

## SIXTY SEVENTH LEGISLATURE - REGULAR SESSION

## SEVENTY FIRST DAY

House Chamber, Olympia, Monday, March 22, 2021

The House was called to order at 9:55 a.m. by the Speaker (Representative Orwall presiding).

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

## RESOLUTION

HOUSE RESOLUTION NO. 2021-4618, by Representatives Abbarno and Orcutt

WHEREAS, Justin R. Schaffer was born January 30, 1992, in Glenwood Springs, Colorado, and graduated from Adna High School in Adna, Washington; and

WHEREAS, Justin Schaffer received a degree in criminal justice from Centralia College; and

WHEREAS, Justin Schaffer served his community honorably as a Washington State trooper in both Morton and Chehalis for seven years of service to the citizens of this state and his community; and

WHEREAS, Trooper Justin Schaffer, while in the line of duty, was fatally struck by a vehicle on Interstate 5 in Chehalis on March 24, 2020; and

WHEREAS, Trooper Justin Schaffer will be missed dearly by his brothers and sisters in the law enforcement family, and his spirit of service will continue through the lives he impacted, as well as those he touched throughout the community; and

WHEREAS, Trooper Justin Schaffer was not only a loving son and brother, but also devoted to his wife, Sandra, his mother, Sheila, and father, Glenn; his brother, Brandon; and his K9 partner, Frankie;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State House of Representatives express its deepest condolences to the family, friends, colleagues, and community that have lost Trooper Justin Schaffer; and

BE IT FURTHER RESOLVED, That the House of Representatives join the people of the State of Washington in commending, saluting, and honoring Trooper Justin Schaffer for his exemplary and exceptional service; and

BE IT FURTHER RESOLVED, That the House of Representatives express profound appreciation and enduring gratitude to the brave men and women that protect our state every day as law enforcement officers; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Chief Clerk of the House of Representatives to the surviving family members of Trooper Justin Schaffer.

There being no objection, HOUSE RESOLUTION NO. 4618 was adopted.

There being no objection, the House advanced to the fifth order of business.

## REPORTS OF STANDING COMMITTEES

March 18, 2021

HB 1277

Prime Sponsor, Representative Ormsby: Providing for an additional revenue source for eviction prevention and housing stability services. Reported by Committee on Appropriations

MAJORITY recommendation: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Housing, Human Services & Veterans. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Caldier; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Chandler; Dye; Jacobsen; Rude; Schmick and Steele.

Referred to Committee on Rules for second reading.

March 18, 2021

HB 1532

Prime Sponsor, Representative Ormsby: Concerning court filing fees. Reported by Committee on Appropriations

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Jacobsen; Johnson, J.; Lekanoff; Pollet; Ryu; Schmick; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen,

Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Rude and Steele.

Referred to Committee on Rules for second reading.

March 19, 2021

**SB 5027** Prime Sponsor, Senator Padden: Concerning closed captioning on televisions in places of public accommodation. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 49.60 RCW to read as follows:

(1) (a) Any person that owns or manages a place of public accommodation that offers a closed-captioned television receiver for use in any public area must activate closed captioning with black background, white text color, and a style and size of font that is readable to people with low vision, unless:

(i) The only receiver of television programming available in a public area is technically incapable of displaying closed captioning; or

(ii) The place of public accommodation is otherwise exempt from the closed captioning requirement under state or federal law.

(b) In a public area with multiple televisions, up to 50 percent of on-premises televisions may be exempt from displaying closed captioning. The exempted televisions must clearly display that they do not have volume or are on mute.

(2) If multiple television models are displayed together for sale in a public area, at least one closed-captioned television must be available for viewing.

(3) If after 90 days from the effective date of this section a person that owns or manages a place of public accommodation fails to comply with the requirements of this section, that person shall be subject to a civil fine of up to \$75 for each violation. Written notice of the violation must be provided to the person and must state that the fine will be assessed. The notice must also state that the person has an opportunity to cure the violation by complying with the

requirement within 30 days after delivery of the notice. If the person demonstrates compliance within the 30-day period, the fine will not be assessed, and the violation must be dismissed. Any subsequent violation shall result in a civil fine of up to \$150.

(4) For purposes of this section the following definitions apply:

(a) "Closed-captioned television receiver" means a receiver of television programming that has the ability to display closed captioning including, but not limited to, a television, digital set-top box, and other technology capable of displaying closed captioning for television programming.

(b) "Closed captioning" means a transcript or dialog of the audio portion of a television program that is displayed on either the bottom or top portion of a television receiver screen when the user activates the feature. There is no requirement for the closed-captioned transcript or dialog to be in any language other than the language of the audio programming, or a default language where a television receiver only displays one language.

(c) "Public area" means any part of a place of public accommodation that is open to the general public.

(5) A violation of this section is a violation of this chapter.

(6) The human rights commission must prepare an educational pamphlet advising employers and employees of their duty and liability under this section. The pamphlet should be made available online. Employers must provide employees with training on this section using the pamphlet."

Correct the title.

Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno; Davis; Entenman; Goodman; Kirby; Klippert; Orwall; Peterson; Thai; Valdez; Walen and Ybarra.

Referred to Committee on Rules for second reading.

March 18, 2021

**SSB 5030** Prime Sponsor, Committee on Early Learning & K-12 Education: Developing comprehensive school counseling

programs. Reported by Committee on Education

**MAJORITY recommendation: Do pass as amended.**

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) The legislature recognizes that certificated school counselors are uniquely qualified to address the developmental needs of all students through a comprehensive school counseling program. School counselors play a critical role in maximizing K-12 student outcomes, including those related to attendance, academic achievement, high school graduation, postsecondary readiness, and social-emotional development. The legislature finds that school counselors play an especially unique role in the lives of students from underserved backgrounds, particularly students of color, students with disabilities, English language learners, and students living in poverty, who, according to research, are more likely to seek out their school counselor for academic, mental health, or postsecondary planning needs.

(2) The legislature also recognizes research indicating that lower counselor to student ratios enable counselors to work more closely with students and address their unique needs, and that school counselors should be able to use their time to provide direct and indirect services to students as described in a comprehensive school counseling program grounded in research.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.320 RCW to read as follows:

By the beginning of the 2022-23 school year each school district shall develop and implement a written plan for a comprehensive school counseling program that is based on regularly updated standards developed by a national organization representing school counselors. The written plan must:

(1) Establish a comprehensive school counseling program that uses state and nationally recognized counselor frameworks and is systemically aligned to state learning standards;

(2) Provide a process for identifying student needs through a multilevel school data review and analysis that includes, at a minimum, use-of-time data, program

results data, and data regarding communication with administrators, parents, students, and stakeholders;

(3) Explain how direct and indirect services will be delivered through the comprehensive school counseling program; and

(4) Establish an annual review and assessment process for the comprehensive school counseling program that includes building administrators and stakeholders.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.320 RCW to read as follows:

(1) The comprehensive school counseling program required by section 2 of this act must be implemented by school counselors or other educational staff associates for the purpose of guiding students in academic pursuits, career planning, and social-emotional learning.

(2) School counselors or other educational staff associates assigned to implement comprehensive school counseling programs must allocate at least 80 percent of their work time providing direct and indirect services to benefit students, as aligned with standards developed by a national organization representing school counselors. Tasks such as coordinating and monitoring student testing, supervising students at lunch and recess, and assuming the duties of other noncounseling staff are not direct or indirect services.

(3) For purposes of this section:

(a) "Direct services" are in-person interactions between school counselors or other educational staff associates assigned to implement comprehensive school counseling programs and students that help students improve achievement, attendance, and discipline. Examples include, but are not limited to, instruction, appraisal, advisement, and counseling.

(b) "Indirect services" are provided on behalf of students as a result of interactions with others by school counselors or educational staff associates assigned to implement comprehensive school counseling programs that allow school counselors or educational staff associates to enhance student achievement and promote equity and access for all students. Examples

include, but are not limited to, collaboration, consultation, and referrals.

(c) "Work time" means the portion of an employee's contracted hours for which they are contracted to perform the duties of a school counselor or other educational staff associate assignment.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.320 RCW to read as follows:

(1) By December 1, 2021, the office of the superintendent of public instruction must develop and distribute to school districts guidance for the implementation of sections 2 and 3 of this act.

(2) Prior to the 2022-23 school year, each school district board of directors must, within existing funds, adopt a transition plan for developing and implementing a comprehensive school counseling program plan.

(3) This section expires June 30, 2023."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Berg; Bergquist; Callan; Ortiz-Self and Stonier.

MINORITY recommendation: Without recommendation. Signed by Representatives Ybarra, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; McCaslin; McEntire; Rude and Steele.

Referred to Committee on Rules for second reading.

March 19, 2021

SSB 5034 Prime Sponsor, Committee on Law & Justice: Concerning nonprofit corporations. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"PART I  
FORMATION AND GENERAL CONDITIONS  
ARTICLE 1  
GENERAL PROVISIONS**

NEW SECTION. Sec. 1101. SHORT TITLE. This chapter may be known and cited as

the Washington nonprofit corporation act.

NEW SECTION. Sec. 1102. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Address," unless otherwise specified, means either a physical mailing address or an electronic address.

(2) "Articles" or "articles of incorporation" means the original articles of incorporation as modified by all amendments thereof, as filed by the secretary of state. If any record filed under this chapter restates the articles in their entirety, thenceforth the articles shall not include any prior filings.

(3) "Board" or "board of directors" means the team or body of individuals ultimately responsible for the management of the activities and affairs of the nonprofit corporation, regardless of the name used to refer to the team or body.

(4) "Bylaws" means the code or codes of rules, other than the articles, adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules, excluding separate policies or procedures adopted by the board.

(5) "Charitable corporation" means a domestic nonprofit corporation that is operated primarily or exclusively for one or more charitable purposes.

(6) "Charitable purpose" means a purpose that:

(a) Would make a corporation organized and operated exclusively for that purpose eligible to be exempt from taxation under section 501(c) (3) of the Internal Revenue Code; or

(b) Is considered charitable under applicable law other than this chapter or the Internal Revenue Code.

(7) "Contribution" means the payment, donation, or promise, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation.

(8) "Corporation" means a domestic nonprofit corporation, unless otherwise specified.

(9) "Delegate" means a person elected or appointed to vote in a representative capacity for the election of directors or on other matters.

(10) "Deliver" or "delivery" of a record means delivery by hand, United States mail, private courier service, electronic transmission, or other methods of delivery used in conventional commercial practice, except that delivery to the secretary of state means actual receipt by the secretary of state.

(11) "Director" means an individual designated, elected, or appointed, by that or any other name or title, to act as a member of the board of directors, while the individual is holding that position.

(12) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(13) "Domestic corporation" or "domestic nonprofit corporation" means a domestic corporation incorporated under or subject to this chapter.

(14) "Domestic unincorporated entity" means an unincorporated entity whose internal affairs are governed by the laws of this state.

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

(16) "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.

(17) "Electronically transmitted" means that the sender of an electronic transmission initiated the electronic transmission.

(18) "Eligible entity" means a domestic or foreign unincorporated entity, a domestic nonprofit corporation incorporated under a corporations statute other than this chapter or its predecessor statutes, or a domestic or foreign for-profit corporation.

(19) "Employee" does not include an individual serving as an officer or director who is not otherwise employed by the corporation.

(20) "Entitled to vote" means entitled to vote on the matter under consideration pursuant to the articles or bylaws of the nonprofit corporation or any applicable controlling provision of law.

(21) "Entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and includes, but is not limited to:

(a) A domestic or foreign for-profit corporation;

(b) A domestic or foreign nonprofit corporation;

(c) A domestic or foreign general or limited partnership;

(d) A domestic or foreign limited liability partnership;

(e) A domestic or foreign limited liability company;

(f) Any other domestic or foreign unincorporated entity;

(g) A domestic or foreign estate or trust;

(h) The federal government;

(i) A tribal government; and

(j) A state or local government, foreign government, or governmental subdivision.

(22) "Ex officio director" means an individual who becomes a member of the board of directors not through the regular elections process but by virtue of another position that he or she holds. Unless the articles or bylaws specifically state that an ex officio director does not have the right to vote, such a director has the same right to vote as any other director.

(23) "Execute" or "executed" means:

(a) Signed, with respect to a written record;

(b) Electronically transmitted along with sufficient information to determine the sender's identity and intent to execute; or

(c) With respect to a record to be filed by the secretary of state, in

compliance with the standards for filing as prescribed by this chapter; chapter 23.95 RCW; or the secretary of state.

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

(25) "Filing entity" means an unincorporated entity that is created by filing a public organic record.

(26) "For-profit corporation" or "domestic for-profit corporation" means a domestic business corporation incorporated under or subject to Title 23B RCW or any successor provisions.

(27) "Foreign," with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than this state.

(28) "Foreign for-profit corporation" means a foreign corporation that would be a for-profit corporation if incorporated under the law of this state.

(29) "Foreign corporation" or "foreign nonprofit corporation" means a foreign corporation that would be a nonprofit corporation if incorporated under the law of this state.

(30) "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

(31) "Fundamental transaction" means an amendment of the articles or bylaws, merger, sale of all or substantially all of the assets, domestication, conversion, or dissolution of a nonprofit corporation.

(32) "Gift instrument" means a record or records under which property is donated to, transferred to, granted to, or held by the corporation. A solicitation constitutes a gift instrument with respect to a donation, transfer, or grant of property made in response to the solicitation only if:

(a) The solicitation was in the form of a record, including but not limited to, invitations made by electronic transmission or in electronic media, or was documented in the form of a record created no later than ninety days after the solicitation was made; and

(b) The donation, transfer, or grant of property was made within one year of the solicitation.

(33) "Governmental subdivision" includes an authority, county, district, and municipality formed or authorized by any federal, state, or local government.

(34) "Includes" denotes a partial definition.

(35) "Individual" means a natural person.

(36) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

(a) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(b) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business, activities, or affairs.

(37) "Interest holder" means a person who holds of record an interest.

(38) "Interest holder liability" means personal liability for a debt, obligation, or liability of a domestic or foreign for-profit or nonprofit corporation or unincorporated entity that is imposed on a person:

(a) Solely by reason of the person's status as a shareholder, interest holder, or member; or

(b) By the articles, bylaws, or an organic record pursuant to a provision of the organic law authorizing the articles, bylaws, or an organic record to make one or more specified shareholders, interest holders, or members liable in their capacity as shareholders, interest holders, or members for all or specified debts, obligations, or liabilities of the entity.

(39) "Internal Revenue Code" means Title 26 U.S.C., the federal Internal Revenue Code of 1986, as amended, or any successor statute.

(40) "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.

(41) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(42) "Material interest" means an actual or potential benefit or detriment, other than one that would devolve on the

nonprofit corporation or the members generally, that would reasonably be expected to impair the objectivity of an individual's judgment when participating in the action to be taken.

(43) "Material relationship" means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of an individual's judgment when participating in the action to be taken.

(44) "Means" denotes an exhaustive definition.

(45) "Member" means:

(a) Where the articles state that the corporation has members, a person who has a right set forth in the articles or bylaws, not as a delegate, to select or vote for the election of directors or delegates or to vote on at least one type of fundamental transaction.

(b) For a corporation formed before January 1, 2022, the articles of which do not state that the corporation has members, a person who:

(i) Is defined as a member in the bylaws; and

(ii) Has a right provided in the bylaws, not as a delegate, to select or vote for the election of directors or delegates or to vote on at least one type of fundamental transaction.

(c) A delegate or group of delegates, to the extent:

(i) The powers, functions, or authority of the members have been vested in, or are exercised by, such a delegate or group of delegates; and

(ii) The provision of this chapter in which the term appears is relevant to the discharge by the delegate or group of delegates of its powers, functions, or authority.

(46) "Membership" means the rights and any obligations of a member in a nonprofit corporation.

(47) "Membership corporation" means a nonprofit corporation whose articles provide that it has members, or that has members as defined in subsection (45) of this section.

(48) "Nonfiling entity" means an unincorporated entity that is not created by filing a public organic record.

(49) "Nonmembership corporation" means a nonprofit corporation whose articles do not provide that it has members and that does not have members as defined in subsection (45)(b) of this section.

(50) "Nonprofit corporation" means a domestic nonprofit corporation, unless otherwise specified.

(51) "Notice" has the same meaning as described in section 1103 of this act.

(52) "Notify" means to provide notice as defined in section 1103 of this act.

(53) "Officer" includes:

(a) A person who is an officer as defined in section 2601 of this act; and

(b) If a nonprofit corporation is in the hands of a custodian, receiver, trustee, or other court-appointed fiduciary, that fiduciary or any person appointed by that fiduciary to act as an officer for any purpose under this chapter.

(54) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(55) "Organic record" means a public organic record or the private organic rules.

(56) "Person" includes an individual or an entity.

(57) "Principal office" means the office designated in the annual report required under RCW 23.95.255 as the location of the principal executive office of a domestic or foreign nonprofit corporation, whether or not in this state.

(58) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an unincorporated entity, are binding on all of its interest holders, and are not part of its public organic record, if any.

(59) "Proceeding" means any civil suit or criminal, administrative, or investigatory action.

(60) "Property" means all property, whether real, personal, or mixed or tangible or intangible, including cash, securities, or real property, or any right or interest therein.

(61) "Property held for charitable purposes" is as defined in section 1408 of this act.

(62) "Public organic record" means the record, if any, that is filed as a public record to create an unincorporated entity and any amendment to or restatement of that record.

(63) "Record" means information inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. An electronic transmission not directly involving the physical transfer of a record in a tangible medium is a record only if:

(a) It may be retained, retrieved, and reviewed by the sender and the recipient thereof; and

(b) It may be directly reproduced in a tangible medium by the sender and the recipient thereof.

(64) "Record date" means the date established under section 2307 of this act on which a nonprofit corporation determines the identity of its members and the membership rights they hold for purposes of this chapter. The determinations shall be made as of 12:01 a.m. on the record date unless another time for doing so is specified when the record date is fixed.

(65) "Registered foreign nonprofit corporation" means a foreign nonprofit corporation registered to do business in this state.

(66) "Religious corporation" means a charitable corporation including, but not limited to, a church, mosque, synagogue, temple, nondenominational ministry, interdenominational or ecumenical organization, or faith-based social service agency, that is:

(a) Organized primarily for religious purposes;

(b) Operated primarily, in good faith, to carry out religious purposes;

(c) Held out to the public as carrying out religious purposes; and

(d) Not engaged primarily or substantially in the exchange of goods or services for consideration, unless the consideration does not exceed nominal amounts.

(67) "Shareholder" means the person in whose name shares are registered in the records of a domestic or foreign for-profit corporation or the beneficial owner of shares to the extent of the

rights granted by a nominee certificate on file with such a corporation.

(68) "Shares" means the units into which the proprietary interests in a domestic or foreign for-profit corporation, or a nonprofit corporation incorporated under organic law other than this chapter that permits proprietary interests in such a corporation, are divided.

(69) "Solicitation" means any oral or written request for a contribution, including an offer or attempt by the solicitor to sell any property, rights, services, or other thing, in connection with which:

(a) Any appeal is made for any charitable purpose;

(b) The name of any charitable corporation, or any foreign nonprofit corporation that would be a charitable corporation if it were incorporated under this chapter, is used as an inducement for making the contribution or consummating the sale; or

(c) Any statement is made that implies that the whole or any part of the contribution or the proceeds from the sale will be applied toward any charitable purpose or donated to any entity organized or operated for charitable purposes.

(70) "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, and any agency or governmental subdivision of any of the foregoing.

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

(72) "Unincorporated entity" means an entity that is not any of the following: A domestic or foreign for-profit or nonprofit corporation, an estate, a trust, a governmental subdivision, the federal government, a tribal government, a state or local government, a municipal corporation, a foreign government, or a governmental subdivision. The term includes a general partnership, limited liability company, limited partnership, cooperative association, limited cooperative association, business or statutory trust, joint stock



association, and unincorporated nonprofit association.

(73) "Vote," "voting," or "casting a vote" includes voting occurring at a meeting; voting of members by ballot or proxy; and the giving of consent in the form of a record without a meeting by a person entitled to vote. Whether or not the person entitled to vote characterizes such conduct as voting or casting a vote, the term does not include either recording the fact of abstention or failing to vote for:

(a) A candidate; or

(b) Approval or disapproval of a matter.

(74) "Voting group" means one or more classes of members that under the articles, bylaws, or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the articles, bylaws, or this chapter to vote generally on that matter are for that purpose a single voting group.

(75) "Voting power" means the current power to vote in the election of directors or delegates, or to vote on approval of any type of fundamental transaction.

**NEW SECTION. Sec. 1103. NOTICE.** (1) Notice under this chapter must be in the form of a record unless this chapter or the articles or bylaws allow oral notice.

(2) Notice may be communicated in person or by delivery. If these forms of communication are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(3) Notice, other than notice described in subsection (4) of this section, is effective at the earliest of the following:

(a) When received;

(b) When left at the recipient's residence or usual place of business;

(c) Five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed; or

(d) On the date shown on the return receipt, if sent by registered or

certified mail, return receipt requested, or by commercial delivery service.

(4) Notice in the form of a record by a membership corporation to a member is effective:

(a) Five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed to the member's address shown in the corporation's current record of members;

(b) When given, if the notice is delivered by electronic transmission to the member's address shown in the corporation's current record of members; or

(c) When given, if the notice is delivered in any other manner that the member has authorized.

(5) Notice to a domestic or registered foreign nonprofit corporation may be delivered to its 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 an annual report, in its registration statement.

(6) Where oral notice is permitted, it is effective when communicated, if communicated in a comprehensible manner.

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

(8) With respect to electronic transmissions:

(a) Unless otherwise provided in the articles or bylaws, or otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(i) It enters an electronic system that the recipient has designated or currently uses for the purpose of receiving electronic transmissions of the type sent; and

(ii) It is in a form capable of being processed by that system.

(b) An electronic transmission is received under (a)(i) of this subsection even if no individual is aware of its receipt.

(c) Receipt of an electronic acknowledgment from an electronic system described in (a)(i) of this subsection establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received, and is not necessary for the record to be received.

(9) A member may revoke in the form of a record a corporation's express or implied authorization to deliver notices or communications by electronic transmission to the member. Such authorization is deemed revoked with respect to a member if:

(a) The corporation cannot deliver two consecutive notices or other communications to the member's address shown in the corporation's current record of members; and

(b) The inability becomes known to the secretary or other person responsible for giving the notice or other communication; but the failure to treat the inability as a revocation does not invalidate any meeting or other action.

**NEW SECTION. Sec. 1104. SERVICE ON CORPORATIONS.** (1) Service upon a nonprofit corporation of any process, notice, or demand required or permitted by law may be made by serving the nonprofit corporation's registered agent.

(2) Service upon a nonprofit corporation made by serving the nonprofit corporation's registered agent, or service on the nonprofit corporation in the absence of a registered agent, is governed by chapter 23.95 RCW.

**NEW SECTION. Sec. 1105. VENUE FOR ACTIONS.** Except as provided under federal or state law or in specific provisions of this chapter, every action arising under this chapter shall be tried in, and "the court" throughout this chapter refers to, the superior court:

(1) In the county where the corporation's principal office in this state is located;

(2) If the corporation has no principal office in this state, in the county where the corporation's registered agent in this state is located;

(3) Of King county; or

(4) Of Thurston county.

**NEW SECTION. Sec. 1106. APPLICATION TO EXISTING NONPROFIT CORPORATIONS.** (1) This chapter applies to every domestic nonprofit corporation in existence on January 1, 2022, that was incorporated under chapter 24.03 RCW or filed a statement of election through which it elected to have chapter 24.03 RCW apply to it.

(2) Any corporation or association organized under any other chapter of Title 24 RCW may be reorganized under this chapter by adopting and filing amendments to its articles in accordance with this chapter. The articles as amended shall conform to this chapter, and shall state that the corporation accepts the benefits of and will be bound by this chapter.

**NEW SECTION. Sec. 1107. APPLICATION TO REGISTERED FOREIGN CORPORATIONS.** A foreign nonprofit corporation registered as of December 31, 2021, is subject to this chapter but is not required to obtain a new statement of registration to transact business in this state.

**NEW SECTION. Sec. 1108. RELATIONSHIP TO PRIOR STATUTES.** (1) Except as provided in subsection (2) of this section, the repeal of chapter 24.03 RCW by this act does not affect:

(a) The operation of the repealed chapter or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the repealed chapter before its repeal;

(c) Any violation of the repealed chapter, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding, reorganization, or dissolution commenced under the repealed chapter before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the repealed chapter as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of chapter 24.03 RCW repealed by this act is reduced by this chapter, then the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

NEW SECTION. **Sec. 1109.** RELATIONSHIP TO OTHER LAWS. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) This chapter does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

(3) This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act, Title 15 U.S.C. Sec. 7001 et seq., but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize delivery by electronic transmission of any of the notices described in section 103(b) of that act.

NEW SECTION. **Sec. 1110.** SUBORDINATION TO CANON LAW. To the extent religious doctrine or canon law governing the internal affairs of a nonprofit corporation is inconsistent with this chapter, the religious doctrine or canon law controls to the extent required by the United States Constitution, the state Constitution, or both.

## ARTICLE 2

### FILING DOCUMENTS—SECRETARY OF STATE

NEW SECTION. **Sec. 1201.** APPLICABILITY OF UNIFORM BUSINESS ORGANIZATIONS CODE. Filing of documents under this chapter by the secretary of state is governed by this chapter and chapter 23.95 RCW.

NEW SECTION. **Sec. 1202.** FILING REQUIREMENTS. (1) To be entitled to filing by the secretary of state, a record delivered for filing under this chapter must:

(a) Satisfy the requirements set forth in RCW 23.95.200;

(b) Contain all information required under this chapter and chapter 23.95 RCW;

(c) Be executed on behalf of the domestic or foreign entity as follows:

(i) If the entity is a domestic or foreign nonprofit corporation, by an officer;

(ii) If the entity is not a domestic or foreign nonprofit corporation, by a

person with authority to sign for the entity; or

(iii) If the entity is in the hands of a custodian, receiver, trustee, or other court-appointed fiduciary, by that fiduciary; and

(d) Satisfy the requirements of any other provision of this chapter or chapter 23.95 RCW that adds to or varies any of the requirements in this section.

(2) A filed record may include additional information not in conflict with the requirements of subsection (1) of this section.

(3)(a) Whenever a provision of this chapter permits any of the terms of a plan or a filed record to be dependent on facts objectively ascertainable outside the plan or filed record, the following provisions apply:

(i) The plan or filed record shall set forth the manner in which the facts will operate upon the terms of the plan or filed record.

(ii) The facts may include:

(A) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(B) A determination or action by any person or body, including the nonprofit corporation or any other party to a plan or filed record; or

(C) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or record.

(d) As used in this subsection:

(i) "Filed record" means a record filed by the secretary of state under any provision of the Uniform Business Organizations Code or any provision of this chapter except sections 1801 through 1811 of this act, except an annual report filed pursuant to section 1204 of this act; and

(ii) "Plan" means a plan of domestication, business conversion, entity conversion, distribution, or merger.

NEW SECTION. **Sec. 1203.** ELECTRONIC FILINGS. Any rules governing electronic filing adopted by the secretary of state under RCW 23.95.115(2) apply to all filings required or permitted under this chapter unless such rules, this chapter, or chapter 23.95 RCW specify otherwise.

NEW SECTION. **Sec. 1204.** ANNUAL REPORT. Each domestic nonprofit corporation, and each registered foreign nonprofit corporation, shall deliver to the secretary of state for filing an annual report as required under RCW 23.95.255(2).

NEW SECTION. **Sec. 1205.** MAJOR CHANGES BY CHARITABLE CORPORATIONS. (1) A charitable corporation shall report any action described in subsection (2) of this section on the next annual report that the charitable corporation delivers to the secretary of state for filing under section 1204 of this act, except as provided in subsection (3) of this section.

(2) The actions that create a reporting requirement under this section are:

(a) Amendment of the charitable corporation's articles to include one or more purposes of the corporation substantially different from any purpose stated in the charitable corporation's articles in effect before the amendment; or

(b) Operation of a significant program or activity that is substantially different from both:

(i) Programs or activities the charitable corporation has previously operated; and

(ii) Programs or activities described in the most recent application for recognition of exemption from federal income tax that the charitable corporation has filed with the internal revenue service and in response to which the internal revenue service has issued a determination letter of tax-exempt status to the charitable corporation.

(3) A charitable corporation is not required to report actions described in subsection (2) of this section:

(a) If the charitable corporation was a religious corporation both before and after it took the action;

(b) Within the charitable corporation's first three years of

existence, if all programs or activities the charitable corporation operates are consistent with the purposes set forth in the charitable corporation's articles; or

(c) When the charitable corporation operates a program or activity described in subsection (2)(b) of this section, if all funds expended to conduct such a program or activity are derived only from one or more of the following sources:

(i) Contributions or sales in response to one or more solicitations in which:

(A) The program or activity was clearly described; and

(B) A statement was made that implies that the corporation will apply any contribution, or proceeds from any sale, in connection with those solicitations toward the program or activity;

(ii) Admissions, performance of services, or furnishing of facilities;

(iii) Sales of goods not in connection with any solicitation;

(iv) Income from investments of the charitable corporation that is not subject to any gift restriction; or

(v) Revenue from any source that is recognized after the program or activity has been in continuous operation and disclosed to the general public for a period of at least three years.

(4) The secretary of state shall deliver to the attorney general a copy of every annual report filed by the secretary of state that includes a report described in this section.

NEW SECTION. **Sec. 1206.** POWERS OF SECRETARY OF STATE. The secretary of state has the powers 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.

NEW SECTION. **Sec. 1207.** FEES. The secretary of state may adopt rules in accordance with chapter 34.05 RCW setting fees for any services provided by the secretary of state under this chapter.

### ARTICLE 3

#### INCORPORATION

NEW SECTION. **Sec. 1301.** INCORPORATORS. One or more individuals may act as the incorporators of a

nonprofit corporation by delivering articles of incorporation to the secretary of state for filing. Individuals acting as incorporators must be at least eighteen years old.

**NEW SECTION. Sec. 1302. CORPORATE NAME.** The name or any reserved name of a nonprofit corporation is governed by chapter 23.95 RCW.

**NEW SECTION. Sec. 1303. ARTICLES OF INCORPORATION.** (1) The articles of incorporation shall set forth:

(a) A name for the nonprofit corporation that satisfies the requirements of section 1302 of this act;

(b) The name and address of the corporation's initial registered agent;

(c) That the corporation is incorporated under this chapter;

(d) The purpose or purposes for which the corporation is organized;

(e) The number of directors constituting the initial board of directors, and the names and mailing addresses of the persons who are to serve as the initial directors;

(f) If the corporation will have members as defined in section 1102 of this act, a statement that the corporation will have members;

(g) The distribution of assets upon dissolution;

(h) The name and mailing address of each incorporator; and

(i) The signature of each incorporator.

(2) The articles of incorporation may set forth:

(a) A statement that the corporation has no members as defined in this chapter (whether or not the corporation uses the term "member" to define one or more classes of persons who are not members as defined in this chapter);

(b) The names of the initial members, if any;

(c) Provisions not inconsistent with law regarding:

(i) Managing the business and regulating the affairs of the corporation;

(ii) Defining, limiting, and regulating the powers of the corporation,

its board of directors, and the members, if any;

(iii) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

(d) A provision permitting or making obligatory indemnification of any individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding, subject to the limitations set forth in section 2706 of this act;

(e) Provisions required if the corporation is to be exempt from taxation under federal, state, or local law; or

(f) Any other provision that this chapter specifically permits to be set forth in the articles or bylaws.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

(4) Provisions of the articles may be made dependent upon facts objectively ascertainable outside the articles in accordance with section 1202(3) of this act.

**NEW SECTION. Sec. 1304. EFFECTIVENESS OF INCORPORATION.** (1) Unless a delayed effective date is specified, the corporate existence begins on the date the articles are filed by the secretary of state.

(2) The filing of the articles by the secretary of state is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by this state to cancel or revoke the incorporation or involuntarily dissolve the nonprofit corporation.

**NEW SECTION. Sec. 1305. REQUIREMENT OF REGISTERED AGENT.** (1) Each nonprofit corporation shall designate and maintain a registered agent in this state.

(2) The designation and maintenance of a nonprofit corporation's registered agent are governed by chapter 23.95 RCW.

**NEW SECTION. Sec. 1306. LIABILITY FOR PREINCORPORATION TRANSACTIONS.** All persons purporting to act as or on behalf of a nonprofit corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

NEW SECTION. Sec. 1307. ORGANIZATION OF CORPORATIONS. (1) After incorporation:

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

(b) If the initial directors resign or refuse to meet, then the incorporator or incorporators shall hold a meeting at the call of a majority of the incorporators to elect a board of directors who shall complete the organization of the corporation.

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

(3) The directors or incorporators may take organizational action without a meeting if the action taken is evidenced by one or more consents in the form of a record describing the action taken and executed by each director or incorporator.

NEW SECTION. Sec. 1308. BYLAWS. (1) The board shall adopt initial bylaws for the corporation.

(2) The bylaws may contain any provision for managing the activities and regulating the affairs of the corporation that is not inconsistent with law or the articles. Whenever a provision of the bylaws is inconsistent with a provision of the articles, the provision of the articles controls.

#### **ARTICLE 4**

##### **PURPOSES, POWERS, AND LIMITATIONS**

NEW SECTION. Sec. 1401. PURPOSES. (1) Nonprofit corporations may be organized under this chapter for the purpose of engaging in any lawful activity. A nonprofit corporation may set forth a more limited purpose or purposes in its articles.

(2) A charitable corporation formed on or after January 1, 2022, must be organized under this chapter, unless incorporating under this chapter is prohibited by another statute of this state.

(3) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if

incorporating under this chapter is not prohibited by the other statute. The corporation is subject to all the limitations of the other statute. Organizations subject to any provision of the banking or insurance laws of this state may not be organized under this chapter, except that any nonprofit corporation heretofore organized under any act hereby repealed and existing for the purpose of providing health care services as defined in RCW 48.44.010 or 48.46.020, as now or hereafter amended, continues to be organized under this chapter.

NEW SECTION. Sec. 1402. POWER TO MODIFY PURPOSES. (1) Unless otherwise prohibited by its articles or bylaws, a nonprofit corporation, including a charitable corporation, may modify its purposes by:

(a) Amending its articles or bylaws in accordance with this chapter and with those documents; and

(b) Making provision for any gift restrictions as defined in section 1502 of this act, either by ensuring continued adherence to those restrictions or by obtaining modification as provided in section 1503 of this act.

(2) A decision to modify the corporation's purposes is subject to judicial review only with respect to violations of this chapter or other applicable law.

NEW SECTION. Sec. 1403. GENERAL POWERS. Unless its articles provide otherwise, every nonprofit corporation has perpetual duration and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power to:

(1) Sue and be sued, complain and defend in its corporate name;

(2) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) Make and amend bylaws and policies, not inconsistent with its articles or with the laws of this state, for managing and regulating the affairs of the corporation;

(4) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with,

real or personal property, or any legal or equitable interest in property, wherever located;

(5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;

(7) Make contracts; make guarantees that may reasonably be expected to benefit, directly or indirectly, the guarantor corporation; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of any of its property or income;

(8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 2701 of this act;

(9) Be a promoter, partner, shareholder, member, trustee, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) Conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this state;

(11) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit, except as limited by sections 2701 and 2702 of this act;

(12) Pay pensions and establish pension plans, pension trusts, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents, except as limited by section 2702 of this act;

(13) Make donations for charitable purposes;

(14) Impose dues, assessments, admission, and transfer fees on its members;

(15) Establish conditions for admission or removal of members, admit or remove members, and issue memberships;

(16) Carry on a business, and, subject to the requirements of sections 1406 and

2702 of this act, make net profits and accumulate reserves; and

(17) Make payments or donations, or do any other acts, not inconsistent with law, that further the purposes, activities, and affairs of the corporation.

NEW SECTION. **Sec. 1404.** EMERGENCY POWERS. (1) For purposes of this section, an emergency exists if a quorum of the directors cannot readily be assembled because of some catastrophic event. A catastrophic event is a sudden, natural or man-made situation where rapid change or destruction has occurred that has limited normal functions in daily living including communications and travel.

(2) In anticipation of and for the duration of an emergency, the board of a nonprofit corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Take those actions necessary to preserve the corporation and ensure that it acts in accordance with its purposes.

(3) During an emergency, unless the articles or bylaws provide otherwise:

(a) Notice of a meeting of the board need be given only to those directors it is practicable to reach and may be given in any practicable manner;

(b) The quorum required under section 2504 of this act or the articles or bylaws need not be established at such a meeting; and

(c) One or more officers of the nonprofit corporation present at a meeting of the board may be deemed to be directors for purposes of the meeting.

(4) In anticipation of and for the duration of an emergency, any meeting of the membership or of the board of directors may be conducted through one or more means of remote communication through which members or directors not physically present may simultaneously participate with each other during the meeting, notwithstanding any provision of the articles or bylaws that provides otherwise. A member or director participating in a meeting through such means in anticipation of and for the duration of an emergency is considered present in person at the meeting.

(5) Corporate action taken in good faith during an emergency to further the purposes and the ordinary affairs of the nonprofit corporation:

(a) Binds the corporation; and

(b) May not be used to impose liability on a director, officer, employee, or agent.

**NEW SECTION. Sec. 1405. ULTRA VIRES ACTION.** (1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.

(2) The power of a nonprofit corporation to act may be challenged:

(a) In a proceeding by the corporation, directly or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(b) In a proceeding by the attorney general under section 3605 of this act.

**NEW SECTION. Sec. 1406. DISTRIBUTIONS PROHIBITED.** (1) A nonprofit corporation shall not distribute any property held for charitable purposes to its members, directors, officers, or other persons who are in a position to exercise substantial influence over the affairs of the corporation, except:

(a) As permitted under section 1407 of this act;

(b) To another entity that is a charitable corporation or is organized and operated exclusively for one or more charitable purposes; or

(c) To the federal government, a tribal government, or a state or local government for a public purpose.

(2) A nonprofit corporation shall not pay dividends or make distributions of any part of its assets, income, or profits to its members, directors, officers, or other persons who are in a position to exercise substantial influence over the affairs of the corporation, except as permitted under:

(a) Subsection (1)(b) or (c) of this section;

(b) Subsection (3) of this section;

(c) Section 1407 of this act; or

(d) Section 3502 of this act.

(3) A nonprofit corporation other than a charitable corporation may confer benefits upon or make transfers to members or nonmembers in conformity with its purposes, repurchase its memberships only to the extent provided in section 2114 of this act, or repay capital contributions, subject to the following conditions:

(a) Property held for charitable purposes may not be used to confer benefits upon or make transfers to members or nonmembers, repurchase memberships, or repay capital contributions;

(b) The nonprofit corporation may not be insolvent, and conferral of benefits, making of transfers, repurchase of memberships, or repayment of capital contributions shall not render the corporation insolvent or unable to carry out its purposes; and

(c) The fair value of the corporation's assets remaining after the conferring of benefits, making of transfers, repurchase, or repayment must be sufficient to meet the corporation's liabilities.

**NEW SECTION. Sec. 1407. REASONABLE COMPENSATION PERMITTED.** A nonprofit corporation, including a charitable corporation, may pay reasonable compensation to members, directors, or officers for services rendered, or reimburse reasonable expenses incurred by members, directors, or officers in connection with services rendered.

**NEW SECTION. Sec. 1408. PROPERTY HELD FOR CHARITABLE PURPOSES.** (1) Property owned by a nonprofit corporation is held for charitable purposes if:

(a) The corporation is a charitable corporation;

(b) The property is subject to restrictions contained in a gift instrument that limit its use only to one or more charitable purposes; or

(c) The property is subject to restrictions contained in the corporation's articles, bylaws, or any record adopted by the corporation's board, or to other limitations in the form of a record, that limit its use only to one or more charitable purposes.

(2) In no event may property held for charitable purposes be distributed in a



manner inconsistent with sections 1406, 3404, or 3502 of this act.

**NEW SECTION. Sec. 1409. DEBT AND SECURITY INTERESTS.** (1) A nonprofit corporation shall not issue bonds or other evidences of indebtedness except for cash or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof.

(2) The board may authorize a mortgage or pledge of, or the creation of a security interest in, all or any part of the property of the nonprofit corporation, or any interest therein. Unless otherwise provided in the articles or bylaws, the vote or consent of the members is not required to make effective such an action by the board.

**NEW SECTION. Sec. 1410. PRIVATE FOUNDATIONS.** (1) Except as provided in subsection (2) of this section, a nonprofit corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code shall:

(a) Distribute sufficient amounts for each taxable year at a time and in a manner so as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;

(b) Not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(c) Not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(d) Not make any investments in a manner that subjects the corporation to tax under section 4944 of the Internal Revenue Code; and

(e) Not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

(2) Subsection (1) of this section does not apply to a nonprofit corporation incorporated before January 1, 1970, that has been properly relieved from the requirements of section 508(e)(1) of the Internal Revenue Code by a timely judicial proceeding.

## ARTICLE 5

### GIFT RESTRICTIONS

**NEW SECTION. Sec. 1501. UNRESTRICTED GIFTS.** Giving a gift to a nonprofit

corporation, including a charitable corporation, without a gift instrument transfers complete ownership of the gift to the nonprofit corporation. A restricted gift to a nonprofit corporation is created only by a gift instrument.

**NEW SECTION. Sec. 1502. RESTRICTED GIFTS.** (1) This section distinguishes between:

(a) Enforceable trusts held by a nonprofit corporation, including a charitable corporation, governed under chapter 11.110 RCW; and

(b) Gift restrictions whose terms may be enforced and are subject to modification under this chapter or other applicable law.

(2) A gift to a nonprofit corporation, including a charitable corporation, does not create a charitable trust unless:

(a) The donor expresses an intent to create a charitable trust; and

(b) The trustee, which may be a charitable corporation, agrees in the form of a record to act as trustee of that trust according to its terms.

(3) Giving a gift to a nonprofit corporation, including a charitable corporation, that is: (a) Accepted by the corporation; (b) not in trust; and (c) subject to material restrictions or requirements contained in a gift instrument transfers complete ownership to the nonprofit corporation. The nonprofit corporation is bound by the material restrictions or requirements contained in the gift instrument.

(4) A nonprofit corporation complies with a term contained in a gift instrument if the nonprofit corporation reasonably complies with all material restrictions or requirements contained in the term, or, when appropriate under the facts and circumstances, seeks modification in accordance with section 1503 of this act.

(5) If the nonprofit corporation fails to comply with any material restriction or requirement contained in a gift instrument and fails to seek a modification in accordance with section 1503 of this act, then the attorney general may bring a proceeding to enforce the terms of the gift instrument.

**NEW SECTION. Sec. 1503. MODIFICATION OR RELEASE OF GIFT RESTRICTIONS.** (1) A

term of a gift instrument that binds a nonprofit corporation may be modified or released, in whole or in part:

(a) If the donor consents in a record;

(b) As set forth in subsection (2) of this section, if the term is unlawful, impracticable, impossible to achieve, or wasteful;

(c) For gift instruments limiting the use of property to one or more charitable purposes, through a binding agreement executed by the nonprofit corporation, the attorney general, and other interested parties, and filed with or approved by the court in accordance with section 1504 of this act;

(d) By approval of the court in accordance with section 1505 of this act; or

(e) As provided by other applicable law including, but not limited to, chapter 24.55 RCW.

(2) If a nonprofit corporation, including a charitable corporation, determines that a restriction contained in a gift instrument on the management, investment, or purpose of a gift is unlawful, impracticable, impossible to achieve, or wasteful, then the nonprofit corporation, sixty days after notification to the attorney general, may modify the restriction, in whole or part, if:

(a) The gift subject to the restriction has a total value consistent with RCW 24.55.045(4)(a) or any successor provision;

(b) More than twenty years have elapsed since the gift was given; and

(c) The nonprofit corporation uses the gift in a manner consistent with any charitable purposes expressed in the gift instrument.

(3) Application of sections 1501 through 1506 of this act to existing gifts:

(a) Before January 1, 2023, sections 1501 through 1506 of this act apply to gifts existing on December 31, 2021, only if the nonprofit corporation's board elects to apply sections 1501 through 1506 of this act to existing gifts before January 1, 2023.

(b) On or after January 1, 2023, sections 1501 through 1506 of this act apply to all gifts.

(c) As applied to gifts existing on December 31, 2021, sections 1501 through 1506 of this act govern only decisions made or actions taken on or after January 1, 2023, except that in the case of a nonprofit corporation that makes the election under (a) of this subsection sections 1501 through 1506 of this act govern decisions made or actions taken on or after the date the nonprofit corporation elects to be covered by sections 1501 through 1506 of this act.

NEW SECTION. **Sec. 1504.** BINDING AGREEMENT TO MODIFY OR RELEASE RESTRICTIONS. (1) If a gift instrument limits the use of the gift to one or more charitable purposes, and the conditions set forth in subsection (3) or (4) of this section are satisfied, then the gift instrument may be modified by agreement of the nonprofit corporation, the attorney general, and all other interested parties.

(2) For purposes of this section, an "interested party" does not include:

(a) The donor; or

(b) Any member of any charitable class that the gift would benefit, either before or after the modifications to be made by the agreement.

(3) A restriction related to a gift's management or investment may be modified by an agreement described in subsection (1) of this section if:

(a) Because of circumstances not anticipated by the donor, modification will further the charitable purpose of the gift;

(b) Enforcement of the restriction has become impracticable or wasteful; or

(c) Enforcement of the restriction impairs the management or investment of the gift.

(4) A restriction on the use of a gift relating to the gift's charitable purpose, rather than its management or investment, may be modified by an agreement described in subsection (1) of this section if the purpose becomes unlawful, impracticable, impossible to achieve, or wasteful.

(5) An agreement described in subsection (1) of this section must:

(a) Be in writing and executed by all of the parties;

(b) Be binding and conclusive on the nonprofit corporation and all other parties with a beneficial interest in the gift;

(c) Identify the gift instrument and the term or terms of the gift instrument that it modifies;

(d) Describe completely the modifications that it would make;

(e) Set forth the reasons why the modifications would comply with subsection (3) or (4) of this section; and

(f) State changes to the charitable purposes to which the use of the gift is limited, if any, resulting from the modifications.

(6) The nonprofit corporation or its legal representative may file the executed agreement with the court within thirty days of the agreement's execution by all parties. Upon filing of the executed agreement with the court:

(a) The agreement becomes effective and equivalent to a final court order binding on the nonprofit corporation and all other parties with a beneficial interest in the use of the gift, and

(b) The modifications are deemed approved by the court, and have the same effect as if the court ordered them pursuant to section 1505 of this act.

(7) The nonprofit corporation or its legal representative may, as an alternative to the procedure described in subsection (6) of this section, petition the court for a hearing for presentation of an agreement entered under this section to the court within twenty-one days of the agreement's execution by all parties. The nonprofit corporation shall (a) provide notice of the time and date of the hearing to each party to the agreement unless that party has waived notice in the form of a record, and (b) file proof of mailing or delivery of the notice or waiver with the court. At the hearing, the court shall review the agreement on behalf of all the parties. The court shall determine whether the agreement adequately represents and protects the interests of the parties and the public interest, and enter an order declaring its determination. If the court determines that the agreement does not adequately represent and protect those interests, then the agreement is void.

NEW SECTION. **Sec. 1505.** JUDICIAL MODIFICATION OR RELEASE OF RESTRICTIONS.

(1) Upon application by a corporation subject to a restriction related to a gift's management or investment, rather than to its charitable purpose, the court may modify the restriction if:

(a) Because of circumstances not anticipated by the donor, modification will further the charitable purpose of the gift;

(b) Enforcement of the restriction has become impracticable or wasteful; or

(c) Enforcement of the restriction impairs the management or investment of the gift.

(2) Upon application by a corporation subject to a restriction on the use of a gift relating to the charitable purpose of the gift, rather than its management or investment, the court may modify the restriction if the purpose becomes unlawful, impracticable, impossible to achieve, or wasteful.

(3) If the gift instrument provides for a forfeiture or gift-over to an alternative beneficiary, then the court may modify one or more restrictions under the procedure set out in subsection (1) of this section if a management or investment provision fails. The court may not, however, modify any restriction under the procedure set out in subsection (2) of this section to defeat the interest of an alternate beneficiary unless the beneficiary would also be subject to, and unable to perform, the term requiring modification. The alternative beneficiary is entitled to notice and may participate in the determination of whether to grant modification.

(4) Any modification made by the court must, to the extent possible, be made in a manner consistent with the charitable purposes as expressed in the gift instrument.

(5) A nonprofit corporation shall notify the attorney general whenever it seeks to modify a charitable gift restriction under this section and the court shall offer the attorney general an opportunity to be heard.

NEW SECTION. **Sec. 1506.** CHARITABLE PURPOSE SURVIVES. Modification or release of a gift restriction shall not allow a gift to be used for a purpose other than a charitable purpose.

**ARTICLE 6****BOOKS AND RECORDS**

NEW SECTION. **Sec. 1601.** CORPORATE RECORDS. (1) A nonprofit corporation shall keep permanently a copy of the following records:

(a) Minutes of all meetings of its members and of its board of directors;

(b) A record of all actions taken by the members and board of directors by unanimous written consent; and

(c) A record of all actions taken on behalf of the corporation by a committee of the board.

(2) A nonprofit corporation shall keep a current copy of the following records:

(a) Its articles of incorporation 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) All communications in the form of a record to members generally within the past six years, including the financial statements furnished for the past six years under section 1604 of this act;

(d) A list of the names and business addresses of its current directors and officers; and

(e) Its most recent annual report delivered to the secretary of state under section 1204 of this act.

(3) A nonprofit corporation shall maintain appropriate accounting records.

(4) A membership corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(5) A nonprofit corporation shall maintain its records in written form or in any other form of a record.

(6) All records required to be maintained by a nonprofit corporation may be maintained at any location within or without this state.

NEW SECTION. **Sec. 1602.** INSPECTION BY MEMBERS. (1) A member of a nonprofit corporation may inspect and copy, during regular business hours at a reasonable

location specified by the corporation, any of the records the corporation is required to maintain under section 1601(2) of this act, if the member delivers to the corporation an executed notice in the form of a record at least five business days before the date on which the member wishes to inspect and copy the records.

(2) Subject to the limitations set forth in subsections (3) and (4) of this section, a member of a nonprofit corporation may inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation, if the member delivers to the corporation an executed notice in the form of a record at least five business days before the date on which the member wishes to inspect and copy the records:

(a) Excerpts from those minutes and records required to be maintained under section 1601(1) of this act;

(b) Accounting records of the corporation described in section 1601(3) of this act; and

(c) Subject to section 1607 of this act, the membership list described in section 1601(4) of this act.

(3) A nonprofit corporation may withhold from inspection under this section:

(a) Those portions of records that contain information protected by the attorney-client privilege or related work product;

(b) The address of any member who is known to the corporation to be a participant in the address confidentiality program described in chapter 40.24 RCW or any similar program established by law;

(c) Those portions of records, which, if disclosed, would be reasonably likely to result in harm to the corporation or a third party, such as disciplinary actions involving nondirector members, identities of job applicants, discussions of strategic acquisitions, records that are required to be kept confidential under obligations to a third party, etc.; or

(d) Any information that a nonprofit corporation is required to keep confidential under any other law.

(4) A member may inspect and copy the records described in subsection (2) of this section only if the:

(a) Member's demand is made in good faith and for a proper purpose;

(b) Member describes with reasonable particularity the purpose and the records the member desires to inspect;

(c) Member agrees in the form of a record to reasonable restrictions required by the board on the use or distribution of the records; and

(d) Records are directly connected with this purpose.

(5) The right of inspection granted by this section may not be abolished or limited by a nonprofit corporation's articles or bylaws.

(6) This section does not affect the:

(a) Right of a member to inspect records as part of discovery in connection with litigation; or

(b) Power of any court of competent jurisdiction, independently of this chapter, to compel the production of corporate records for examination.

**NEW SECTION. Sec. 1603. SCOPE OF MEMBER'S INSPECTION RIGHT.** (1) A member's agent or attorney has the same inspection and copying rights as the member represented.

(2) The right to copy records under section 1602 of this act includes, if reasonable, the right to receive copies. Copies may be provided through electronic transmission unless the member requests otherwise in the form of a record.

(3) The nonprofit corporation may comply with a member's demand to inspect and copy the list of members under section 1602(2)(c) of this act by providing the member for a reasonable charge as described in subsection (4) of this section with a list of members that was compiled no earlier than the date of the member's demand.

(4) The nonprofit corporation shall provide a copy of its articles and bylaws at no cost to a member on request. The nonprofit corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any other documents provided to the member. The charge may not exceed the estimated cost of production, reproduction, or transmission of the records.

**NEW SECTION. Sec. 1604. FINANCIAL STATEMENTS FOR MEMBERS.** (1) Except as provided in the articles or bylaws of a nonprofit corporation engaged in religious activity, upon a demand in the form of a record from a member, a corporation shall furnish that member with its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, then the annual financial statements must also be prepared on that basis.

(2) If the annual financial statements are reported upon by a certified public accountant, then the accountant's report shall accompany them. If not, then the statements must be accompanied by a statement of the president or the person responsible for the nonprofit corporation's accounting records:

(a) Stating the reasonable belief of the president or other person as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

**NEW SECTION. Sec. 1605. COURT-ORDERED INSPECTION.** (1) If a nonprofit corporation does not allow a member who complies with section 1602(1) of this act to inspect and copy any records required by that subsection to be available for inspection, then the court may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a nonprofit corporation does not within a reasonable time allow a member to inspect and copy any other record to which the member is entitled under section 1602(2) of this act, then the member who complies with section 1602 (3) and (4) of this act may apply to the court for an order to permit inspection and copying of the records demanded. The court may inspect the records in question *in camera* and determine the extent of required disclosure, if any, in light of

section 1602 of this act. In making that determination, the court shall consider the probability and extent of potential harm to the corporation or any third party that may result from inspection, and the probability and extent of benefit to the corporation or the member.

(3) If the court orders inspection and copying of the records demanded, then it shall also order the nonprofit corporation to pay the member's costs, including reasonable attorneys' fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded. If the court denies the majority of the request for inspection and copying, it may order the member to pay part or all of the nonprofit corporation's costs, including reasonable attorneys' fees.

(4) If the court orders inspection and copying of the records demanded, then it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

**NEW SECTION. Sec. 1606. INSPECTION BY DIRECTORS.** (1) A director of a nonprofit corporation may inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation or law other than this chapter.

(2) The court may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused the inspection rights set out in subsection (1) of this section, unless the corporation establishes that the director is not entitled to those inspection rights.

(3) If an order is issued, then the court may include provisions protecting the nonprofit corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including

reasonable attorneys' fees, incurred in connection with the application.

**NEW SECTION. Sec. 1607. USE OF MEMBERSHIP LIST.** (1) Without the consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board, a membership list or any part thereof may not be:

(a) Used to solicit cash or other property unless the cash or other property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;

(b) Used for any commercial purpose; or

(c) Sold to or purchased by any person.

(2) Instead of making a membership list available for inspection and copying under sections 1601 through 1607 of this act, a nonprofit corporation may elect to proceed under the procedures set forth in section 2304(6) of this act.

## ARTICLE 7

### PUBLIC BENEFIT CORPORATIONS

**NEW SECTION. Sec. 1701. PUBLIC BENEFIT DESIGNATION.** (1) There is hereby established the special designation of "public benefit nonprofit corporation." A corporation may be designated as a public benefit nonprofit corporation if it meets the following requirements:

(a) The corporation complies with this chapter; and

(b) The corporation is currently recognized by the internal revenue service as an organization described in section 501(c)(3) of the Internal Revenue Code or is exempt from applying for that recognition under section 508(c) of the Internal Revenue Code.

(2) A temporary designation as a public benefit nonprofit corporation may be provided to a corporation that has applied to the internal revenue service for recognition of its status as an organization described in section 501(c)(3) of the Internal Revenue Code. The temporary designation is valid for up to one year and may be renewed at the discretion of the secretary of state.

(3) Designation of a corporation as a public benefit nonprofit corporation

does not alter the applicability to the corporation of any other provision of this chapter.

NEW SECTION. **Sec. 1702.** APPLICATION AND RENEWAL. (1) The secretary of state shall develop an application process for new and existing corporations to apply for public benefit nonprofit corporation status.

(2) Public benefit nonprofit corporation status must be renewed annually. The secretary of state may schedule renewals in conjunction with the corporation's annual report.

NEW SECTION. **Sec. 1703.** REMOVAL OF STATUS. The secretary of state may remove a corporation's public benefit nonprofit corporation designation if the corporation does not comply with this chapter or the internal revenue service revokes recognition of the corporation's status as an organization described in section 501(c) (3) of the Internal Revenue Code.

## ARTICLE 8

### FOREIGN CORPORATIONS

NEW SECTION. **Sec. 1801.** REGISTRATION TO DO BUSINESS. A foreign nonprofit corporation may not do business in this state until it registers with the secretary of state pursuant to chapter 23.95 RCW.

NEW SECTION. **Sec. 1802.** EFFECT OF REGISTRATION. (1) A foreign nonprofit corporation with a valid foreign registration statement has the same but no greater rights and has the same but no greater privileges as, and except as provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic nonprofit corporation of like character.

(2) This chapter does not authorize this state to regulate the organization or internal affairs of a registered foreign nonprofit corporation.

(3) For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate records are required to be delivered to the secretary of state for filing, the records must be delivered to the insurance commissioner rather than the secretary of state.

NEW SECTION. **Sec. 1803.** NAME OF FOREIGN CORPORATION. (1) The name of a registered foreign nonprofit corporation, any name reserved by a registered foreign nonprofit corporation, or any alternate name adopted under RCW 23.95.525 is governed by chapter 23.95 RCW.

(2) A foreign nonprofit corporation not registered to do business in this state may register its name, or an alternate name adopted pursuant to RCW 23.95.525, under RCW 23.95.315.

NEW SECTION. **Sec. 1804.** REGISTERED AGENT OF FOREIGN CORPORATION. (1) Each registered foreign nonprofit corporation in this state shall designate and maintain a registered agent in this state.

(2) The designation and maintenance of a foreign nonprofit corporation's registered agent are governed by chapter 23.95 RCW.

NEW SECTION. **Sec. 1805.** SERVICE ON FOREIGN CORPORATION. (1) A registered foreign nonprofit corporation may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(2) Service upon a registered foreign nonprofit corporation made by serving its registered agent, or service on the registered foreign nonprofit corporation in the absence of a registered agent, is governed by chapter 23.95 RCW.

NEW SECTION. **Sec. 1806.** WITHDRAWAL OF REGISTRATION. A registered foreign nonprofit corporation may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing under RCW 23.95.530.

NEW SECTION. **Sec. 1807.** WITHDRAWAL UPON CONVERSION OR DISSOLUTION. (1) A registered foreign nonprofit corporation that converts to any type of domestic entity automatically is deemed to have withdrawn its registration on the effective date of the conversion.

(2) A registered foreign nonprofit corporation that has dissolved and completed winding up or has converted to a domestic or foreign entity not required to register under chapter 23.95 RCW or other law of this state shall deliver a statement of withdrawal to the secretary of state for filing under RCW 23.95.540.

(3) After the withdrawal of a foreign nonprofit corporation under this section

is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign nonprofit corporation was registered to do business in this state may be made pursuant to RCW 23.95.450.

NEW SECTION. Sec. 1808. AMENDMENT TO REGISTRATION UPON CONVERSION. A registered foreign nonprofit corporation that converts to a foreign for-profit corporation or to any form of foreign unincorporated entity that is required to register with the secretary of state to do business in this state shall deliver to the secretary of state for filing an amendment to its foreign registration statement under RCW 23.95.515.

NEW SECTION. Sec. 1809. TRANSFER OF REGISTRATION. (1) If a registered foreign nonprofit corporation merges into a nonregistered foreign entity or converts to a different type of foreign entity required to register to do business in this state, the foreign entity shall deliver to the secretary of state for filing an application for transfer of registration under RCW 23.95.545.

(2) If a registered foreign nonprofit corporation is a party to a statutory merger permitted by the laws of the jurisdiction where it is incorporated, and the corporation is the surviving corporation, it is not necessary for the corporation to register to do business or to amend its registration unless the corporation's name is changed.

NEW SECTION. Sec. 1810. TERMINATION OF REGISTRATION. The secretary of state may terminate the registration of a registered foreign nonprofit corporation under RCW 23.95.550:

(1) For any reason set forth in RCW 23.95.550(1);

(2) If 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 did not survive a merger; or

(3) If the corporation has continued to exceed or abuse the authority conferred upon it by this chapter.

NEW SECTION. Sec. 1811. JUDICIAL REVIEW OF TERMINATION. (1) A foreign nonprofit corporation may appeal the

secretary of state's termination of its registration to the superior court of Thurston county within ninety days after service of the statement of termination is perfected. The foreign nonprofit corporation shall appeal by petitioning the court to set aside the termination and attaching to the petition copies of its statement of registration and the secretary of state's statement of termination.

(2) The court may summarily order the secretary of state to reinstate the registration or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

## **PART II**

### **GOVERNANCE**

#### **ARTICLE 1**

##### **MEMBERS AND MEMBERSHIPS**

NEW SECTION. Sec. 2101. MEMBERS. (1) A nonprofit corporation may have one or more classes of members or may have no members.

(2) For corporations formed on or after January 1, 2022, notwithstanding anything to the contrary in the bylaws, where the articles of a nonprofit corporation do not provide that it has members, the nonprofit corporation does not have members.

(3) For organizations formed before January 1, 2022, where the articles of a nonprofit corporation do not provide that it has members, the corporation has members only if the bylaws:

(a) Provide that the corporation has members; and

(b) Provide that members of at least one class have the right to select or vote for the election of directors or delegates or to vote on at least one type of fundamental transaction.

(4) Where a nonprofit corporation does not have members under this section, or where a corporation has no members entitled to vote on a given matter, any provision of this chapter or any other provision of law requiring notice to, the presence of, or the vote, consent, or other action by members in connection with that matter is satisfied by notice to, the presence of, or the vote, consent, or other action by the board.



NEW SECTION. **Sec. 2102.** SCOPE OF MEMBERSHIP. A person is not a member of a nonprofit corporation for purposes of any provision of this chapter unless the person meets the definition of "member" in section 1102 of this act, regardless of whether the corporation refers to or designates the person as a member.

NEW SECTION. **Sec. 2103.** ADMISSION OF MEMBERS. (1) The articles or bylaws of a membership corporation may establish criteria or procedures for admission of members.

(2) A person may not be admitted as a member without the person's consent. Consent may be express or implied and need not be in the form of a record.

(3) If a membership corporation provides certificates of membership to the members, then the certificates shall not be registered or transferable except as provided in the articles or bylaws or by resolution of the board.

NEW SECTION. **Sec. 2104.** CONSIDERATION FOR ADMISSION. Except as provided in its articles or bylaws, a membership corporation may admit members for no consideration or for consideration determined by the board, which may take any form, including promissory notes, intangible property, or past or future services. Payment of the consideration may be made at those times and upon those terms as are set forth in or authorized by the articles, bylaws, or a resolution of the board.

NEW SECTION. **Sec. 2105.** CAPITAL CONTRIBUTIONS. (1) A membership corporation that is not a charitable corporation may provide in its articles or bylaws that members, upon or after admission, shall make capital contributions. Except as provided in the articles or bylaws, the board shall fix the amount. The requirement of a capital contribution may apply to all members, or to the members of a single class, or to members of different classes in different amounts or proportions.

(2) The adoption or amendment of a capital contribution requirement, whether or not approved by the members, shall not apply to, or be an obligation of, a member who did not vote in favor of the adoption or amendment until thirty days after the member has been given notice of the adoption or amendment.

NEW SECTION. **Sec. 2106.** RIGHTS AND OBLIGATIONS. (1) The members of a

membership corporation have only those rights, privileges, powers, or obligations specifically given or assigned to members in the articles, the bylaws, or section 2313 of this act.

(2) A member shall not have the right to vote on any matter unless the articles, the bylaws, or section 2313(1) of this act provides expressly that the class of members to which that member belongs has the right to vote on that particular matter.

NEW SECTION. **Sec. 2107.** DIFFERENCES IN RIGHTS AND OBLIGATIONS. (1) Except as provided in the articles or bylaws, each member of a membership corporation has the same rights and obligations as every other member with respect to voting, dissolution, membership transfer, and other matters.

(2) If the corporation has one or more classes of members, then the designation of the class or classes, the articles, or the bylaws shall set forth the manner of election or appointment and the qualifications and rights of the members of each class.

NEW SECTION. **Sec. 2108.** TRANSFERS OF MEMBERSHIP. (1) Except as provided in the articles or bylaws or by resolution of the board, a member of a membership corporation may not transfer a membership or any right arising therefrom.

(2) Where the right to transfer a membership has been provided, a restriction on that right shall not be binding with respect to a member holding a membership issued before the adoption of the restriction unless the affected member consents to the restriction in the form of a record.

NEW SECTION. **Sec. 2109.** MEMBER'S LIABILITY FOR CORPORATE OBLIGATIONS. A member of a membership corporation is not personally liable for the acts, debts, liabilities, or obligations of the corporation.

NEW SECTION. **Sec. 2110.** MEMBER'S LIABILITY FOR DUES, FEES, AND ASSESSMENTS. (1) A membership corporation may levy dues, assessments, and fees on its members to the extent authorized in the articles or bylaws. Particular dues, assessments, and fees may be imposed in the articles or bylaws or by resolution of the board, subject to any membership approval required under section 3112(1) of this act, on members of the same class either alike or in

different amounts or proportions, and may be imposed on a different basis on different classes of members. Members of a class may be made exempt from dues, assessments, and fees to the extent provided in the articles or bylaws or by resolution of the board.

(2) The amount and method of collection of dues, assessments, and fees may be fixed in the articles or bylaws, or the articles or bylaws may authorize the board or members to fix the amount and method of collection, with or without approval of the class or classes of members affected.

(3) The articles or bylaws may provide reasonable means, such as termination and reinstatement of membership, to enforce the collection of dues, assessments, and fees.

**NEW SECTION. Sec. 2111. CREDITOR'S ACTION AGAINST MEMBER.** (1) A proceeding may not be brought by a creditor of a membership corporation to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part.

(2) All creditors of a membership corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (1) of this section to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in the proceeding.

**NEW SECTION. Sec. 2112. RESIGNATION OF MEMBER.** (1) A member of a membership corporation may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations incurred or commitments made before resignation.

**NEW SECTION. Sec. 2113. TERMINATION AND SUSPENSION OF MEMBER.** (1) A membership in a membership corporation may be terminated or suspended for the reasons and in the manner provided in the articles or bylaws.

(2) A membership in a membership corporation may also be terminated, regardless of the procedure set forth in the articles or bylaws, if:

(a) The corporation has had no contact from the member for at least three years; and

(b) Either:

(i) The member fails to respond within ninety days to a request from the corporation to update the member's contact information that includes a statement that failure to respond could result in termination of membership, delivered to that member by means reasonably likely to reach that member; or

(ii) A request from the corporation to update the member's contact information that includes a statement that failure to respond could result in termination of membership, sent to that member by first-class forwardable mail, with postage prepaid, is returned as undeliverable; or

(iii) If members, or a class of members, are not identified individually on the records of the corporation, a request from the corporation for members to provide contact information that includes a statement that failure to respond could result in termination of membership is published once a week for six consecutive weeks in a newspaper of general circulation in the county in which the corporation's principal office is located.

(3) Unless otherwise provided in the articles or bylaws, if the articles or bylaws allow the board or any other body to admit members, the affirmative vote of two-thirds of that body may terminate a member.

(4) Irrespective of anything to the contrary in the articles or bylaws, in any proceeding involving a corporation or upon application from the corporation, the court may order termination of a member of the corporation in the best interests of the corporation.

(5) A proceeding challenging a termination or suspension for any reason must be commenced within one year after the effective date of the termination or suspension.

(6) The termination or suspension of a member does not relieve the member from any obligations incurred or commitments made before the termination or suspension.

**NEW SECTION. Sec. 2114. REPURCHASE OF MEMBERSHIPS.** A membership corporation that is not a charitable corporation may

repurchase any of its memberships or any right arising therefrom only if it is so provided in the articles or bylaws. A membership corporation that is a charitable corporation may not repurchase any of its memberships or any right arising therefrom.

## **ARTICLE 2**

### **DELEGATES**

#### NEW SECTION. **Sec. 2201.** DELEGATES.

(1) A membership corporation may provide in its articles or bylaws for delegates.

(2) The articles or bylaws may set forth provisions relating to:

(a) The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

(b) Calling, noticing, holding, and conducting meetings of delegates; and

(c) Carrying on activities during and between meetings of delegates.

(3) If the articles or bylaws provide for delegates, then, unless otherwise provided in the articles or bylaws:

(a) The power to appoint, remove, or modify any provision of the articles or bylaws governing the appointment or removal of delegates is reserved to the members.

(b) All other powers of members including, but not limited to, the right to vote on other amendments to articles or bylaws, may be exercised by delegates.

## **ARTICLE 3**

### **MEMBERSHIP MEETINGS AND VOTING**

NEW SECTION. **Sec. 2301.** ANNUAL AND REGULAR MEETINGS. (1) A membership corporation shall hold an annual meeting of members once during each fiscal year at a time stated in or fixed in accordance with the articles or bylaws.

(2) A membership corporation may hold regular meetings on a regional or other basis at times stated in or fixed in accordance with the articles or bylaws.

(3) Except as provided in subsection (5) of this section, annual and regular meetings of the members may be held in or out of this state at the place stated in or fixed in accordance with the articles or bylaws. If no place is stated in or fixed in accordance with the articles or bylaws, then annual and regular meetings

shall be held at the membership corporation's principal office.

(4) The failure to hold an annual or regular meeting at the time stated in or fixed in accordance with the articles or bylaws does not affect the validity of any corporate action.

(5) The articles or bylaws may provide that an annual or regular meeting of members may be held in a specified location and, if so provided under the articles or bylaws, through one or more means of remote communication through which members not physically present may participate in the meeting substantially concurrently, vote on matters submitted to the members, pose questions, and make comments. For any meeting at which one or more members may participate by means of remote communication, the corporation shall deliver notice of the meeting to each member by a means which the member has authorized and provide complete instructions for participating in the meeting by remote communication.

NEW SECTION. **Sec. 2302.** SPECIAL MEETINGS. (1) A membership corporation shall hold a special meeting of members:

(a) At the call of its board of directors, the president, or the persons authorized to do so by the articles or bylaws; or

(b) Upon the execution and delivery to the corporation of one or more demands for a special meeting, in the form of a record, describing the purpose for which the meeting is to be held, by either:

(i) The number or proportion of members entitled under the articles or bylaws to call a meeting on the subject matter proposed to be considered at the proposed special meeting, which shall not represent more than twenty-five percent of all the votes entitled to be cast on that subject matter; or

(ii) In the absence of a provision fixing the number or proportion of members entitled to call a meeting, the number or proportion of members representing five percent of all the votes entitled to be cast on the subject matter proposed to be considered at the proposed special meeting.

(2) Unless otherwise provided in the articles or bylaws, a demand for a special meeting may be revoked by notice to that effect received by the membership corporation from the members calling the

meeting before the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(3) If not otherwise fixed under section 2303 or 2307 of this act, the record date for determining members entitled to demand a special meeting is the date the first member executes a demand.

(4) Only business within the purpose or purposes described in the meeting notice required by section 2305(3) of this act may be conducted at a special meeting of the members.

(5) Except as provided in subsection (6) of this section, special meetings of the members may be held in or out of this state at the place stated in or fixed in accordance with the articles or bylaws. If no place is stated or fixed in accordance with the articles or bylaws, then special meetings shall be held at the corporation's principal office.

(6) The articles or bylaws may provide that a special meeting of members be held at a specified location and, unless otherwise provided under the articles or bylaws, through means of remote communication through which members not physically present may participate in the meeting substantially concurrently, vote on matters submitted to the members, pose questions, and make comments. Notice of meetings at which one or more members may participate by means of remote communication must be delivered by a means which the member has authorized and provide complete instructions for participating in the meeting from a remote location.

**NEW SECTION. Sec. 2303. COURT-ORDERED MEETING.** (1) The court may summarily order a meeting to be held:

(a) On application of any member entitled to participate in an annual or regular meeting if an annual meeting was not held within eighteen months after the last annual meeting; or

(b) On application of a member who executed a demand for a special meeting under section 2302 of this act that was executed by a sufficient number of members to call a meeting, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of a court-ordered meeting, determine the members entitled to participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the court-ordered meeting.

**NEW SECTION. Sec. 2304. LIST OF MEMBERS FOR MEETING.** (1) After fixing a record date for a meeting, a membership corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of that meeting of the members. The list of members shall show the address of and number of votes each member is entitled to cast at the meeting, except that the address of any member who is known to the corporation to be a participant in the address confidentiality program described in chapter 40.24 RCW or any similar law may be omitted.

(2) The list of members must be available for inspection by any member, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the membership corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A member or the member's agent, on demand in the form of a record, may inspect and, subject to the requirements of section 1602(4) of this act, copy the list, during regular business hours and at the member's expense, during the period it is available for inspection.

(3) The membership corporation shall make the list of members available at the meeting, and a member or the member's agent may inspect the list at any time during the meeting or any adjournment.

(4) If a membership corporation refuses to allow a member or the member's agent to inspect the list of members before or at the meeting or copy the list as permitted by subsection (2) of this section, then the court, on application of the member, may:

(a) Summarily order the inspection or copying at the corporation's expense;

(b) Postpone the meeting for which the list was prepared until the inspection or copying is complete;

(c) Order the corporation to pay the member's costs including reasonable attorneys' fees incurred to obtain the order; and

(d) Order other appropriate relief.

(5) Refusal or failure to prepare or make available the list of members does not affect the validity of action taken at the meeting.

(6) Instead of making the list of members available as provided in subsection (2) of this section, a membership corporation may state in a notice of meeting that the corporation has elected to proceed under this subsection. A member of a corporation that has elected to proceed under this subsection shall state in the member's demand for inspection a proper purpose for inspection. Within ten business days after receiving a demand under this subsection, the corporation shall deliver to the member making the demand an offer of a reasonable alternative method of achieving the purpose identified in the demand without providing access to or a copy of the list of members. An alternative method that reasonably and in a timely manner accomplishes the proper purpose set forth in the demand relieves the corporation from making the list of members available under subsection (4)(b) of this section, unless within a reasonable time after acceptance of the offer the corporation fails to do the things it offered to do. Any rejection of the corporation's offer must be in the form of a record and indicate the reasons the alternative proposed by the corporation does not meet the proper purpose of the demand.

NEW SECTION. Sec. 2305. NOTICE OF MEMBERSHIP MEETING. (1) A membership corporation shall give notice to the members of the date, time, and place of each annual, regular, or special meeting of the members. Except as provided under subsection (6) of this section, the notice must be given in the form of a record no fewer than ten nor more than sixty days before the meeting date. Except as provided in this chapter, the articles, or the bylaws, the corporation is only required to give notice to members entitled to vote at the meeting.

(2) Unless this chapter, the articles, or the bylaws require otherwise, notice of an annual or regular meeting need not include a description of the purpose for which the meeting is called.

(3) Notice of a special meeting shall include a description of the purpose for which the meeting is called.

(4) If not otherwise fixed under section 2303 or 2307 of this act, the record date for determining members entitled to notice of and to vote at an annual or special meeting of the members is the day before the first notice is given to members.

(5) Unless the articles or bylaws require otherwise, if an annual, regular, or special meeting of the members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or is required to be fixed under section 2307 of this act, then the corporation shall give notice of the adjourned meeting to the members entitled to vote on the new record date.

(6) Notice of regular meetings other than the annual meeting may be made by providing each member with the adopted schedule of regular meetings for the ensuing year in the form of a record at any time after the annual meeting and ten days before the next succeeding regular meeting and at any time requested by a member or by any other notice prescribed by the bylaws.

(7) Whenever notice would otherwise be required to be given under any provision of this chapter to a member, the notice need not be given if notice of two consecutive annual meetings, and all notices of meetings during the period between those two consecutive annual meetings, have been returned undeliverable or could not be delivered. If a member delivers to the nonprofit corporation a notice setting forth the member's then current address, then the requirement that notice be given to that member is reinstated.

NEW SECTION. Sec. 2306. WAIVER OF NOTICE. (1) A member may waive any notice required by this chapter, the articles, or the bylaws no more than sixty days before or sixty days after the date and time stated in the notice or of the meeting or action. The waiver must be

in the form of a record, be executed by the member entitled to the notice, and be delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.

(2) The attendance of a member at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting or immediately upon arrival at the meeting objects to holding the meeting or transacting business at the meeting; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the member objects at the meeting to considering the matter.

**NEW SECTION. Sec. 2307. RECORD DATE.**

(1) The articles or bylaws may fix or provide the manner of fixing the record date to determine the members entitled to notice of a meeting of the members, to demand a special meeting, to vote, or to take any other action. If the articles or bylaws do not fix or provide for fixing a record date, then the board of the membership corporation may fix a future date as the record date.

(2) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members.

(3) A determination of members entitled to notice of or to vote at a meeting of the members is effective for any adjournment of the meeting unless the board fixes a new record date, which it shall do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(4) If the court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, then it may provide that the original record date continues in effect or it may fix a new record date.

**NEW SECTION. Sec. 2308. CONDUCT OF MEETING.** (1) At each meeting of members, an individual shall preside as chair. The chair is appointed and may be removed:

(a) As provided in the articles or bylaws;

(b) In the absence of a provision in the articles or bylaws, by the board; or

(c) In the absence of both a provision in the articles or bylaws and an appointment by the board, by the members at the meeting.

(2) Except as provided in the articles or bylaws or by resolution of the board, the chair determines the order of business and has the authority to establish rules for the order and conduct of the meeting.

(3) Any rules established for the order and conduct of the meeting pursuant to subsection (2) of this section must be fair to the members.

(4) Except as provided in the articles or bylaws or by resolution of the board:

(a) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon.

(b) If no announcement is made, then the polls are deemed to have closed upon the final adjournment of the meeting.

(c) After the polls close, no ballots, proxies, or votes, nor any otherwise permissible revocations or changes thereto may be accepted.

**NEW SECTION. Sec. 2309. PROXIES.** (1) Except as provided in the articles or bylaws, a member may not vote by proxy.

(2) If the articles or bylaws allow members to vote by proxy, then the following procedure applies unless the articles or bylaws provide otherwise:

(a) A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by executing an appointment form in the form of a record. An appointment form must contain or be accompanied by information from which it can be determined that the member or the member's agent or attorney-in-fact authorized the appointment of the proxy.

(b) An appointment of a proxy is effective when an executed appointment in the form of a record is received by the inspectors of election, the officer or agent of the membership corporation authorized to tabulate votes, or the secretary. An appointment is valid for eleven months unless a shorter or longer period is expressly provided in the appointment form.

(c) The death or incapacity of the member appointing a proxy does not affect the right of the membership corporation to accept the proxy's authority unless notice of the death or incapacity is received by the inspectors of election, the officer or agent authorized to tabulate votes, or the secretary before the proxy exercises his or her authority under the appointment.

(d) A membership corporation may accept the proxy's vote or other action as that of the member making the appointment, subject to section 2314 of this act and to any express limitation on the proxy's authority stated in the appointment form.

(e) A proxy may be revoked by a member by delivering notice in the form of a record to the corporation before the corporation has relied upon the proxy.

**NEW SECTION. Sec. 2310. VOTING ENTITLEMENT OF MEMBERS.** Except as provided in the articles or bylaws, each member is entitled to one vote on each matter on which the articles or bylaws entitle the members of the class of members to which the member belongs to vote.

**NEW SECTION. Sec. 2311. MEMBERSHIP QUORUM AND VOTING REQUIREMENTS.** (1) Members may take action at a meeting on matters with respect to which all of the members are entitled to vote only if a quorum of the members is present. Except as provided in the articles or the bylaws, ten percent of the votes entitled to be cast at a meeting of the members constitutes a quorum with respect to those matters.

(2) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members is present with respect to that matter. Except as provided in the articles or bylaws, ten percent of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(3) Once a member is represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or is required to be set for that adjourned meeting.

(4) If a quorum is present, then action on a matter other than the 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 the articles, bylaws, or applicable law require a greater number of affirmative votes.

(5) An amendment of the articles or bylaws adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (2) or (4) of this section is governed by section 2312 of this act.

(6) If a meeting cannot be organized because a quorum of members entitled to vote is not present, then those members present may adjourn the meeting to such a time and place as they may determine. When a meeting that has been adjourned for lack of a quorum is reconvened, those members present, although less than a quorum as fixed in this section, the articles, or the bylaws, nonetheless constitute a quorum, if notice of the time and place of the reconvened meeting is provided by electronic transmission or in person to the members entitled to vote at least twenty-four hours before the reconvened meeting, or by other methods pursuant to the requirements and procedures set forth in section 2305 of this act. The articles or the bylaws may, however, permit the reconvening of a meeting without notice, by means of a provision that makes explicit reference to elimination of the notice requirement that would otherwise apply under this section.

(7) The election of directors is governed by section 2313 of this act.

**NEW SECTION. Sec. 2312. DIFFERING QUORUM AND VOTING REQUIREMENTS.** (1) The articles or bylaws may provide for a higher or lower quorum or higher voting requirement for members or voting groups of members than is provided for by this chapter, either generally or with respect to specific matters.

(2) An amendment to the articles or bylaws that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

**NEW SECTION. Sec. 2313. VOTING FOR DIRECTORS.** (1) Except as provided in the articles or bylaws, directors of a membership corporation are elected by a plurality of the votes cast by the

members entitled to vote in the election at a meeting at which a quorum is present.

(2) Except as provided in the articles or bylaws, or under subsection (3) of this section, members do not have a right to cumulate their votes for directors.

(3) Members of a nonprofit corporation who were entitled to cumulate their votes for the election of directors on the effective date of this chapter continue to be entitled to cumulate their votes for the election of directors until otherwise provided in the articles or bylaws of the corporation.

NEW SECTION. Sec. 2314. ACCEPTANCE OF BALLOTS, CONSENTS, WAIVERS, OR PROXIES. (1) If the name signed on a ballot, consent, waiver, or proxy appointment corresponds to the name of a member, then the membership corporation if acting in good faith may accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a ballot, consent, waiver, or proxy appointment does not correspond to the name of its member, then the membership corporation if acting in good faith is nevertheless entitled to accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(a) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented

with respect to the ballot, consent, waiver, or proxy appointment; and

(e) Two or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The membership corporation may reject a ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(4) The membership corporation and its officer or agent who accepts or rejects a ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or section 2309(2) of this act are not liable in damages to the member for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a ballot, consent, waiver, or proxy appointment under this section is valid unless the court determines otherwise.

NEW SECTION. Sec. 2315. INSPECTORS OF ELECTION. (1) A membership corporation may appoint one or more inspectors to act at a meeting of members and make a report in the form of a record of the inspectors' determinations. Each inspector shall execute the duties of inspector impartially and according to the best of the inspector's ability.

(2) The inspectors must:

(a) Ascertain the number of members and delegates, and their voting power;

(b) Determine the members and delegates present at a meeting;

(c) Determine the validity of proxies and ballots;

(d) Count all votes; and

(e) Determine the result.

(3) An inspector may, but need not, be a director, member, officer, or employee of the membership corporation. A person who is a candidate for office to be filled at the meeting may not be an inspector.



NEW SECTION. **Sec. 2316.** ACTION BY VOTING GROUPS. (1) If this chapter, the articles, or the bylaws provide for voting by a single voting group on a matter, then action on that matter is taken when voted upon by that voting group as provided in section 2311 or 2318 of this act.

(2) If this chapter, the articles, or the bylaws provide for voting by two or more voting groups on a matter, then action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 2311 or 2318 of this act.

NEW SECTION. **Sec. 2317.** VOTING AGREEMENTS. (1) If the articles or bylaws allow voting agreements, then two or more members may provide for the manner in which they will vote by executing an agreement in the form of a record for that purpose, to the extent allowed under the articles or bylaws.

(2) A voting agreement is specifically enforceable if:

(a) The voting agreement is allowed under the articles or bylaws; or

(b) The effective date of the voting agreement is before the effective date of this section.

(3) Notwithstanding subsection (2) of this section, no voting agreement is enforceable to the extent that enforcement of the agreement would violate the purposes of the membership corporation.

NEW SECTION. **Sec. 2318.** ACTION WITHOUT MEETING BY UNANIMOUS WRITTEN CONSENT. (1) Except as provided in the articles or bylaws, action required or permitted by this chapter to be taken at a meeting of the members may be taken without a meeting if the action is taken by all the members entitled to vote on the action. The action must be evidenced by one or more consents in the form of a record bearing the date of execution and describing the action taken, executed by all the members entitled to vote on the action, and delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise fixed under section 2303 or 2307 of this act, the record date for determining members entitled to take action without a meeting is the date the first member executes the consent under subsection (1) of this

section. A consent shall not be effective to take the corporate action referred to therein unless, within sixty days after the earliest date appearing on a consent delivered to the membership corporation in the manner required by this section, consents executed by all members entitled to vote on the action are received by the corporation. A consent may be revoked by an executed notice in the form of a record to that effect received by the corporation before receipt by the corporation of unrevoked consents sufficient in number to take corporate action.

(3) A consent executed under this section has the same force and effect as a unanimous vote at a meeting duly called and held, and may be described as such.

(4) If this chapter, the articles, or the bylaws require that prior notice of any proposed action be given to members not entitled to vote on the action and the action is to be taken by consent of the members entitled to vote, then the membership corporation shall deliver to the members not entitled to vote notice of the proposed action at least ten days before taking the action by consent. The notice must contain or be accompanied by the same material that would have been required to be delivered to members not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the members for action.

NEW SECTION. **Sec. 2319.** ACTION WITHOUT MEETING BY BALLOT. (1) Except as otherwise restricted by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the membership corporation delivers a ballot to every member entitled to vote on the matter.

(2) A ballot must:

(a) Be in the form of a record;

(b) Set forth each proposed action;

(c) Provide an opportunity to vote, or withhold a vote, separately for each candidate for a director position; and

(d) Provide an opportunity to vote for or against each other proposed action.

(3) Approval by ballot pursuant to this section of action other than election of directors is valid only when the number of ballots returned equals or exceeds the quorum required to be present at a meeting authorizing the action, and

the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All requests for votes by ballot must:

(a) Indicate the number of responses needed to meet the quorum requirements;

(b) State the percentage of approvals necessary to approve each matter other than election of directors; and

(c) Specify the time by which a ballot must be received by the membership corporation to be counted, which shall not be less than ten days after the ballot is delivered to the member.

(5) Except as provided in the articles or bylaws, a ballot may not be revoked.

NEW SECTION. **Sec. 2320.** PROCEDURE FOR REMOTE MEETINGS. When provided for in the articles or bylaws, meetings of the members held by remote communication must follow the provisions of sections 2301 through 2319 of this act to the greatest practicable extent.

#### **ARTICLE 4**

##### **BOARD OF DIRECTORS**

NEW SECTION. **Sec. 2401.** BOARD OF DIRECTORS—AUTHORITY. (1) A nonprofit corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of the board of directors, and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of the board of directors, subject only to any powers expressly reserved to the corporation's membership or other persons in the articles or bylaws.

NEW SECTION. **Sec. 2402.** STANDARDS OF CONDUCT FOR DIRECTORS. (1) Each director, when discharging the duties of a director, shall act:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director reasonably believes to be in the best interests of the nonprofit corporation.

(2) In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed by law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(3) In discharging the duties of a director, a director may rely on information, opinions, reports, or statements, including financial statements or other financial data, if prepared or presented by:

(a) One or more officers, employees, or volunteers of the nonprofit corporation whom the director reasonably believes to be reliable and competent in the functions performed or the matters presented;

(b) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(i) Within the particular person's professional or expert competence; or

(ii) As to which the particular person merits confidence; or

(c) A committee of the board of which the director is not a member, designated in accordance with provisions of the articles or bylaws, as to matters within its designated authority, if the director reasonably believes the committee merits confidence.

(4) A director is not a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

NEW SECTION. **Sec. 2403.** QUALIFICATION OF DIRECTORS. A director of a nonprofit corporation must be an individual. The articles or bylaws may prescribe other qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the articles or bylaws so prescribe.

NEW SECTION. **Sec. 2404.** NUMBER OF DIRECTORS. (1) A board of directors shall consist of one or more directors, with the number specified in or fixed in accordance with the articles or bylaws.

(2) The board of directors of any corporation shall consist of three or more directors if:

(a) The internal revenue service has determined the corporation to be a public charity described in section 509(a)(1) through (4) of the Internal Revenue Code;

(b) The corporation has applied to the internal revenue service for a determination of exempt status through an application representing that the corporation is described in section 509(a)(1) through (4) of the Internal Revenue Code; or

(c) The corporation has applied to the internal revenue service for classification as an organization described in section 509(a)(1) through (4) of the Internal Revenue Code.

(3) The number of directors on a board of directors who are under 18 years of age may not exceed three or one-third of the total number of directors then in office, whichever is fewer.

(4) A corporation described in subsection (2) of this section may have fewer than three directors if the death, incapacity, resignation, or removal of a director causes the corporation to have fewer than three directors, provided that the entity, body, or person with the power to elect or appoint directors makes reasonable and prompt efforts to elect or appoint additional directors.

(5) The number of directors may be increased or decreased but to no fewer than one from time to time by amendment to, or in the manner provided in, the articles or bylaws.

(6) A decrease in the number of directors may not shorten an incumbent director's term.

NEW SECTION. **Sec. 2405.** SELECTION OF DIRECTORS. (1) The members of a membership corporation shall elect the directors, other than the initial directors named in the articles, at the annual meetings of members, unless the articles or bylaws provide some other time or method of election, or provide that some other person or persons shall appoint some or all of the directors, or designate some other manner of

appointment, for example, ex officio directors.

(2) The directors of a nonmembership corporation shall elect the directors, other than the initial directors named in the articles, at the annual meeting of directors, unless the articles or bylaws provide some other time or method of election, or provide that some other person or persons shall appoint some or all of the directors, or designate some other manner of appointment, for example, ex officio directors.

NEW SECTION. **Sec. 2406.** TERMS OF DIRECTORS, GENERALLY. (1) The articles or bylaws may specify the terms of directors. If a term is not specified in the articles or bylaws, then the term of a director is one year. Each term of a director elected by the members or directors, or by some other method provided in the articles or bylaws, may not exceed five years except as provided in subsection (2) of this section. Terms of directors appointed by some other person or persons, or designated in some other manner, may be of any length.

(2) For a corporation formed before the effective date of this section, if the articles or bylaws current as of the effective date of this section provided for terms of elected directors longer than five years, then the terms for elected directors provided in those articles or bylaws may continue in effect until and unless the articles or bylaws are amended to shorten those terms.

(3) The initial directors named in the articles hold office until the first annual election of directors or for any other period specified in the articles.

(4) A reduction in directors' terms of office does not shorten an incumbent director's term.

(5) Except as provided in the articles or bylaws, the term of a director elected to fill a vacancy expires at the end of the unexpired term that the director is filling.

(6) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, appointed, or designated and until the director's successor takes office, unless otherwise provided in the articles or bylaws.

NEW SECTION. **Sec. 2407.** STAGGERED TERMS FOR DIRECTORS. The articles or

bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office and number of directors in each group do not need to be uniform.

NEW SECTION. Sec. 2408. RESIGNATION OF DIRECTOR. (1) A director may resign at any time by delivering an executed notice in the form of a record to the president, the secretary of the corporation, or another officer designated for that purpose in the articles or bylaws. A director may also resign by giving oral notice to the board at a meeting of the board.

(2) A resignation is effective when the notice is delivered unless the notice specifies a later effective time.

(3) If the resignation of a director of a charitable corporation results in the charitable corporation having no directors in office, then the resigning director shall notify the attorney general that the charitable corporation has no directors in office. Such notice must be in the form of a record delivered to the attorney general within ten calendar days after the effective date of the director's resignation.

NEW SECTION. Sec. 2409. REMOVAL OF DIRECTORS. (1) Removal of directors of a membership corporation is subject to the following provisions:

(a) The members may remove, with or without cause, one or more directors who have been elected by the members, unless the articles or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.

(b) The board of a membership corporation may not remove a director who has been elected by the members except as provided in subsection (5) of this section or in the articles or bylaws.

(c) The directors may remove, with or without cause, one or more directors who have been elected by the directors, unless the articles or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.

(d) Except as provided in the articles or bylaws, if a director is elected by a voting group of members, or by a chapter or other organizational unit, or by a region or other geographic grouping, then

only the members of that voting group or chapter, unit, region, or grouping may participate in the vote to remove the director.

(e) The notice of a meeting of members at which removal of a director is to be considered shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(2) The board may remove a director of a nonmembership corporation who was elected by the directors:

(a) With or without cause, unless the articles or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.

(b) A nonprofit corporation shall give notice of any meeting of directors at which removal of a director is to be considered in accordance with the articles or bylaws governing notice for special meetings, but in no event less than forty-eight hours before the meeting. Such notice shall state that the purpose, or one of the purposes, of the meeting is removal of a director.

(c) As provided in subsection (5) of this section.

(3) A director who is designated by name in the articles or bylaws may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(4) Except as provided in the articles or bylaws, a director who is appointed by persons other than the members or the directors may be removed with or without cause only by those persons.

(5) Notwithstanding anything else to the contrary in this section or the articles or bylaws, the board of a membership corporation or nonmembership corporation may remove a director:

(a) Who has been appointed a guardian under RCW 11.130.185 or 11.130.265;

(b) Who has been appointed a conservator under RCW 11.130.360;

(c) Who is subject to a written certification by his or her attending physician that in the physician's opinion the director is substantially unable to manage his or her financial resources or resist fraud or undue influence;

(d) Who has been convicted of a felony;

(e) Who has been found by a final order of any court of competent jurisdiction to have breached a duty as a director under section 2402 of this act;

(f) Who has missed the number of board meetings specified in the articles or bylaws, if the articles or bylaws at the beginning of the director's current term provided that a director may be removed for missing the specified number of board meetings; or

(g) Who does not satisfy any of the qualifications for directors set forth in the articles or bylaws at the beginning of the director's current term, if the decision that the director fails to satisfy a qualification is made by the vote of a majority of the directors who meet all of the required qualifications.

(6) Notwithstanding anything else to the contrary in this section or the articles or bylaws, the board of a charitable corporation that is a membership corporation or a nonmembership corporation may remove a director if the director's continued service would cause the charitable corporation to be prohibited from soliciting charitable funds under RCW 19.09.100(13).

**NEW SECTION. Sec. 2410. VACANCY ON BOARD OF DIRECTORS.** (1) Except as provided in subsection (2) of this section, the articles, or the bylaws, if a vacancy occurs on the board, including a vacancy resulting from an increase in the number of directors, then the vacancy may be filled by a majority of the directors remaining in office even if they constitute less than a quorum. For purposes of section 2409 of this act, any director so elected is deemed to have been elected by the members, voting group, or persons who would elect that director at a regular election.

(2) Except as provided in the articles or bylaws, a vacancy in the position of a director who is:

(a) Appointed by persons other than the members, may be filled only by those persons; or

(b) Designated by name in the articles or bylaws, may not be filled by action of the board.

(3) A vacancy that will occur at a specific later time, by reason of a resignation effective at a later time under section 2408(2) of this act, or

otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

(4) If no directors remain in office, and there are no members with the right to elect directors, then the attorney general has the power to appoint one or more directors selected for their interest and ability to carry out the purposes of the corporation, unless the articles or bylaws provide a different method for electing, appointing, or designating at least one director.

**NEW SECTION. Sec. 2411. LIABILITY OF DIRECTORS.** (1) A director of a nonprofit corporation is not liable to the nonprofit corporation for any action taken, or any failure to take any action, as a director, except as provided in subsection (2) or (3) of this section or in the articles or bylaws.

(2) Notwithstanding any provision to the contrary in the articles or bylaws, a director is liable to the corporation for:

(a) The value of any benefit in cash, other property, or services received by the director to which the director is not legally entitled; or

(b) Intentional misconduct or a knowing violation of law, including but not limited to criminal law or this chapter, by the director.

(3) A director is liable to the corporation for a violation of any additional standard of conduct specified in the nonprofit corporation's articles as an exception to the limitation on director's liability.

(4) A director of a nonprofit corporation is not liable to any member of the nonprofit corporation for any action taken, or any failure to take action, as a director, except as provided in subsection (5) of this section.

(5) A director is liable to a member of the corporation only for:

(a) A knowing infliction of harm upon the member; or

(b) An intentional violation of criminal law or this chapter that results in harm or loss to the member.

(6) The party seeking to establish the director's liability to the corporation or any member of the corporation:

(a) For money damages, also has the burden of establishing that:

(i) Harm to the nonprofit corporation or its members has been suffered; and

(ii) The harm suffered was proximately caused by the director's challenged conduct; or

(b) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever burden of persuasion may be called for to establish that the payment sought is appropriate in the circumstances; or

(c) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever burden of persuasion may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(7) Nothing contained in this section:

(a) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the nonprofit corporation under section 2703(1)(c) of this act, alters the burden of proving the fact or lack of fairness otherwise applicable;

(b) Alters the fact or lack of liability of a director to the nonprofit corporation under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under section 2702 of this act, a conflicting interest transaction under section 2703 of this act, or taking advantage of a business opportunity under section 2704 of this act;

(c) Affects any rights to which the corporation or a director or member may be entitled under another statute of this state or the United States; or

(d) Affects the authority of the attorney general to take any action against a director under this chapter or other applicable Washington state law.

NEW SECTION. **Sec. 2412.** COMPENSATION OF DIRECTORS. Unless the articles or bylaws provide otherwise, the board may fix the compensation of directors.

## **ARTICLE 5**

### **MEETINGS AND ACTION OF THE BOARD**

NEW SECTION. **Sec. 2501.** MEETINGS OF THE BOARD. (1) The board may hold

regular or special meetings in or out of this state.

(2) Unless the articles or bylaws provide otherwise, the board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, one or more means of remote communication through which all of the directors may simultaneously participate with each other during the meeting. A director participating in a meeting by this means is considered present in person at the meeting. For any meeting at which one or more directors may participate by means of remote communication, notice of the meeting must be delivered to each director by a means which the director has authorized and provide complete instructions for participating in the meeting by remote communication.

NEW SECTION. **Sec. 2502.** NOTICE OF BOARD MEETINGS. (1) Regular meetings of the board may be held with or without notice as prescribed in the articles or bylaws, unless notice is required by section 2409(2) of this act or other provisions of this chapter.

(2) Unless the articles or bylaws provide for a longer or shorter period, special meetings of the board must be preceded by at least forty-eight hours' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting, except as required by section 2409(2) of this act, other provisions of this chapter, or the articles or bylaws.

(3) Unless the articles or bylaws provide otherwise, the president, the secretary, or twenty percent of the directors then in office may call and give, or cause to be given, notice of a meeting of the board.

(4) Oral notice of meetings of the board may be given, unless oral notice is not permitted by a corporation's articles or bylaws.

NEW SECTION. **Sec. 2503.** WAIVER OF NOTICE. (1) A director may waive any notice required by this chapter, the articles, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2) of this section, the waiver must be in the form of a record, executed by the director entitled to the notice, and filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting, unless the director at the beginning of the meeting or promptly upon arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

**NEW SECTION. Sec. 2504. BOARD QUORUM AND VOTING REQUIREMENTS.** (1) Except as provided in subsection (2) or (3) of this section, the articles, or the bylaws, a quorum of the board consists of a majority of the directors in office before a meeting begins.

(2) The articles or bylaws may authorize a quorum of the board to consist of no fewer than one-third of the number of directors in office.

(3) A quorum shall not be present at any time during a meeting unless a majority of the directors present are at least 18 years of age.

(4) If a quorum is present when a vote is taken, then the affirmative vote of a majority of directors present is the act of the board unless a greater vote is required by the articles or bylaws or this chapter.

(5) No proxy for a director, however appointed, may:

(a) Participate in any vote of the board or of any board committee;

(b) Be counted for the purpose of determining whether a quorum is present at a meeting; or

(c) Execute any written consent on behalf of the director.

(6) A director who is present at a meeting of the board when corporate action is taken is considered to have assented to the action taken unless:

(a) The director objects at the beginning of the meeting or promptly upon arrival to holding it or transacting business at the meeting;

(b) The director dissents or abstains from the action; or

(c) The director delivers notice in the form of a record of the director's dissent or abstention to the president or secretary of the corporation or another officer of the corporation designated in the bylaws before or during the meeting

or before the approval of the minutes of the meeting.

(7) The right of dissent or abstention is not available to a director who votes in favor of the action taken.

**NEW SECTION. Sec. 2505. ACTION WITHOUT MEETING BY UNANIMOUS WRITTEN CONSENT.** (1) Unless the articles or bylaws prohibit action without a meeting, action required or permitted by this chapter to be taken by the board may be taken without a meeting if each director entitled to vote with respect to the subject matter thereof executes a consent in the form of a record describing the action to be taken and delivers it to the nonprofit corporation.

(2) For purposes of this section only, "each director entitled to vote" does not include an "interested director" who abstains in writing from providing consent, where:

(a) The board has determined that:

(i) The corporation is entering into the transaction for its own benefit; and

(ii) The transaction is fair and reasonable to the corporation when it enters into the transaction or the noninterested directors determine in good faith after reasonable investigation that the corporation cannot obtain a more advantageous arrangement with reasonable effort under the circumstances, at or before execution of the written consent;

(b) That determination of the board is included in the written consent executed by the noninterested directors or in other records of the corporation; and

(c) All of the noninterested directors approve the action.

(3) Action taken under this section is the act of the board when one or more consents executed by all the directors entitled to vote are delivered to the nonprofit corporation. In no event may the period between the date of the first signature by a director on such a consent and the date on which all directors have executed the consent be more than sixty days. The consent may specify the time at which the action taken in the consent is to be effective. A director's consent may be withdrawn by a revocation in the form of a record executed by the director and delivered to the president, secretary, or other officer of the corporation specified by the board for that purpose

before delivery to the corporation of unrevoked consents executed by all the directors.

(4) A written consent executed under this section has the effect of action taken at a meeting of the board and may be described as such in any document.

NEW SECTION. Sec. 2506. BOARD AND ADVISORY COMMITTEES. (1) Unless this chapter, the articles, or the bylaws provide otherwise, a board may create one or more committees of the board that consist of two or more directors. A committee of the board shall not include as voting members persons who are not directors, except:

(a) As provided in Title 48 RCW or the regulations promulgated thereunder;

(b) If the only powers delegated to the committee are those necessary for the committee to serve in any fiduciary capacity with respect to one or more employee benefit plans established under the federal employee retirement income security act of 1974, or any successor statute; or

(c) Unless without the inclusion of persons who are not directors it is impossible or impracticable for the corporation to comply with applicable law other than this chapter.

(2) Unless this chapter otherwise provides, the creation of a committee of the board and appointment of directors to it shall be approved by the greater of:

(a) A majority of all the directors in office when the action is taken; or

(b) The number of directors required by the articles or bylaws to take action under section 2504 of this act.

(3) Sections 2501 through 2505 of this act apply to both committees of the board and their members to the greatest practicable extent.

(4) To the extent specified by the board or in the articles or bylaws, each committee of the board may exercise the powers of the board granted through section 2401(2) of this act, except as limited by subsection (5) of this section.

(5) A committee of the board may not:

(a) Authorize distributions;

(b) Adopt, amend, alter, or repeal bylaws;

(c) In the case of a membership corporation, approve or propose to members action that must be approved by members under the articles or bylaws;

(d) Elect, appoint or remove any member of any committee of the board or any director or officer of the corporation;

(e) Amend the articles;

(f) Adopt a plan of merger with another corporation;

(g) Adopt a plan of domestication, for-profit conversion, or entity conversion;

(h) Authorize the sale, lease, or exchange of all or substantially all of the property and assets of the corporation not in the ordinary course of business;

(i) Authorize the voluntary dissolution of the corporation or revoke proceedings therefor;

(j) Adopt a plan for the distribution of the assets of the corporation; or

(k) Amend, alter, or repeal any resolution of the board, unless the resolution provides by its terms that it may be amended, altered, or repealed by a committee.

(6) The creation of, delegation of authority to, or action by a committee of the board does not alone constitute compliance by a director with the standards of conduct described in section 2402 of this act.

(7) A nonprofit corporation may create or authorize the creation of one or more advisory committees whose members need not be directors or meet the qualification requirements for directors. The board shall not delegate any of its authority to an advisory committee. An advisory committee:

(a) Is not a committee of the board; and

(b) May not exercise any of the powers of the board.

NEW SECTION. Sec. 2507. PROCEDURE FOR REMOTE MEETINGS. Unless otherwise provided in the articles or bylaws, meetings of the board or any committee held by remote communication must follow the provisions of sections 2501 through 2506 of this act to the greatest practicable extent.



**ARTICLE 6****OFFICERS**

NEW SECTION. Sec. 2601. OFFICERS-DUTIES. (1) The officers of a nonprofit corporation consist of a president, secretary, and treasurer, and other officers as may be authorized by the articles, the bylaws, or the board.

(2) Unless the articles or bylaws provide otherwise, the board shall elect or appoint all officers annually, and officers shall serve until their respective successors have been elected or appointed or until their earlier removal or resignation.

(3) The same individual may simultaneously hold more than one office in a nonprofit corporation, except that the same individual may not hold the offices of president and secretary.

(4) Each officer has the authority and shall perform the duties set forth in the articles or bylaws or, to the extent consistent with the articles and bylaws, the duties prescribed by the board or by direction of an officer authorized by the board to prescribe the duties of other officers.

NEW SECTION. Sec. 2602. STANDARDS OF CONDUCT FOR OFFICERS. (1) An officer with discretionary authority shall discharge his or her duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) The duty of an officer includes the obligation to convey to his or her superior officer, the board, a board committee, or another appropriate person within the nonprofit corporation:

(a) Information about the affairs of the nonprofit corporation within the scope of the officer's functions, and known to the officer to be material to the superior officer, board, or committee thereof; and

(b) Information regarding any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an

officer, director, employee, agent, or vendor of the corporation, that the officer believes has occurred or is likely to occur.

(3) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the nonprofit corporation whom the officer reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(b) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(i) Within the particular person's professional or expert competence; or

(ii) As to which the particular person merits confidence.

(4) An officer is not a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

NEW SECTION. Sec. 2603. RESIGNATION AND REMOVAL OF OFFICERS. (1) An officer may resign at any time by delivering notice to the nonprofit corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, then the board or the appointing officer may designate a successor before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

(2) Except as provided in the articles or bylaws, an officer may be removed at any time with or without cause by:

(a) The board;

(b) The officer who appointed the officer being removed, unless the board provides otherwise; or

(c) Any other officer authorized by the articles, the bylaws, or the board to remove the officer being removed.

(3) In this section, "appointing officer" means the officer, including any successor to that officer who appointed the officer resigning or being removed.

NEW SECTION. **Sec. 2604.** CONTRACT RIGHTS OF OFFICERS. (1) The appointment or election of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the nonprofit corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

#### **ARTICLE 7**

#### **PROVISIONS COMMON TO DIRECTORS AND OFFICERS**

NEW SECTION. **Sec. 2701.** LOANS OR GUARANTEES. (1) A nonprofit corporation may not lend money to, advance credit to, or guarantee the obligation of a director or officer of the corporation.

(2) Subsection (1) of this section does not apply to:

(a) An advance to pay reimbursable expenses reasonably expected to be incurred within a time period that is reasonable under the circumstances by a director or officer;

(b) Advances pursuant to section 2706 of this act;

(c) Loans or advances pursuant to employee benefit plans; or

(d) A loan to pay reasonable relocation expenses of an officer.

(3) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

(4) The directors who vote for or assent to any loan, advance, or guarantee in violation of subsection (1) of this section, and any officer materially participating in the making of such a loan, advance, or guarantee, are personally liable on a joint and several basis to the nonprofit corporation on the loan, advance, or guarantee. Liability under this subsection terminates upon the repayment of any funds advanced by the nonprofit corporation in violation of subsection (1) of this section or, if no

funds have been advanced under a guarantee, upon the termination of the guarantee.

(5) A director or officer held liable under subsection (4) of this section for any unlawful loan or guarantee is entitled to contribution from every other director or officer who could be held liable under subsection (4) of this section for the unlawful loan or guarantee.

(6) A proceeding to enforce contribution or recoupment under subsection (5) of this section is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (4) of this section.

NEW SECTION. **Sec. 2702.** LIABILITY FOR UNLAWFUL DISTRIBUTIONS. (1) A director or officer is personally liable to the nonprofit corporation for the amount of any distribution that exceeds the amount the corporation could have distributed without violating section 1406 of this act if:

(a) The nature or amount of the distribution was material to the interests of the corporation for any reason under all of the facts and circumstances including, but not limited to, federal excise tax liability or federal tax penalties imposed on the corporation as a result of the distribution;

(b) The director or officer voted for or assented to that distribution as a director, or participated beyond the level of a ministerial function in making that distribution as an officer; and

(c) The party asserting liability establishes that, when taking the action, the director or officer violated the standard of conduct set forth in subsection (2) of this section.

(2) A director or officer may be held liable under this section:

(a) For a distribution by a charitable corporation, or a distribution of assets held for charitable purposes, if the director did not comply with section 2402 of this act or the officer did not comply with section 2602 of this act; or

(b) If the conduct of the director or officer with respect to the distribution constitutes gross negligence.

(3) A director or officer held liable under this section for an unlawful distribution is entitled to:

(a) Contribution from every other director or officer who could be held liable under this section for the unlawful distribution; and

(b) Recoupment from each person of the pro rata portion of the amount of the unlawful distribution the person received:

(i) Whether or not the person knew the distribution was made in violation of this chapter, for a distribution by a charitable corporation or of property held for charitable purposes; or

(ii) Knowing the distribution was made in violation of this chapter, for a distribution of property not held for charitable purposes.

(4) A proceeding to enforce:

(a) The liability of a director or officer under this section is barred, unless it is commenced within three years after the date on which the distribution was made; or

(b) Contribution or recoupment under subsection (3) of this section is barred, unless it is commenced within one year after the liability of the claimant under this section has been finally adjudicated.

**NEW SECTION. Sec. 2703. CONFLICTING INTEREST TRANSACTIONS—VOIDABILITY.** (1) A contract or transaction between a nonprofit corporation and one or more of its members, directors, or officers; or between a nonprofit corporation and any other entity in which one or more of its directors or officers are directors or officers, hold a similar position, or have a financial interest is not void or voidable solely for that reason, or solely because the member, director, or officer is present at or participates in the meeting of the board that authorizes the contract or transaction or solely because his or her or their votes are counted for that purpose, if:

(a) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board and the board in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors even though the disinterested directors are less than a quorum;

(b) The material facts as to the relationship or interest of the member, director, or officer and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of those members; or

(c) The contract or transaction is fair as to the corporation as of the time the board or the members authorize, approve, or ratify the transaction.

(2) Interested directors or directors holding a similar position in the other entity involved in a contract or transaction specified in subsection (1) of this section may be counted in determining the presence of a quorum at a meeting of the board that authorizes the contract or transaction.

(3) This section is applicable except as provided in the articles or bylaws.

**NEW SECTION. Sec. 2704. BUSINESS OPPORTUNITIES.** (1) The taking advantage, directly or indirectly, by a director or officer of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director or officer, in a proceeding by or in the right of the nonprofit corporation on the ground that the opportunity should have first been offered to the corporation, if before becoming legally obligated or entitled respecting the opportunity the director or officer brings it to the attention of the corporation and action by the members or the directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 2703 of this act, as if the decision being made concerned a conflicting interest transaction.

(2) In any proceeding seeking equitable relief or other remedies, based upon an alleged improper 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) of this section before taking advantage of the opportunity does not support an inference that the opportunity should have been first presented to the nonprofit 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.

NEW SECTION. **Sec. 2705.** REMOVAL BY JUDICIAL PROCEEDING. (1) The court may remove a director or officer from office in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) The director or officer engaged in fraudulent conduct with respect to the corporation or its members, knowingly inflicted harm on the corporation, or engaged in acts or omissions constituting gross negligence with respect to the director's or officer's duties; and

(b) Considering the course of conduct of the director or officer and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

(2) An action under this section may be commenced by a member, individual director, or delegate. The attorney general may also commence an action under this section if the corporation holds property for charitable purposes.

(3) The court, in addition to removing the director or officer, may bar the director or officer from being reelected, redesignated, or reappointed as a director, an officer, or both for a period prescribed by the court.

(4) Nothing in this section limits the equitable powers of the court to order other relief.

(5) If a proceeding is commenced under this section to remove a director or officer of a charitable corporation, then the plaintiff shall give the attorney general notice in the form of a record of the commencement of the proceeding.

NEW SECTION. **Sec. 2706.** INDEMNIFICATION AND ADVANCE FOR EXPENSES. The provisions of RCW 23B.08.500 through 23B.08.603, or their successors, apply to any corporation to which this chapter applies. For purposes of this chapter:

(1) All references in those provisions to shares of a corporation are deemed to refer to membership interests in the nonprofit corporation.

(2) All references in those provisions to shareholders are deemed to refer to members of the nonprofit corporation.

(3) All references in those provisions to a shareholders meeting are deemed to refer to a meeting of the members of the nonprofit corporation.

(4) All references in those provisions to transactions from which directors or officers will personally receive a benefit to which they are not entitled are deemed to include transactions approved or implemented by a director or officer knowing them to be in violation of section 1406 of this act.

(5) This section does not limit a nonprofit corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee, agent, or volunteer.

NEW SECTION. **Sec. 2707.** DIRECTORS AND OFFICERS UNDER 18 YEARS OF AGE. No director or officer of a corporation who is under 18 years of age shall have authority to execute any document on behalf of the corporation, or otherwise to bind the corporation with respect to any other party, without the written concurrence of one or more other directors or officers of the corporation who are at least 18 years of age and would, between them, have independent authority to execute the same document or to bind the corporation in the same way.

### **PART III**

#### **FUNDAMENTAL TRANSACTIONS**

##### **ARTICLE 1**

##### **AMENDMENT OF ARTICLES OR BYLAWS**

NEW SECTION. **Sec. 3101.** AUTHORITY TO AMEND. (1) A nonprofit corporation may amend its articles of incorporation, from time to time, so long as its articles as amended contain only provisions that are lawful under this chapter.

(2) Amendments to the articles of a charitable corporation to include one or more purposes of the corporation substantially different from the corporation's purposes before the amendment are subject to the reporting requirement set out in section 1205 of this act.

NEW SECTION. **Sec. 3102.** AMENDMENT OF ARTICLES BY NONMEMBERSHIP CORPORATION.

(1) Except as provided in the articles, the board of a nonmembership corporation may adopt amendments to the corporation's articles by the vote of a majority of the directors in office.

(2) Except as provided in subsection (3) of this section, an amendment adopted by the board under this subsection must also be approved, if the amendment changes or deletes a provision regarding

the appointment of a director by persons other than the board, by those persons as if they constituted a voting group.

(3) Unless the articles provide otherwise, the board of a nonmembership corporation may adopt amendments to the corporation's articles without approval of any of the other persons identified in subsection (2) of this section to:

(a) Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(b) Delete the names and addresses of the initial directors;

(c) Notwithstanding section 1303(1) of this act, delete the name of each incorporator and the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state; and

(d) Restate without change all of the then operative provisions of the articles.

**NEW SECTION. Sec. 3103. AMENDMENT BEFORE ADMISSION OF MEMBERS.** If a membership corporation has not yet admitted members, then its board may adopt one or more amendments to the articles.

**NEW SECTION. Sec. 3104. AMENDMENT AFTER ADMISSION OF MEMBERS.** (1) An amendment to the articles of a membership corporation must be adopted in the following manner:

(a) Except as provided in (e) of this subsection, a proposed amendment must be adopted by the board.

(b) Except as provided in sections 3107 and 3108 of this act, a proposed amendment must be submitted to the members entitled to vote on the amendment, if any, for their approval.

(c) The board shall deliver to all members a recommendation that the members approve an amendment, unless the board makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board shall deliver to the members the basis for that determination.

(d) The board may condition its submission of an amendment to the members on any basis. Such a condition is in addition to any approval requirements set

forth in the corporation's articles or bylaws or in this chapter.

(e) If the articles or bylaws so permit, an amendment may be proposed by ten percent or more of the members entitled to vote on the amendment, or by a greater number of members if the articles or bylaws so specify. The provisions of (a), (c), and (d) of this subsection do not apply to an amendment proposed by the members under this subsection.

(f) If an amendment is required to be approved by the members, including under (e) of this subsection, and the approval is to be given at a meeting, then the corporation shall give notice to each member, whether or not entitled to vote on the amendment, of the meeting of members at which the amendment is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy or summary of the amendment. If a summary is provided in lieu of a copy of the amendment, then a copy must be available to members upon request and the notice shall state that fact.

(g) At a meeting described in (f) of this subsection, those members entitled to vote on the amendment may:

(i) Approve or reject the amendment exactly as provided or summarized in the notice of the meeting; or

(ii) Approve revisions to the amendment at the meeting, if the subject matter of the revisions is within the scope of the subject matter of the amendment as provided or summarized in the notice of the meeting.

(h) The board shall determine whether the subject matter of any revisions approved by members remains within the scope of the subject matter of the amendment as provided or summarized in the notice of the meeting. If the board determines that the revisions approved by the members are not within that scope, then the amendment is deemed rejected by the membership. If the board determines that the revisions by members are within scope, then the board may:

(i) Accept the amendment incorporating the revisions approved by the members; or

(ii) Propose a further revised amendment to the members for approval.

This process may continue until an amendment acceptable to the board has been approved by the members. If successive votes take place at the same meeting of members, then no further notices or meetings are required.

(i) Unless the articles or bylaws, or the board acting pursuant to (d) of this subsection, requires a greater vote or a greater number of votes to be present, the approval of an amendment by the members entitled to vote thereon requires the approval of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the amendment, the approval of each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(j) Except as provided in subsection (2) of this section, an amendment adopted by the board under this subsection must also be approved, if the amendment changes or deletes a provision regarding the appointment of a director by persons other than the board, by those persons as if they constituted a voting group.

(k) If a membership corporation has no members entitled to vote on the amendment, then the corporation shall deliver notice of the approval of the amendment by the board to all members of the corporation at least five days before filing articles of amendment or restated articles of incorporation with the secretary of state.

(2) Unless the articles provide otherwise, the board of a membership corporation may adopt amendments to the corporation's articles without approval of the members to:

(a) Delete the names and addresses of the initial directors;

(b) Notwithstanding section 1303(2) of this act, delete the name of each incorporator and the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state; or

(c) Restate without change all of the then operative provisions of the articles.

**NEW SECTION. Sec. 3105. VOTING ON AMENDMENTS BY VOTING GROUPS.** (1) If a nonprofit corporation has more than one class of members entitled to vote on an

amendment to the articles, then the articles or bylaws may provide that the members of each class entitled to vote on the amendment are entitled to vote as a separate voting group if the amendment would change the rights, powers, preferences, or limitations of the class.

(2) If a class of members will be divided into two or more classes by an amendment to the articles, then the amendment must be approved by a majority of the members of each class that will be created.

**NEW SECTION. Sec. 3106. ARTICLES OF AMENDMENT.** After an amendment to the articles has been adopted and approved in the manner required by sections 3101 through 3114 of this act and by the articles, the nonprofit corporation shall deliver to the secretary of state for filing articles of amendment, which must be executed by an officer or other authorized representative and set forth:

(1) The name of the corporation;

(2) The text of the amendment adopted;

(3) The date of the amendment's adoption; and

(4) If the amendment:

(a) Was adopted by the board without member approval, a statement that the amendment was adopted by the board of directors, and that member approval was not required; or

(b) Required approval by the members, a statement that the amendment was approved by the members in the manner required by this chapter and by the articles and bylaws.

**NEW SECTION. Sec. 3107. RESTATED ARTICLES OF INCORPORATION.** (1) The board of a nonprofit corporation may restate its articles of incorporation at any time, without approval by the members or any other person, to consolidate all amendments into a single document without substantive change.

(2) A restatement of the articles may include one or more amendments to the articles. If restated articles of incorporation of a nonmembership corporation include one or more new amendments, then these amendments must have been adopted and approved as provided in section 3102 of this act. If restated articles of incorporation of a membership corporation include one or more new amendments that require member

approval, then the amendments must have been adopted and approved as provided in section 3103 or 3104 of this act, as appropriate.

(3) A nonprofit corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the nonprofit corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) If the restatement does not include any amendments to the articles, a statement of that fact;

(b) If the restatement contains one or more amendments to the articles, the information required by section 3106 (1) through (4) of this act.

(4) The articles of restatement and the certificate must be executed by an officer or other authorized representative.

(5) Duly adopted restated articles of incorporation supersede the original articles and all amendments thereto.

(6) The secretary of state shall certify restated articles of incorporation as the articles currently in effect.

**NEW SECTION. Sec. 3108. AMENDMENT OF ARTICLES PURSUANT TO REORGANIZATION.** (1) A nonprofit corporation's articles of incorporation may be amended without action by the board or the members to carry out a plan of reorganization ordered or decreed by any court of competent jurisdiction in a proceeding relating to the corporation.

(2) An individual designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

**NEW SECTION. Sec. 3109. EFFECTIVE DATE.** Unless a delayed effective date is specified, articles of amendment or restated articles of incorporation become effective on the date the articles of amendment or restated articles of incorporation are filed by the secretary of state.

**NEW SECTION. Sec. 3110. EFFECT OF ARTICLES OF AMENDMENT.** (1) Except as provided in subsection (2) of this section, an amendment to the articles does not affect a cause of action existing against or in favor of the nonprofit corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation or persons referred to in the articles. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

(2) No amendment to the articles shall modify any restriction imposed through any means upon property held for charitable purposes unless, before the delivery of the amendment to the secretary of state for filing, the restriction is modified:

(a) In the case of a restriction imposed pursuant to a trust instrument governed by chapter 11.110 RCW in which the nonprofit corporation is a trustee or a beneficiary, through an appropriate order of the court or the agreement of all interested parties, including the attorney general, under chapter 11.96A RCW; or

(b) In the case of any other restriction, pursuant to section 1503 of this act.

(3) A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with an amendment of the articles unless the person is itself a charitable corporation, the federal government, a state, a governmental subdivision, or an unincorporated entity that has charitable purposes. This subsection does not apply to the receipt of

reasonable compensation for services rendered.

NEW SECTION. **Sec. 3111.** POWER TO AMEND BYLAWS. The power to alter, amend, or repeal the bylaws or adopt new bylaws is vested in the board unless otherwise provided in the articles, the bylaws, or this chapter.

NEW SECTION. **Sec. 3112.** BYLAW AMENDMENTS REQUIRING MEMBER APPROVAL.

(1) Except as provided in the articles or bylaws, the board of a membership corporation that has one or more members may not, without approval of the class or classes of members affected, adopt or amend a provision of the bylaws:

(a) That would eliminate any existing right, power, or privilege of membership contained in the bylaws;

(b) Under section 2107 of this act, providing that some of the members have different rights or obligations than other members with respect to voting, dissolution, transfer of memberships or other matters;

(c) Under section 2110 of this act, levying dues, assessments, or fees on some or all of the members;

(d) Under section 2113 of this act, relating to the termination or suspension of members; or

(e) Under section 2114 of this act, authorizing the purchase of memberships.

(2) The board of a membership corporation that has members may not amend the articles or bylaws without approval of every class or classes of members affected to vary the application of subsection (1) of this section to the corporation.

(3) If a nonprofit corporation has more than one class of members, then the members of a class are entitled to vote as a separate voting group on an amendment to the bylaws that:

(a) Is described in subsection (1) of this section, if the amendment would affect the members of that class differently than the members of another class; or

(b) Has any of the effects described in section 3104(1)(j) of this act.

(4) If a class of members will be divided into two or more classes by an amendment to the bylaws, then the amendment must be approved by a majority

of the members of each class that will be created.

NEW SECTION. **Sec. 3113.** EFFECT OF BYLAW AMENDMENT.

(1) No amendment to the bylaws shall modify any restriction imposed through any means upon property held for charitable purposes unless, before or simultaneously with the adoption of the bylaws amendment, the restriction is modified:

(a) In the case of a restriction imposed pursuant to a trust instrument governed by chapter 11.110 RCW in which the nonprofit corporation is a trustee or a beneficiary, through an appropriate order of the court or the agreement of all interested parties, including the attorney general, under chapter 11.96A RCW; or

(b) In the case of any other restriction, pursuant to section 1503 of this act.

(2) A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with an amendment of the bylaws unless the person is itself a charitable corporation, the federal government, a state, a governmental subdivision, or an unincorporated entity that has charitable purposes. This subsection does not apply to the receipt of reasonable compensation for services rendered.

NEW SECTION. **Sec. 3114.** APPROVAL OF AMENDMENTS BY THIRD PARTIES.

(1) The articles of incorporation may require that an amendment to the articles be approved in the form of a record by a specified person or group of persons in addition to the board or members.

(2) The articles or bylaws may require that an amendment to the bylaws be approved in the form of a record by a specified person or group of persons in addition to the board or members.

(3) A requirement in the articles or bylaws described in subsection (1) or (2) of this section may only be amended with the approval in the form of a record of the specified person or group of persons.

## ARTICLE 2

### MERGER

NEW SECTION. **Sec. 3201.** DEFINITIONS.

The definitions in this section apply throughout this section and sections 3202



through 3209 of this act unless the context clearly requires otherwise.

(1) "Eligible interests" means interests or shares.

(2) "Interests" means either or both of the following rights under the organic law of an unincorporated entity:

(a) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(b) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business, activities, or affairs.

(3) "Merger" means a transaction pursuant to section 3205 of this act.

(4) "Party to a merger" means any domestic or foreign nonprofit corporation or eligible entity that will merge under a plan of merger.

(5) "Shares" means the units into which the proprietary interests in a domestic or foreign for-profit corporation are divided.

(6) "Survivor" in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

**NEW SECTION. Sec. 3202. PROPERTY HELD FOR CHARITABLE PURPOSES.** (1) In a merger under sections 3201 through 3209 of this act, property held for charitable purposes by a nonprofit corporation may not be diverted from charitable purposes.

(2) The survivor of any merger under sections 3201 through 3209 of this act remains bound by any restriction imposed through any means upon property held for charitable purposes by any party to the merger including, but not limited to, any restriction that affects existing rights of persons other than members, shareholders, or interest holders of the other party, unless the restriction is modified:

(a) In the case of a restriction imposed pursuant to a trust instrument governed by chapter 11.110 RCW in which the nonprofit corporation is a trustee or a beneficiary, through an appropriate order of the court or the agreement of all interested parties, including the attorney general, under chapter 11.96A RCW; or

(b) In the case of any other restriction, pursuant to section 1503 of this act.

(3) Property held by a nonprofit corporation for charitable purposes upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, must be returned, transferred, or conveyed in accordance with that condition.

(4) A corporation that is not a charitable corporation but holds property for charitable purposes shall deliver to the attorney general notice of its intent to consummate a merger, unless the survivor of the merger is a charitable corporation. The notice must be delivered to the attorney general in the form of a record at least twenty days before the meeting at which the proposed transaction is to be approved. Such a merger may not be implemented without the approval of the attorney general, or the approval of the court in a proceeding to which the attorney general is made a party. In the event that the attorney general does not deliver a notice of objection in the form of a record to the corporation within twenty days after the delivery to the attorney general of notice of the transaction, approval of the transaction is deemed to have been given.

(5) The notice described in subsection (4) of this section shall include:

(a) A statement specifying how the merger will comply with subsections (1) through (3) of this section; and

(b) A brief description of:

(i) Real property held by the corporation for charitable purposes, and its nature and location;

(ii) Cash, bank deposits, brokerage accounts, or other financial assets held by the corporation for charitable purposes, and their approximate total fair market value;

(iii) Other personal property held by the corporation for charitable purposes, and its nature and approximate total fair market value; and

(iv) All gift restrictions applicable to any property described in (b)(i) through (iii) of this subsection, and the nature of those restrictions.

**NEW SECTION. Sec. 3203. PROHIBITION OF FINANCIAL BENEFIT.** A person who is a

member, director, officer, interest holder, or otherwise affiliated with a charitable corporation or any other eligible entity with a charitable purpose may not receive a direct or indirect financial benefit in connection with a merger governed by sections 3201 through 3209 of this act to which the charitable corporation or unincorporated entity is a party unless the person is itself a charitable corporation, the federal government, a tribal government, a state or local government, a governmental subdivision, or an eligible entity that is organized exclusively for charitable purposes. This section does not apply to the receipt of reasonable compensation for services rendered.

NEW SECTION. Sec. 3204. LIMITATIONS ON CHARITABLE CORPORATIONS. (1) A charitable corporation may merge only with:

- (a) Another charitable corporation;
- (b) A foreign corporation that, if it were a domestic corporation, would qualify under this chapter as a charitable corporation; or
- (c) A foreign or domestic for-profit or nonprofit corporation, or unincorporated entity, only if the charitable corporation is the surviving corporation and continues to qualify as a charitable corporation after the merger.

(2) No member of a charitable corporation may receive or keep anything as a result of a merger other than a membership in the surviving charitable corporation, unless:

- (a) The attorney general, or the court in a proceeding in which the attorney general has been given notice, has provided prior written consent; or
- (b) The member is a charitable corporation, another entity that is organized and operated exclusively for one or more charitable purposes, the federal government, or a tribal, state, or local government.

NEW SECTION. Sec. 3205. MERGER. (1) Subject to the restrictions in sections 3202 through 3204 of this act, one or more domestic nonprofit corporations may merge with one or more domestic or foreign nonprofit corporations or eligible entities pursuant to a plan of merger or two or more foreign nonprofit corporations or domestic or foreign

eligible entities may merge into a new domestic nonprofit corporation to be created in the merger in the manner provided in sections 3201 through 3209 of this act.

(2) A foreign nonprofit corporation, or a foreign eligible entity, may be a party to a merger with a domestic nonprofit corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the organic law of the corporation or eligible entity.

(3) If the law of this state, other than this chapter, permits the merger of a domestic eligible entity with a nonprofit corporation but does not provide procedures for the approval of such a merger, then a plan of merger may be adopted and approved, and the merger may be effectuated, in accordance with the procedures in sections 3201 through 3209 of this act. For the purposes of applying sections 3201 through 3209 of this act, as the context may require:

(a) The eligible entity is treated as a domestic nonprofit corporation, its interest holders are treated as members, eligible interests are treated as memberships, and organic records are treated as articles and bylaws; and

(b) If there is no board of directors and the business and affairs of the eligible entity are managed by a team or body of persons that is not identical to the interest holders, that team or body is deemed to be the board of directors.

(4) The plan of merger must be in the form of a record and include:

- (a) The name of each domestic or foreign nonprofit corporation or eligible entity that will merge and the name of the domestic or foreign nonprofit corporation or eligible entity that will be the survivor of the merger;
- (b) The terms and conditions of the merger;

(c) The manner and basis of converting the memberships of each merging domestic or foreign nonprofit membership corporation and the eligible interests of each merging domestic or foreign eligible entity into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other

consideration; or any combination of the foregoing;

(d) The articles and bylaws of any corporation, or the organic records of any eligible entity, to be created by the merger; or if a new corporation or eligible entity is not to be created by the merger, any changes to the survivor's articles or bylaws or organic records;

(e) Whether the corporation is a charitable corporation or is holding assets for charitable purposes;

(f) If the corporation is a charitable corporation or is holding assets for charitable purposes, a plan setting forth how the merging entities will comply with sections 3202 and 3204 of this act; and

(g) Any other provisions relating to the merger that the parties desire be included in the plan of merger.

(5) The plan of merger may also include a provision that the plan may be amended before filing articles of merger, but if the members of a domestic corporation that is a party to the merger are required or entitled to vote on the plan, then the plan shall provide that after approval of the plan by those members the plan may not be amended to change:

(a) The amount or kind of memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; or other property or other consideration to be received by the members of or owners of eligible interests in any party to the merger;

(b) The articles or bylaws of any corporation, or the organic records of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by section 3104(2) of this act or by comparable provisions of the organic law of a foreign nonprofit or for-profit corporation or domestic or foreign unincorporated entity; or

(c) Any of the other terms or conditions of the plan, if the change would adversely affect those members in any material respect.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with section 1202(3) of this act.

NEW SECTION. **Sec. 3206.** ADOPTION OF PLAN OF MERGER. In the case of a nonprofit corporation that is a party to a merger:

(1) The plan of merger must be adopted by the board.

(2) Except as provided in subsection (9) of this section, section 3205 of this act, or the articles or bylaws, after adopting the plan of merger, the board shall submit the plan to those members entitled to vote on the plan for their approval. The board shall also deliver to the members a recommendation that the members approve the plan, unless the board makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board shall deliver to the members the basis for that determination.

(3) The board may condition its submission of the plan of merger to the members on any basis.

(4) If the plan of merger is required to be approved by the members, and if the approval is to be given at a meeting, then the nonprofit corporation shall give notice to each member, whether or not entitled to vote on the merger, of the meeting of members at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or eligible entity, then the notice shall also include a copy or summary of the articles and bylaws or organic records of that corporation or eligible entity. If the corporation is to be merged into a corporation or eligible entity that is to be created pursuant to the merger, then the notice shall include a copy or a summary of the articles and bylaws or organic records of the new corporation or eligible entity. If a summary is provided in lieu of a copy of the plan or of the articles and bylaws, then a copy of the plan and articles and bylaws, as applicable, must be available to members upon request and this fact must be stated in the notice. Such copy of the plan and articles and bylaws, as applicable, may be made available in electronic format.

(5) Unless the articles or bylaws, or the board acting pursuant to subsection (3) of this section, requires a greater

vote or a greater number of votes to be present, the approval of the plan of merger by the members entitled to vote thereon requires the approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan of merger, the approval of a majority of the members of each voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(6) Separate voting on a plan of merger is required:

(a) By each class of members:

(i) Whose memberships are to be converted into eligible interests, securities, or obligations; rights to acquire eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing;

(ii) Which is to experience a change in the rights, powers, preferences, or limitations of the class as a result of the merger; or

(iii) That would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under the articles or bylaws.

(b) By a voting group, if the voting group is entitled under the articles or bylaws to vote as a voting group to approve a plan of merger.

(7) If a plan of merger would affect in the same or a substantially similar way two or more classes of members entitled to vote separately on the plan of merger under subsection (6) (a) of this section, then, instead of voting separately, all similarly affected classes of members shall vote together as a single voting group on the plan of merger, unless otherwise provided in the articles or as a condition imposed by the board under subsection (3) of this section.

(8) If as a result of a merger one or more members of a domestic nonprofit corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, then approval of the plan of merger requires the execution, by each member who would become subject to owner liability, of a separate record

consenting to become subject to owner liability.

(9) If a domestic nonprofit corporation that is a party to a merger does not have any members entitled to vote on the merger, then a plan of merger is deemed adopted by the corporation when it has been adopted by the board pursuant to subsection (1) of this section. If a membership corporation has no members entitled to vote on the merger, then the corporation shall deliver notice of the proposed merger to all members of the corporation at least five days before the meeting at which the board is to adopt the plan of merger.

(10) In addition to the adoption and approval of the plan of merger by the board and members as required by this section, the plan of merger must also be approved in the form of a record by any person or group of persons whose approval is required under section 3114 of this act to amend the articles or bylaws.

(11) Adoption and approval of a plan of merger by all required persons under the procedures set forth in this section constitutes adoption and approval of all changes to the approving party's articles, bylaws, or other organic documents contained within the plan of merger.

**NEW SECTION. Sec. 3207. ARTICLES OF MERGER.** (1) After a plan of merger has been adopted and approved as required by sections 3201 through 3209 of this act, articles of merger must be executed on behalf of each party to the merger by an officer or other authorized representative of the party. The articles of merger shall set forth:

(a) The names of the parties to the merger;

(b) If the articles of the surviving domestic nonprofit corporation are being changed, or if a new domestic nonprofit corporation is created as a result of a merger, the changes to the articles of the surviving corporation or the articles of the new corporation;

(c) If the plan of merger required approval by the members of a domestic nonprofit corporation that was a party to the merger, a statement that the plan was approved by the members and, if voting by any separate voting group was required, by each separate voting group entitled to vote, in the manner required by this chapter and the articles or bylaws;

(d) If the plan of merger did not require approval by the members of a domestic nonprofit corporation that was a party to the merger, a statement to that effect;

(e) If a party to the merger is a noncharitable corporation holding property for charitable purposes, and the survivor is not a charitable corporation, a statement that the attorney general has approved, or is deemed to have approved, the merger pursuant to section 3202 of this act; and

(f) As to each foreign nonprofit corporation or eligible entity that was a party to the merger, a statement that the participation of the foreign corporation or eligible entity was authorized as required by the organic law of the corporation or eligible entity.

(2) Terms of articles of merger may be made dependent on facts objectively ascertainable outside the articles in accordance with section 1202(3) of this act.

(3) Articles of merger must be delivered to the secretary of state for filing by the surviving entity of the merger and shall take effect at the effective time provided in RCW 23.95.210. Articles of merger filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

NEW SECTION. **Sec. 3208.** EFFECT OF MERGER. (1) Subject to sections 3202 and 3203 of this act, if the surviving entity is a domestic nonprofit corporation when a merger becomes effective:

(a) The domestic nonprofit corporation that is designated in the plan of merger as the surviving corporation continues or comes into existence, as the case may be;

(b) The separate existence of every domestic or foreign nonprofit corporation or eligible entity that is merged into the survivor ceases;

(c) All property owned by, and every contract and other right possessed by, each domestic or foreign nonprofit corporation or eligible entity that merges into the surviving corporation is vested in the surviving corporation without reversion or impairment;

(d) All liabilities of each domestic or foreign nonprofit corporation or eligible entity that is merged into the survivor are vested in the surviving corporation;

(e) The name of the surviving corporation may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) The articles and bylaws or organic records of the surviving corporation are amended to the extent of the changes provided in the plan of merger;

(g) The articles and bylaws of a surviving corporation that is created by the merger become effective; and

(h) The memberships of each corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing; are converted.

(2) A person who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of any entity as a result of a merger has owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations, and liabilities that arise after the effective time of the articles of merger, except to the extent that the person consented to become subject to liability under section 3206(8) of this act.

(3) The effect of a merger on the owner liability of a person who had owner liability for some or all of the debts, obligations, or liabilities of a party to the merger is as follows:

(a) The merger does not discharge any owner liability under the organic law of the entity in which the person was a member, shareholder, or interest holder to the extent that owner liability arose before the effective time of the articles of merger.

(b) The person does not have owner liability under the organic law of the entity in which the person was a member, shareholder, or interest holder before

the merger for any debt, obligation, or liability that arises after the effective time of the articles of merger.

(c) The provisions of the organic law of any entity for which the person had owner liability before the merger continue to apply to the collection or discharge of any owner liability preserved by subsection (1) of this section, as if the merger had not occurred.

(d) The person has whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by (a) of this subsection, as if the merger had not occurred.

(4) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made before or after a merger, to or for any of the parties to the merger, inures to the survivor, subject to the express terms of the will or other instrument.

**NEW SECTION. Sec. 3209. ABANDONMENT OF MERGER.** (1) Unless otherwise provided in a plan of merger or in the organic law of a foreign nonprofit corporation or a domestic or foreign eligible entity that is a party to a merger, after the plan has been adopted and approved as required by sections 3201 through 3209 of this act, and at any time before the merger has become effective, it may be abandoned by a domestic nonprofit corporation that is a party thereto without action by its members, in accordance with any procedures set forth in the plan of merger or, if no procedures are set forth in the plan, in the manner determined by the board, subject to any contractual rights of other parties to the merger.

(2) If a merger is abandoned under subsection (1) of this section after articles of merger have been filed by the secretary of state but before the merger has become effective, then a statement that the merger has been abandoned in accordance with this section, executed on behalf of a party to the merger by an officer or other authorized representative, must be delivered to the secretary of state for filing before the effective date of the merger. Upon filing by the secretary of state, the statement takes effect and the merger is deemed abandoned and shall not become effective.

### ARTICLE 3

### DOMESTICATION AND CONVERSION

**NEW SECTION. Sec. 3301. DEFINITIONS.** The definitions in this section apply throughout this section and sections 3302 through 3326 of this act unless the context clearly requires otherwise.

(1) "Conversion" means a transaction authorized by section 3312, 3317, or 3321 of this act.

(2) "Converting corporation" means the domestic or foreign nonprofit or for-profit corporation that approves a conversion pursuant to sections 3301 through 3326 of this act or its organic law.

(3) "Converting entity" means the domestic or foreign entity that approves a conversion pursuant to section 3321 of this act or its organic law.

(4) "Domesticated corporation" means the domesticating corporation as it continues in existence after a domestication.

(5) "Domesticating corporation" means the domestic nonprofit corporation that adopts a plan of domestication pursuant to section 3308 of this act or the foreign nonprofit corporation that approves a domestication pursuant to its organic law.

(6) "Domestication" means a transaction authorized by section 3307 of this act.

(7) "Surviving corporation" means the corporation as it continues in existence immediately after consummation of a for-profit conversion pursuant to section 3312 of this act, a foreign for-profit conversion and domestication pursuant to section 3317 of this act, or an entity conversion pursuant to section 3321 of this act.

(8) "Surviving entity" means the unincorporated entity as it continues in existence immediately after consummation of an entity conversion pursuant to section 3321 of this act.

**NEW SECTION. Sec. 3302. EXCLUDED TRANSACTIONS.** Sections 3301 through 3326 of this act may not be used to effect a transaction that:

(1) Converts a nonprofit or mutual insurance company to a for-profit stock corporation; or

(2) Is governed by chapter 70.45 RCW.

NEW SECTION. **Sec. 3303.** REQUIRED APPROVALS. If a domestic or foreign nonprofit corporation or eligible entity may not be a party to a merger or sale of its assets without the approval of a federal or state agency other than the secretary of state, then the corporation or eligible entity shall not be a party to a transaction under sections 3301 through 3326 of this act without the prior approval of that agency.

NEW SECTION. **Sec. 3304.** PROPERTY HELD FOR CHARITABLE PURPOSES. (1) In any transaction under sections 3301 through 3326 of this act, property held for charitable purposes by a nonprofit corporation may not be diverted from charitable purposes.

(2) No transaction under sections 3301 through 3326 of this act shall modify any restriction imposed through any means upon property held for charitable purposes by any entity involved in the transaction, including but not limited to a restriction that affects existing rights of persons other than members, shareholders, or interest holders of the entity, unless the restriction is modified:

(a) In the case of a restriction imposed pursuant to a trust instrument governed by chapter 11.110 RCW in which the nonprofit corporation is a trustee or a beneficiary, through an appropriate order of the court or the agreement of all interested parties, including the attorney general, under chapter 11.96A RCW; or

(b) In the case of any other restriction, pursuant to section 1503 of this act.

(3) Property held by a nonprofit corporation for charitable purposes upon condition requiring return, transfer or conveyance, which condition occurs by reason of a transaction under sections 3301 through 3326 of this act, must be returned, transferred, or conveyed in accordance with that condition.

(4) A corporation holding property for charitable purposes shall deliver to the attorney general notice of its intent to consummate any transaction under sections 3301 through 3326 of this act. The notice must be delivered to the attorney general in the form of a record at least forty-five days before the meeting at which the proposed transaction is to be approved. Such a transaction may not be implemented without the approval

of the attorney general, or the approval of the court in a proceeding to which the attorney general is made a party. In the event that the attorney general does not deliver a notice of objection in the form of a record to the corporation within twenty days after the delivery to the attorney general of notice of the transaction, approval of the transaction is deemed to have been given.

(5) The notice described in subsection (4) of this section shall include:

(a) A statement specifying how the transaction will comply with subsections (1) through (3) of this section, as applicable; and

(b) A brief description of:

(i) Real property held for charitable purposes by the corporation, and its nature and location;

(ii) Cash, bank deposits, brokerage accounts, or other financial assets held for charitable purposes by the corporation, and their approximate total fair market value;

(iii) Other personal property held for charitable purposes by the corporation, and its nature and approximate total fair market value; and

(iv) Any gift restrictions applicable to any property described in (b)(i) through (iii) of this subsection, and the nature of those restrictions.

(6) An event of domestication or conversion does not affect the applicability of chapter 11.110, 19.09, or 24.55 RCW to any entity.

NEW SECTION. **Sec. 3305.** PROHIBITION ON FINANCIAL BENEFIT. A person who is a member, interest holder, or otherwise affiliated with a charitable corporation or an unincorporated entity with charitable purposes may not receive a direct or indirect financial benefit in connection with a transaction governed by sections 3301 through 3326 of this act to which the charitable corporation or unincorporated entity is a party unless the person is itself a charitable corporation, the federal government, a tribal, state, or local government, a governmental subdivision, or an unincorporated entity that has charitable purposes. This section does not apply to the receipt of reasonable compensation for services rendered.

NEW SECTION. Sec. 3306. VOTING RIGHTS IN EXISTING CORPORATIONS. For any corporation formed before January 1, 2022, any member or other person who is entitled under the articles or bylaws to vote on or approve a merger transaction involving the corporation is deemed entitled, to the same extent, to vote on or approve any transaction under sections 3301 through 3326 of this act involving the corporation.

NEW SECTION. Sec. 3307. DOMESTICATION. (1) A foreign nonprofit corporation may become a domestic nonprofit corporation only if the law of the foreign jurisdiction allows the domestication.

(2) A domestic nonprofit corporation may become a foreign nonprofit corporation if the law of the foreign jurisdiction allows the domestication.

(3) Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication must be approved by the corporation's adoption of a plan of domestication in the manner provided in sections 3301 through 3326 of this act.

(4) The plan of domestication shall include:

(a) A statement of the jurisdiction in which the corporation is to be domesticated;

(b) The terms and conditions of the domestication;

(c) The manner and basis of canceling or reclassifying the memberships of the corporation following its domestication into memberships, obligations, rights to acquire memberships, cash, other property, or any combination of the foregoing;

(d) If the corporation is a charitable corporation or is holding assets for charitable purposes, a plan setting forth how the corporation will comply with section 3304 (1) through (3) of this act; and

(e) Any desired changes to the articles or bylaws of the corporation in connection with its domestication.

(5) The plan of domestication may also include a provision that the plan may be amended before filing the document required by the laws of this state or the other jurisdiction to consummate the domestication; except that, after

approval of the plan by the members, the plan may not be amended without the approval of the members entitled to vote thereon to change:

(a) The amount or kind of memberships, obligations, rights to acquire memberships, cash, or other property to be received by the members under the plan;

(b) The articles as they will be in effect immediately following the domestication, except for changes permitted by section 3104 of this act or by comparable provisions of the laws of the other jurisdiction; or

(c) Any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

(6) Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with section 1202(3) of this act.

(7) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a domestic nonprofit corporation before January 1, 2022, contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, then the provision is deemed to apply to a domestication of the corporation until the provision is amended after that date.

NEW SECTION. Sec. 3308. ACTION ON A PLAN OF DOMESTICATION. In the case of a domestication of a domestic nonprofit corporation in a foreign jurisdiction:

(1) The plan of domestication must be adopted by the board.

(2) If there are no members entitled to vote on the plan, then the plan must be adopted by a vote of the majority of directors then in office. If a membership corporation has no members entitled to vote on the plan, then the corporation shall deliver notice of the proposed domestication to all members of the corporation at least ten days before the meeting at which the board is to adopt the plan.

(3) After adopting the plan of domestication, the board shall submit the plan to the members for their approval, if there are members entitled to vote on



the plan. The board shall also transmit to the members a recommendation that the members approve the plan, unless the board determines that, because of conflicts of interest or other special circumstances, it should not make such a recommendation, in which case the board shall transmit to the members the basis for that determination.

(4) The board may condition its submission of the plan of domestication to the members on any basis.

(5) If the approval of the members is to be given at a meeting, then the corporation shall notify each member, whether or not entitled to vote, of the meeting of members at which the plan of domestication is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include a copy of the articles and bylaws as they will be in effect immediately after the domestication. If a summary is provided in lieu of a copy of the plan, then a copy of the plan must be available to members upon request and this fact must be stated in the notice.

(6) Unless the articles or bylaws, or the board acting pursuant to subsection (4) of this section, requires a greater vote or a greater number of votes to be present, the approval of the plan of domestication by the members entitled to vote thereon requires the approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan, the approval of a majority of the members of each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(7) A separate voting by voting groups is required by each class of members that:

(a) Is to be reclassified under the plan of domestication into a different class of members, or into obligations, rights to acquire memberships, cash, other property, or any combination of the foregoing;

(b) Would be entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under section 3105 of this act; or

(c) Is entitled under the articles or bylaws to vote as a voting group to approve an amendment of the articles.

(8) If any provision of the articles, bylaws, or an agreement to which any of the directors or members are parties, adopted or entered into before January 1, 2022, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, then the provision is deemed to apply to a domestication of the corporation until the provision is later amended.

**NEW SECTION. Sec. 3309. ARTICLES OF DOMESTICATION.** (1) Articles of domestication must be executed on behalf of the domesticating corporation by an officer or other authorized representative. The articles shall set forth:

(a) The name and jurisdiction of incorporation of the domesticating corporation;

(b) The name and jurisdiction of incorporation of the domesticated entity; and

(c) If the domesticating corporation is a domestic nonprofit corporation, a statement that the plan of domestication was approved in accordance with sections 3301 through 3326 of this act or, if the domesticating corporation is a foreign nonprofit corporation, a statement that the domestication was approved in accordance with the law of its jurisdiction of incorporation.

(2) The articles of domestication must be delivered to the secretary of state for filing, and take effect at the effective time provided in RCW 23.95.210.

(3) If the domesticating corporation is a foreign corporation, then the domesticating corporation must, simultaneously with the delivery of the articles of domestication, deliver articles of incorporation that comply with this title to the secretary of state for filing and the secretary of state shall file the articles. Provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the corporation must be included and the name of the corporation must satisfy the requirements of section 1302 of this act.

(4) If the domesticating corporation is a registered foreign corporation, then its registration is terminated automatically on the effective date of its domestication, and the secretary of state shall record the termination of the registration.

NEW SECTION. Sec. 3310. EFFECT OF DOMESTICATION. (1) Except as provided in section 3304 of this act, when a domestication becomes effective:

(a) The title to all real and personal property, both tangible and intangible, of the domesticating corporation remains in the domesticated corporation without reversion or impairment;

(b) The liabilities of the domesticating corporation remain the liabilities of the domesticated corporation;

(c) An action or proceeding pending against the domesticating corporation continues against the domesticated corporation as if the domestication had not occurred;

(d) The articles of incorporation filed pursuant to section 3309(3) of this act constitute the articles of a foreign corporation domesticating in Washington state;

(e) The memberships in the domesticating corporation are reclassified into memberships, obligations, rights to acquire memberships, or cash or other property in accordance with the terms of the domestication, and the members are entitled only to the rights provided by those terms;

(f) Gift restrictions binding the domestic corporation remain in place as if the domestication had not occurred, unless modified in accordance with section 1503 of this act;

(g) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made to or for the domesticating corporation before or after the domestication, inures to the domesticated corporation, subject to the express terms of the will or other instrument; and

(h) The domesticating corporation is deemed to be:

(i) Incorporated under and subject to the organic law of the domesticated corporation for all purposes; and

(ii) The same corporation without interruption as the domesticating corporation.

(2) The interest holder liability of a member in a foreign nonprofit corporation that is domesticated in the state of Washington is as follows:

(a) The domestication does not discharge any interest holder liability under the laws of the foreign jurisdiction to the extent the interest holder liability arose before the effective time of the articles of domestication.

(b) The member does not have interest holder liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.

(c) The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any interest holder liability preserved by (a) of this subsection, as if the domestication had not occurred.

(d) The domestication has no effect on any member's rights of contribution from other members provided by the laws of the foreign jurisdiction with respect to any interest holder liability preserved by (a) of this subsection.

NEW SECTION. Sec. 3311. ABANDONMENT OF DOMESTICATION. (1) Unless otherwise provided in a plan of domestication of a domestic nonprofit corporation, after the plan has been adopted and approved as required by sections 3301 through 3326 of this act, and at any time before the domestication has become effective, it may be abandoned by the members if there are members entitled to vote on the plan of domestication, or by the board without action by members.

(2) If a domestication is abandoned under subsection (1) of this section after articles of domestication have been filed by the secretary of state but before the domestication has become effective, then a statement that the domestication has been abandoned in accordance with this section, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing before the effective date of the domestication. The statement takes effect upon filing and

the domestication is abandoned and does not become effective.

(3) If the domestication of a foreign nonprofit corporation in Washington state is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed by the secretary of state, then a statement that the domestication has been abandoned, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing. The statement takes effect upon filing and the domestication is abandoned and does not become effective.

NEW SECTION. **Sec. 3312.** FOR-PROFIT CONVERSION OF NONCHARITABLE CORPORATIONS. (1) A domestic nonprofit corporation, other than a charitable corporation, may become a domestic for-profit corporation pursuant to a plan of for-profit conversion if the for-profit conversion is permitted under Title 23B RCW.

(2) A domestic nonprofit corporation, other than a charitable corporation, may become a foreign for-profit corporation if the for-profit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of for-profit conversion, the foreign for-profit conversion must be approved by the adoption by the domestic nonprofit corporation of a plan of for-profit conversion in the manner provided in sections 3301 through 3326 of this act.

(3) The plan of for-profit conversion shall include:

(a) The terms and conditions of the conversion;

(b) The manner and basis of:

(i) Issuing at least one share in the corporation following its conversion; and

(ii) Otherwise reclassifying the memberships in the corporation, if any, following its conversion into shares and other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(c) If the corporation is holding assets for charitable purposes, a plan setting forth how the corporation will comply with section 3304 (1) through (3) of this act;

(d) Any desired changes to the articles or bylaws of the corporation following its conversion; and

(e) If the domestic nonprofit corporation is to be converted to a foreign for-profit corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.

(4) The plan of for-profit conversion may also include a provision that the plan may be amended before filing articles of for-profit conversion, except that after approval of the plan by the members the plan may not be amended without the approval of the members to change:

(a) The amount or kind of shares and other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received by the members under the plan;

(b) The articles of incorporation as they will be in effect immediately following the conversion, except for changes permitted by section 3104 of this act; or

(c) Any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

(5) Terms of a plan of for-profit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with section 1202(3) of this act.

(6) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a domestic nonprofit corporation before January 1, 2022, contains a provision applying to a merger of the corporation and the document does not refer to a for-profit conversion of the corporation, then the provision is deemed to apply to a for-profit conversion of the corporation until the provision is later amended.

NEW SECTION. **Sec. 3313.** ACTION ON A PLAN OF FOR-PROFIT CONVERSION. In the case of a conversion of a domestic nonprofit corporation to a domestic or foreign for-profit corporation:

(1) The plan of for-profit conversion must be adopted by the board.

(2) If there are no members entitled to vote on the plan, then the plan must be adopted by a vote of the majority of directors then in office. If a membership corporation has no members entitled to vote on the plan, then the corporation shall deliver notice of the proposed for-profit conversion to all members of the corporation at least ten days before the meeting at which the board is to adopt the plan.

(3) After adopting the plan of for-profit conversion, the board shall submit the plan to the members for their approval if there are members entitled to vote on the plan. The board shall also deliver to the members a recommendation that the members approve the plan, unless the board determines that because of conflicts of interest or other special circumstances, it should not make such a recommendation, in which case the board shall deliver to the members the basis for that determination.

(4) The board may condition its submission of the plan of for-profit conversion to the members on any basis.

(5) If the approval of the members is to be given at a meeting, then the corporation shall notify each member of the meeting of members at which the plan of for-profit conversion is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include a copy of the articles as they will be in effect immediately after the for-profit conversion. If a summary is provided in lieu of a copy of the plan, then a copy of the plan must be available to members upon request and this fact must be stated in the notice.

(6) Unless the articles or bylaws, or the board acting pursuant to subsection (4) of this section, require a greater vote or a greater number of votes to be present, the approval of the plan of for-profit conversion by the members entitled to vote thereon requires approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan of for-profit conversion, the approval of a majority of the members of each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(7) If any provision of the articles, bylaws, or an agreement to which any of the directors or members are parties, adopted or entered into before January 1, 2022, applies to a merger of the corporation and the document does not refer to a for-profit conversion of the corporation, then the provision is deemed to apply to a for-profit conversion of the corporation until the provision is later amended.

**NEW SECTION. Sec. 3314. ARTICLES OF FOR-PROFIT CONVERSION.** (1) Articles of for-profit conversion must be executed on behalf of the converting corporation by an officer of the corporation. The articles shall set forth:

(a) If the surviving corporation is a domestic business corporation, the name of the corporation immediately before the filing of the articles of for-profit conversion and if that name does not satisfy the requirements of RCW 23B.04.010, or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of RCW 23B.04.010;

(b) Whether the corporation is holding assets for charitable purposes;

(c) If the corporation is holding assets for charitable purposes, that the attorney general has approved, or is deemed to have approved, the for-profit conversion pursuant to section 3304(4) of this act;

(d) If the surviving corporation is a foreign for-profit corporation, its name after the conversion and its jurisdiction of incorporation;

(e) If the nonprofit corporation has members with voting rights with respect to the for-profit conversion, a statement that the plan of for-profit conversion was approved by the members in the manner required by this chapter and the articles or bylaws; and

(f) Where there are no members or no members having voting rights with respect to the for-profit conversion, a statement to that effect, the date of the meeting of the board at which the amendment was adopted, and a statement that the amendment received the vote of a majority of directors in office.

(2) If the surviving corporation is a domestic for-profit corporation, then the articles of for-profit conversion shall either contain all of the

provisions that RCW 23B.02.020 requires to be set forth in articles of incorporation of a domestic for-profit corporation and any other desired provisions permitted under Title 23B RCW, or have attached articles of incorporation that satisfy the requirements of RCW 23B.02.020. In either case, provisions that would not be required to be included in restated articles of incorporation of a domestic for-profit corporation may be omitted, except that the name and address of the initial registered agent of the for-profit corporation must be included.

(3) The articles of for-profit conversion and articles of incorporation, if a separate document, must be delivered to the secretary of state for filing, and take effect at the effective time provided in RCW 23.95.210.

**NEW SECTION. Sec. 3315. EFFECT OF FOR-PROFIT CONVERSION.** (1) Except as provided in section 3304 of this act, when a conversion of a domestic nonprofit corporation to a domestic or foreign for-profit corporation becomes effective:

(a) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(b) The liabilities of the corporation remain the liabilities of the corporation;

(c) An action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred;

(d) The articles of the domestic or foreign for-profit corporation become effective;

(e) The memberships of the corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, or into cash or other property in accordance with the plan of conversion, and the members are entitled only to the rights provided in the plan of for-profit conversion;

(f) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made to or for the corporation before or after the for-profit conversion, continues to inure to the corporation, subject to the

express terms of the will or other instrument; and

(g) The corporation is deemed to:

(i) Be a domestic or foreign for-profit corporation for all purposes; and

(ii) Be the same corporation without interruption as the nonprofit corporation.

(2) The interest holder liability of a member in a domestic nonprofit corporation that converts to a domestic for-profit corporation is as follows:

(a) The conversion does not discharge any interest holder liability of the member as a member of the nonprofit corporation to the extent the interest holder liability arose before the effective time of the articles of for-profit conversion.

(b) The member does not have interest holder liability for any debt, obligation, or liability of the for-profit corporation that arises after the effective time of the articles of for-profit conversion.

(c) The laws of this state continue to apply to the collection or discharge of any interest holder liability preserved by (a) of this subsection, as if the conversion had not occurred.

(d) The member has whatever rights of contribution from other members are provided by the laws of this state with respect to any interest holder liability preserved by (a) of this subsection, as if the conversion had not occurred.

(3) A member who becomes subject to interest holder liability for some or all of the debts, obligations, or liabilities of the for-profit corporation has interest holder liability only for those debts, obligations, or liabilities of the for-profit corporation that arise after the effective time of the articles of for-profit conversion.

**NEW SECTION. Sec. 3316. ABANDONMENT OF FOR-PROFIT CONVERSION.** (1) Unless otherwise provided in a plan of for-profit conversion of a domestic nonprofit corporation, after the plan has been adopted and approved as required by sections 3301 through 3326 of this act, and at any time before the for-profit conversion has become effective, it may be abandoned by the members if there are members entitled to vote on the for-

profit conversion, or by the board without action by members.

(2) If a for-profit conversion is abandoned under subsection (1) of this section after articles of for-profit conversion have been filed by the secretary of state but before the for-profit conversion has become effective, then a statement that the for-profit conversion has been abandoned in accordance with this section, executed by an officer of the corporation, must be delivered to the secretary of state for filing before the effective date of the for-profit conversion. The statement takes effect upon filing and the for-profit conversion is abandoned and does not become effective.

**NEW SECTION. Sec. 3317. FOR-PROFIT DOMESTICATION AND CONVERSION.** A foreign for-profit corporation may become a domestic nonprofit corporation if the domestication and conversion is permitted by the law of the foreign jurisdiction.

**NEW SECTION. Sec. 3318. ARTICLES OF DOMESTICATION AND CONVERSION.** (1) Articles of domestication and conversion must be executed on behalf of the domesticating and converting corporation by an officer or other authorized representative. The articles shall set forth:

(a) The name of the corporation immediately before the filing of the articles of domestication and conversion and, if that name is unavailable for use in Washington state or the corporation desires to change its name in connection with the domestication and conversion, a name that satisfies the requirements of section 1302 of this act;

(b) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and conversion and the date the corporation was incorporated in that jurisdiction; and

(c) A statement that the domestication and conversion of the corporation in this state was authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication and conversion in Washington state.

(2) The articles of domestication and conversion shall either contain all of the provisions that section 1303(1) of this act requires to be set forth in

articles of incorporation and any other desired provisions that section 1303 (2) and (3) of this act permit to be included in articles of incorporation, or have attached articles of incorporation that comply with this chapter. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the domestic nonprofit corporation must be included.

(3) If the domesticating corporation is a foreign corporation, then the domesticating corporation must, simultaneously with the delivery of the articles of domestication and conversion, deliver articles of incorporation that comply with this chapter to the secretary of state for filing and the secretary of state shall file the articles. Provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the corporation must be included and the name of the corporation must satisfy the requirements of section 1302 of this act.

(4) If the foreign for-profit corporation is authorized to transact business in Washington state under chapter 23B.01 RCW, then its registration shall be terminated automatically on the effective date of its domestication and conversion and the secretary of state shall record the termination of registration.

**NEW SECTION. Sec. 3319. EFFECT OF FOR-PROFIT DOMESTICATION AND CONVERSION.** (1) When a domestication and conversion of a foreign for-profit corporation to a domestic nonprofit corporation becomes effective:

(a) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(b) The liabilities of the corporation remain the liabilities of the corporation;

(c) An action or proceeding pending against the corporation continues against the corporation as if the domestication and conversion had not occurred;

(d) The articles of domestication and conversion, or the articles attached to

the articles of domestication and conversion, constitute the articles of incorporation of the corporation;

(e) Memberships, securities, obligations, rights to acquire memberships or securities of the corporation, or cash or other property must be issued or paid as provided pursuant to the laws of the foreign jurisdiction;

(f) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made to or for the foreign for-profit corporation before or after the domestication and conversion, inures to the domestic nonprofit corporation, subject to the express terms of the will or other instrument and to applicable law of the foreign jurisdiction; and

(g) The corporation is deemed to be:

(i) A domestic corporation for all purposes; and

(ii) The same corporation without interruption as the foreign for-profit corporation.

(2) The interest holder liability of a shareholder of the foreign for-profit corporation who becomes a member of the domestic nonprofit corporation in the domestication and conversion is as follows:

(a) The domestication and conversion does not discharge any interest holder liability under the laws of the foreign jurisdiction to the extent the interest holder liability arose before the effective time of the articles of domestication and conversion.

(b) The member does not have interest holder liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication and conversion.

(c) The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any interest holder liability preserved by (a) of this subsection, as if the domestication and conversion had not occurred.

(d) The member has whatever rights of contribution from other members are provided by the laws of the foreign jurisdiction with respect to any interest

holder liability preserved by (a) of this subsection, as if the domestication and conversion had not occurred.

(3) A shareholder of a foreign for-profit corporation who becomes subject to interest holder liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its domestication and conversion in this state has interest holder liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of domestication and conversion.

NEW SECTION. **Sec. 3320.** ABANDONMENT OF FOR-PROFIT DOMESTICATION AND CONVERSION. If the domestication and conversion of a foreign for-profit corporation to a domestic nonprofit corporation is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication and conversion have been filed by the secretary of state, then a statement that the domestication and conversion has been abandoned, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing. The statement takes effect upon filing and the domestication and conversion is abandoned and does not become effective.

NEW SECTION. **Sec. 3321.** ENTITY CONVERSION FOR NONCHARITABLE CORPORATIONS. (1) A domestic nonprofit corporation, other than a charitable corporation, may become a domestic unincorporated entity pursuant to a plan of entity conversion only if the entity conversion is permitted under the organic law governing the entity that would survive the entity conversion.

(2) A domestic nonprofit corporation, other than a charitable corporation, may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

(3) A domestic unincorporated entity may be converted into a domestic nonprofit corporation only if applicable Washington state law provides procedures for the approval of an entity conversion into a domestic nonprofit corporation.

(4) A foreign unincorporated entity may become a domestic nonprofit corporation if the law of the foreign jurisdiction authorizes it to become a nonprofit corporation in another jurisdiction.

(5) If any provision of a debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a domestic nonprofit corporation before January 1, 2022, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, then the provision is deemed to apply to an entity conversion of the corporation until the provision is later amended.

NEW SECTION. **Sec. 3322.** PLAN OF ENTITY CONVERSION. (1) A plan of entity conversion shall include:

(a) A statement of the type of unincorporated entity the surviving entity will be and, if it will be a foreign unincorporated entity, its jurisdiction of organization;

(b) The terms and conditions of the conversion;

(c) The manner and basis of converting the memberships in the domestic nonprofit corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing;

(d) If the corporation is holding assets for charitable purposes, a plan setting forth how the corporation will comply with section 3304 (1) through (3) of this act; and

(e) The full text, as they will be in effect immediately following the conversion, of the organic documents of the surviving entity.

(2) The plan of entity conversion may also include a provision that the plan may be amended before filing articles of entity conversion, except that after approval of the plan by the members the plan may not be amended to change:

(a) The amount or kind of memberships or other securities, interests, obligations, rights to acquire memberships, securities, or interests, cash, or other property to be received under the plan by the members;

(b) The organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity comparable to section 3104(2) of this act; or

(c) Any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

(3) Terms of a plan of entity conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with section 1202(3) of this act.

NEW SECTION. **Sec. 3323.** ACTION ON A PLAN OF ENTITY CONVERSION. In the case of an entity conversion of a domestic nonprofit corporation to a domestic or foreign unincorporated entity:

(1) The plan of entity conversion must be adopted by a vote of the majority of the directors in office.

(2) If there are no members entitled to vote on the plan, then the plan must be adopted by a vote of the majority of directors then in office. If a membership corporation has no members entitled to vote on the plan, then the corporation shall deliver notice of the proposed entity conversion to all members of the corporation at least ten days before the meeting at which the board is to adopt the plan.

(3) After adopting the plan of entity conversion, the board shall submit the plan to the members for their approval if there are members entitled to vote on the plan. The board shall also deliver to the members a recommendation that the members approve the plan, unless the board determines that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board shall deliver to the members the basis for that determination.

(4) The board may condition its submission of the plan of entity conversion to the members on any basis.

(5) If the approval of the members is to be given at a meeting, then the corporation shall notify each member, whether or not entitled to vote, of the meeting of members at which the plan of entity conversion is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include a copy of the organic documents as they will be in effect immediately after the entity conversion. The notice may additionally be accompanied by a



summary of the required materials. If a summary is provided in lieu of a copy of the plan, then a copy of the plan must be available to members upon request and this fact must be stated in the notice. Such copy of the plan may be made available to members electronically.

(6) Unless the articles, or the board acting pursuant to subsection (3) of this section, requires a greater vote or a greater number of votes to be present, the approval of the plan of entity conversion by the members entitled to vote thereon requires the approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan of entity conversion, the approval of a majority of the members of each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(7) If any provision of the articles, bylaws, or an agreement to which any of the directors or members are parties, adopted or entered into before January 1, 2022, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, then the provision is deemed to apply to an entity conversion of the corporation until the provision is later amended.

(8) If, as a result of the conversion, one or more members of the corporation would become subject to interest holder liability for the debts, obligations, or liabilities of any other person or entity, then approval of the plan of conversion requires the execution, by each affected member, of a separate written consent to become subject to interest holder liability.

**NEW SECTION. Sec. 3324. ARTICLES OF ENTITY CONVERSION.** (1) After the conversion of a domestic nonprofit corporation to a domestic or foreign unincorporated entity has been adopted and approved as required under sections 3301 through 3326 of this act, articles of entity conversion must be executed on behalf of the converting corporation by an officer of the corporation. The articles must:

(a) Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must be a name that satisfies the

organic law of the surviving entity if the surviving entity is a domestic entity;

(b) State whether the corporation is holding assets for charitable purposes;

(c) If the corporation is holding assets for charitable purposes, state that the attorney general has approved, or is deemed to have approved, the entity conversion pursuant to section 3304(4) of this act;

(d) State the type of unincorporated entity that the surviving entity will be and its jurisdiction of organization;

(e) State that the plan of entity conversion was approved in the manner required by this chapter; and

(f) If the surviving entity is a domestic filing entity, either contain all of the provisions required to be set forth in its public organic record and any other desired provisions that are permitted, or have attached a public organic record.

(2) After the conversion of a domestic unincorporated entity to a domestic nonprofit corporation has been adopted and approved as required by the organic law of the unincorporated entity, articles of entity conversion must be executed on behalf of the unincorporated entity by an officer or other authorized representative. The articles must:

(a) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which must be a name that satisfies the requirements of section 1302 of this act;

(b) Set forth a statement that the plan of entity conversion was approved in accordance with the organic law of the unincorporated entity; and

(c) Either contain all of the provisions that section 1303(1) of this act requires to be set forth in articles of incorporation and any other desired provisions that section 1303 (2) and (3) of this act permit to be included in articles of incorporation, or have attached articles of incorporation that comply with this act.

(3) After the conversion of a foreign unincorporated entity to a domestic nonprofit corporation has been

authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign unincorporated entity by an officer or other authorized representative. The articles must:

(a) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which must be a name that satisfies the requirements of section 1302 of this act;

(b) Set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;

(c) Set forth a statement that the conversion of the unincorporated entity was approved in the manner required by the law of the foreign jurisdiction; and

(d) Either contain all of the provisions that section 1303(1) of this act requires to be set forth in articles of incorporation and any other desired provisions that section 1303 (2) and (3) of this act permit to be included in articles of incorporation, or have attached articles of incorporation that comply with this act; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic nonprofit corporation may be omitted.

(4) The articles of entity conversion and articles of incorporation must be simultaneously delivered to the secretary of state for filing. The articles of entity conversion and articles of incorporation take effect at the effective time provided in RCW 23.95.210. Articles of entity conversion filed under subsection (1) or (2) of this section may be combined with any required conversion filing under the organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of both this section and the other organic law.

(5) If the converting entity is a foreign unincorporated entity that is registered to do business in this state under chapter 23.95 RCW, then its registration statement is canceled automatically on the effective date of its conversion.

NEW SECTION. **Sec. 3325.** EFFECT OF ENTITY CONVERSION. (1) Except as provided in section 3304 of this act, when a conversion under sections 3301 through 3326 of this act becomes effective:

(a) The title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without reversion or impairment;

(b) The liabilities of the converting entity remain the liabilities of the surviving entity;

(c) An action or proceeding pending against the converting entity continues against the surviving entity as if the conversion had not occurred;

(d) In the case of a surviving entity that is a filing entity, its articles or public organic record and its private organic rules become effective;

(e) In the case of a surviving entity that is a nonfiling entity, its private organic rules become effective;

(f) The memberships or interests of the converting entity are reclassified into memberships, interests, other securities, obligations, rights to acquire memberships, interests, or securities, or into cash or other property in accordance with the plan of conversion; and the members or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity;

(g) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made to or for the converting entity before or after the conversion, inures to the surviving entity, subject to the express terms of the will or other instrument; and

(h) The surviving entity is deemed to be:

(i) Incorporated or organized under and subject to the organic law of the converting entity for all purposes; and

(ii) The same nonprofit corporation or unincorporated entity without interruption as the converting entity.

(2) A member who becomes subject to interest holder liability for some or all

of the debts, obligations, or liabilities of the surviving entity has interest holder liability only for those debts, obligations, or liabilities of the surviving entity that arise after the effective time of the articles of entity conversion.

(3) The interest holder liability of an interest holder in an unincorporated entity that converts to a domestic nonprofit corporation is as follows:

(a) The conversion does not discharge any interest holder liability under the organic law of the unincorporated entity to the extent the interest holder liability arose before the effective time of the articles of entity conversion.

(b) The interest holder does not have interest holder liability under the organic law of the unincorporated entity for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of entity conversion.

(c) The provisions of the organic law of the unincorporated entity continue to apply to the collection or discharge of any interest holder liability preserved by (a) of this subsection, as if the conversion had not occurred.

(d) The interest holder has whatever rights of contribution from other interest holders are provided by the organic law of the unincorporated entity with respect to any interest holder liability preserved by (a) of this subsection, as if the conversion had not occurred.

**NEW SECTION. Sec. 3326. ABANDONMENT OF ENTITY CONVERSION.** (1) Unless otherwise provided in a plan of entity conversion of a domestic nonprofit corporation, after the plan has been adopted and approved as required by sections 3301 through 3326 of this act, and at any time before the entity conversion has become effective, it may be abandoned by the members if there are members entitled to vote, or by the board without action by the members.

(2) If an entity conversion is abandoned after articles of entity conversion have been filed by the secretary of state but before the entity conversion has become effective, then a statement that the entity conversion has been abandoned in accordance with this section, executed by an officer of the corporation, must be delivered to the

secretary of state for filing before the effective date of the entity conversion. Upon filing, the statement takes effect and the entity conversion is abandoned and does not become effective.

#### **ARTICLE 4**

##### **DISPOSITION OF ASSETS**

**NEW SECTION. Sec. 3401. DISPOSITIONS NOT REQUIRING MEMBER APPROVAL.** Unless the articles or bylaws otherwise provide, approval of the members of a nonprofit corporation is not required:

(1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets:

(a) In the usual and regular course of its activities; or

(b) If the assets disposed of represent less than fifty percent of the total assets of the corporation and its consolidated subsidiaries, determined as of the end of the most recently completed fiscal year;

(2) To mortgage, pledge, dedicate to the repayment of indebtedness whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business its activities; or

(3) To transfer any or all of the corporation's assets to one or more corporations or other entities all of the memberships or interests of which are owned by the corporation.

**NEW SECTION. Sec. 3402. DISPOSITIONS REQUIRING MEMBER APPROVAL.** (1) A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 3401 of this act, requires approval of the corporation's members that are entitled to vote on the disposition, unless the articles or bylaws otherwise provide.

(2) A disposition that requires approval of the members must be initiated by a resolution by the board authorizing the disposition. After adoption of the resolution, the board shall submit the proposed disposition to the members for their approval. The board shall also deliver to the members a recommendation that the members approve the proposed disposition, unless the board makes a determination that because of conflicts of interest or other special circumstances it should not make a

recommendation, in which case the board shall deliver to the members the basis for that determination.

(3) The board may condition its submission of a disposition to the members under subsection (2) of this section on any basis.

(4) If a disposition is required to be approved by the members, and if the approval is to be given at a meeting, then the nonprofit corporation shall give notice to each member, whether or not entitled to vote, of the meeting of members at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(5) Unless the articles, bylaws, or the board acting pursuant to subsection (3) of this section requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the members entitled to vote thereon requires the approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the disposition, the approval of a majority of the members of each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(6) If a membership corporation has no members entitled to vote on a disposition, then the corporation shall deliver notice of a proposed disposition to all members of the corporation at least ten days before the meeting at which the board is to act upon the disposition.

(7) After a disposition has been approved by the members under subsection (5) of this section, and at any time before the disposition has been consummated, it may be abandoned by the nonprofit corporation without action by the members, subject to any contractual rights of other parties to the disposition.

(8) In addition to the approval of a disposition of assets by the board and members as required by this section, the disposition must also be approved in the form of a record by any person or group of persons whose approval is required

under section 3114 of this act to amend the articles or bylaws.

(9) The assets of a direct or indirect consolidated subsidiary are deemed the assets of the parent nonprofit corporation for the purposes of this section.

(10) A disposition of assets in the course of a dissolution governed by sections 3501 through 3512 of this act is not governed by sections 3401 through 3405 of this act.

NEW SECTION. **Sec. 3403.** EFFECT OF DISPOSITIONS. Unless a domestic entity that is a party to a disposition of assets obtains an appropriate order of the court or approval from the attorney general under the law of this state, a disposition of assets under sections 3401 through 3405 of this act may not affect:

(1) Any restriction imposed upon the entity by its organic documents or other governing authority that may not be amended by its directors, members, or interest holders; or

(2) The existing rights of persons other than members, shareholders, or interest holders of the entity.

NEW SECTION. **Sec. 3404.** PROPERTY HELD FOR CHARITABLE PURPOSES. (1) In a disposition of assets under sections 3401 through 3405 of this act, property held for charitable purposes by a nonprofit corporation may not be diverted from charitable purposes.

(2) Property held by a nonprofit corporation and restricted to charitable purposes by a gift instrument may not be diverted from the restricted charitable purpose by a disposition of assets under sections 3401 through 3405 of this act unless modified in accordance with section 1503 of this act.

(3) Property held for charitable purposes pursuant to a trust instrument governed by chapter 11.110 RCW in which the nonprofit corporation is a trustee or a beneficiary may not be diverted from the charitable purposes specified in the trust instrument unless those purposes are modified by the court or pursuant to an agreement between all interested parties, including the attorney general, under chapter 11.96A RCW.

(4) Property held by a nonprofit corporation for charitable purposes upon condition requiring return, transfer, or conveyance, which condition occurs by

reason of a disposition of assets under sections 3401 through 3405 of this act, must be returned, transferred, or conveyed in accordance with that condition.

(5) A charitable corporation or a corporation holding property for charitable purposes shall deliver to the attorney general of its intent to consummate a disposition, other than a disposition described in section 3401 of this act. The notice must be delivered to the attorney general in the form of a record at least twenty days before the meeting at which the proposed disposition is to be approved. Such a disposition may not be implemented without the approval of the attorney general, or the approval of the court in a proceeding to which the attorney general is made a party. In the event that the attorney general does not deliver a notice of objection in the form of a record to the corporation within twenty days after the delivery to the attorney general of notice of the disposition, approval of the disposition is deemed to have been given.

(6) The notice described in subsection (5) of this section shall include:

(a) A statement specifying how the disposition will comply with subsections (1) through (4) of this section; and

(b) A brief description of:

(i) Real property held for charitable purposes that will be included in the disposition, and its nature and location;

(ii) Cash, bank deposits, brokerage accounts, or other financial assets held for charitable purposes that will be included in the disposition in full or in part, and their approximate total fair market value;

(iii) Other personal property held for charitable purposes that will be included in the disposition, and its nature and approximate total fair market value; and

(iv) Any gift restrictions applicable to any property described in (b)(i) through (iii) of this subsection, and the nature of those restrictions.

**NEW SECTION. Sec. 3405. PROHIBITION OF FINANCIAL BENEFIT.** A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with a disposition of assets governed by sections 3401 through 3405 of this act unless the person is a

charitable corporation, the federal government, a tribal government, a state or local government, a governmental subdivision, or an unincorporated entity that has charitable purposes. This section does not apply to the receipt of reasonable compensation for services rendered.

## ARTICLE 5

### VOLUNTARY DISSOLUTION

#### NEW SECTION. **Sec. 3501.**

#### AUTHORIZATION OF VOLUNTARY DISSOLUTION.

(1) Unless the articles or bylaws require a greater vote, a majority of the directors in office of a nonprofit corporation may authorize the dissolution of any nonprofit corporation that is not a membership corporation or is a membership corporation but has no members entitled to vote on its dissolution.

(2) If a membership corporation has no members entitled to vote on dissolution, then the corporation shall deliver notice of the proposed dissolution to all members of the corporation at least ten days before the meeting at which the board is to authorize the dissolution.

(3) For a membership corporation that has members that are entitled to vote on its dissolution:

(a) The board may propose dissolution for submission to the members entitled to vote, and for such a proposal to dissolve to be authorized:

(i) The board shall recommend dissolution to the members entitled to vote on the dissolution, unless the board 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 members entitled to vote on the dissolution;

(ii) The board may condition its submission of the proposal for dissolution on any basis, including approval of the proposed plan of distribution if required under section 3502 of this act;

(iii) The nonprofit corporation shall give notice to each member, whether or not entitled to vote, of the proposed meeting of members that includes the following statements:

(A) That the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation; and

(B) How the assets of the corporation will be distributed after all creditors have been paid or how the distribution of assets will be determined; and

(iv) The members entitled to vote on the dissolution shall approve the proposal to dissolve as provided in (b) of this subsection.

(b) Unless the articles, the bylaws, or the board acting pursuant to (a)(ii) of this subsection requires a greater vote or a greater number of members to be present, the adoption of the proposal to dissolve by the members entitled to vote thereon requires the approval of at least a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the proposal, the approval by a majority of the members in each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

**NEW SECTION. Sec. 3502. DISTRIBUTION OF ASSETS ON DISSOLUTION.** The assets of a corporation in the process of dissolution shall be applied and distributed in the following order:

(1) All known liabilities and obligations of the corporation must be paid, satisfied, and discharged, or adequate provision must be made to pay, satisfy, and discharge those liabilities.

(2) All property held for charitable purposes by the corporation, including all assets of a charitable corporation remaining after satisfaction of subsection (1) of this section, must be applied and distributed consistently with the corporation's articles, such that property is not diverted from charitable purposes, and as follows:

(a) Property held for charitable purposes pursuant to a trust instrument in which the nonprofit corporation is a trustee or a beneficiary must be governed by and distributed in accordance with the trust instrument and chapter 11.110 RCW, and any modification of restrictions imposed through the trust instrument accomplished through an appropriate order of the court or the agreement of all interested parties, including the attorney general, pursuant to chapter 11.96A RCW.

(b) Property owned outright and held for charitable purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution and not subject to any gift restriction, must be transferred or conveyed:

(i) To one or more entities operated exclusively for one or more charitable purposes;

(ii) To the federal government, a tribal government, or a state or local government for a public purpose; or

(iii) Subject to one or more gift restrictions requiring the property to be used exclusively for the same charitable purposes for which the dissolving corporation holds the property.

(c) Property that is subject to charitable purpose or management or investment restrictions that do not require modification at the time of dissolution and is not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution must be transferred or conveyed subject to all restrictions applicable to the property, except to the extent restrictions are modified pursuant to section 1503 of this act before distribution, pursuant to a plan of distribution adopted by the board and as provided by sections 3501 through 3512 of this act.

(d) Property subject to charitable purpose or management or investment restrictions that require modification at the time of dissolution and are not held upon a condition requiring return, transfer, or conveyance by reason of dissolution, must be modified pursuant to section 1503 of this act before the gifts can be distributed, pursuant to a plan of distribution adopted by the board and as provided by sections 3501 through 3512 of this act.

(e) Property held for charitable purposes by the nonprofit corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, must be returned, transferred, or conveyed in accordance with those requirements.

(3) Property held by a corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, must be returned, transferred, or conveyed in

accordance with the requirements of the condition.

(4) Other assets of a corporation other than a charitable corporation, if any, must be distributed:

(a) To members or other persons in accordance with the articles or bylaws, to the extent that the articles or bylaws determine the rights of members to distributions upon dissolution, or provide for distribution to other persons or classes of persons; and

(b) To the extent that the articles or bylaws do not govern distribution of assets on dissolution, to any persons the board may select.

NEW SECTION. Sec. 3503. CORPORATIONS HOLDING PROPERTY FOR CHARITABLE PURPOSES. (1) A nonprofit corporation holding property for charitable purposes, including any charitable corporation, may not deliver articles of dissolution to the secretary of state for filing pursuant to section 3504 of this act until it has complied with all of the requirements of this section.

(2) A nonprofit corporation described in subsection (1) of this section shall adopt a plan for the distribution of assets for the purpose of authorizing any transfer or conveyance of property held for charitable purposes, which shall:

(a) Be consistent with sections 3502 and 3506 of this act; and

(b) Include a brief description of the following:

(i) Real property held for charitable purposes, and its nature and location;

(ii) Cash, bank deposits, brokerage accounts, or other financial assets held for charitable purposes, and their approximate total fair market value;

(iii) Other personal property held for charitable purposes, and its nature and approximate total fair market value; and

(iv) Any gift restrictions applicable to any property described in (b)(i) through (iii) of this subsection, and the nature of those restrictions.

(3) A plan of distribution shall be adopted in the following manner:

(a) Where there are no members, or no members having voting rights, a plan of distribution is adopted at a meeting of

the board upon receiving a vote of a majority of the directors in office.

(b) Where there are members having voting rights, the board shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights. Such vote may take place at the same meeting during which members having voting rights vote upon dissolution of the nonprofit corporation. Notice in the form of a record setting forth the proposed plan of distribution or a summary thereof must be given to each member, whether or not entitled to vote at the meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution is adopted upon receiving votes from a majority of the members entitled to vote at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan, the approval by a majority of the members in each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present. If the members entitled to vote on the dissolution approve the proposal to dissolve but do not approve the proposed plan of distribution in all material respects, then the board may either accept the plan of distribution, as approved by the members, or propose a new plan of distribution to the members for approval. This process shall continue until a plan of distribution acceptable to the board has been approved by the members. If successive votes take place at the same meeting of members, then no further notices or meetings are required.

(4) A nonprofit corporation described in subsection (1) of this section shall give the attorney general notice that it intends to dissolve. The notice shall include:

(a) A copy of the plan of distribution proposed to be adopted in accordance with subsection (3) of this section; and

(b) The names and phone numbers of individuals available to answer questions regarding the dissolution and proposed plan of distribution.

(5) Notice required under subsection (4) of this section must be delivered to the attorney general in the form of a record at least twenty days before the meeting at which the proposed plan is to be adopted. No plan of distribution for

a corporation described in subsection (1) of this section may be implemented without the approval of the attorney general, or the approval of the court in a proceeding to which the attorney general is made a party. In the event that the attorney general does not deliver a notice of objection in the form of a record to the corporation within twenty days after the delivery to the attorney general of notice of the plan, approval of the plan is deemed to have been given.

NEW SECTION. Sec. 3504. ARTICLES OF DISSOLUTION. (1) At any time after dissolution is authorized, the nonprofit corporation may dissolve by filing with the secretary of state articles of dissolution, accompanied by a revenue clearance certificate issued pursuant to RCW 82.32.260. The articles of dissolution shall set forth:

- (a) The name of the corporation;
- (b) The date of its incorporation;
- (c) The effective date of the dissolution, which may be the date on which the articles of dissolution are filed or any date and time up to thirty days thereafter;
- (d) Whether it is a membership corporation and, if it is a membership corporation, whether it has members that have a right to vote on its dissolution;
- (e) If the corporation is not a membership corporation or has no members that have a right to vote on its dissolution, that the dissolution was authorized by the requisite number of directors;
- (f) If the corporation is a membership corporation that has members that have a right to vote on its dissolution, that the requisite number of members has approved the proposal to dissolve;
- (g) Whether the corporation is a charitable corporation or is holding property for charitable purposes;
- (h) If the corporation is a charitable corporation or is holding property for charitable purposes, that the attorney general has approved, or is deemed to have approved, the corporation's plan of distribution pursuant to section 3503 of this act; and
- (i) That the net assets of the corporation remaining after winding up have been, or will be, distributed in

accordance with the corporation's articles and bylaws and the corporation's adopted plan of distribution.

(2) A nonprofit corporation is dissolved upon the effective date of its articles of dissolution.

(3) For purposes of sections 3501 through 3512 of this act, "dissolved corporation" means a nonprofit corporation whose articles of dissolution have become effective and includes a liquidating trust, if any, or other acquirer entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

NEW SECTION. Sec. 3505. REVOCATION OF DISSOLUTION. (1) A nonprofit corporation may revoke its dissolution within one hundred twenty days of the effective date of the dissolution.

(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 alone, in which event the board may revoke the dissolution without action by the members.

(3) Except as provided in subsection (4) of this section, after the revocation of dissolution is authorized, the nonprofit 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;
- (b) The effective date of the dissolution that was revoked;
- (c) The date that the revocation of dissolution was authorized; and
- (d) That the revocation of dissolution was approved in the manner required by this chapter and by the articles and bylaws.

(4) A charitable corporation or a nonprofit corporation holding property restricted to charitable purposes shall not deliver articles of revocation of dissolution to the secretary of state for filing without the approval of the attorney general. Such a corporation shall give the attorney general notice in the form of a record that it intends to revoke its dissolution, to which notice a copy of the articles of revocation of



dissolution adopted in accordance with subsection (2) of this section must be attached. In the event that the attorney general does not deliver a notice of objection in the form of a record to the corporation within twenty days after the delivery to the attorney general of notice of the revocation of dissolution, approval of the revocation of dissolution is deemed to have been given.

(5) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(6) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the nonprofit corporation resumes carrying on its activities as if dissolution had never occurred.

**NEW SECTION. Sec. 3506. EFFECT OF DISSOLUTION.** (1) A nonprofit corporation, the dissolution of which has been authorized, continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (a) Collecting its assets;
- (b) Disposing of its properties that will not be distributed in kind;
- (c) Discharging or making provision for discharging its liabilities;
- (d) Distributing its remaining property as required by the plan of distribution; and
- (e) Doing every other act necessary to wind up and liquidate its activities and affairs.

(2) Dissolution of or authorization to dissolve a nonprofit corporation does not:

- (a) Transfer title to the corporation's property;
- (b) Subject its directors or officers to standards of conduct different from those prescribed in sections 2402 and 2602 of this act;
- (c) Change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(d) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(e) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;

(f) Terminate the authority of the registered agent of the corporation; or

(g) Modify any gift restriction, unless the restriction is modified in accordance with section 1503 of this act.

**NEW SECTION. Sec. 3507. PROHIBITION OF FINANCIAL BENEFIT.** No person may receive a direct or indirect financial benefit in connection with the dissolution of a charitable corporation unless the person is an entity operated exclusively for one or more charitable purposes, the federal government, a tribal government, a state or local government, or an unincorporated entity that has charitable purposes. This section does not apply to the receipt of reasonable compensation for services rendered.

**NEW SECTION. Sec. 3508. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION.** (1) A dissolved nonprofit corporation shall deliver notice of the dissolution in the form of a record to all of the corporation's known claimants within thirty days of the date when the corporation delivered articles of dissolution to the secretary of state for filing.

(2) A dissolved nonprofit corporation may dispose of the known claims against it by delivering a notice in the form of a record that meets the requirements listed in subsection (3) of this section to its known claimants at any time after the date when the corporation delivered articles of dissolution to the secretary of state for filing. Delivery of a notice under this subsection shall satisfy the requirement of subsection (1) of this section if the notice is delivered to all known claimants within thirty days of the date when the corporation delivered articles of dissolution to the secretary of state for filing.

(3) A notice to claimants under subsection (2) of this section must:

- (a) Describe information that must be included in a claim;
- (b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the notice, by which the dissolved nonprofit corporation must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(4) A claim against the dissolved nonprofit corporation is barred:

(a) If a claimant who was given notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(5) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

**NEW SECTION. Sec. 3509. OTHER CLAIMS AGAINST DISSOLVED CORPORATION.** (1) A dissolved nonprofit corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

(a) Be published three times during three successive weeks in a newspaper of general circulation in the county where the principal office of the dissolved nonprofit corporation or, if none in this state, its registered office is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim shall be sent; and

(c) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the last publication of the notice.

(3) If the dissolved nonprofit corporation publishes a newspaper notice in accordance with subsection (2) of this section, then the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the last publication date of the newspaper notice:

(a) A claimant who was not given notice under section 3508 of this act;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

**NEW SECTION. Sec. 3510. ENFORCEMENT OF CLAIMS.** A claim that is not barred by section 3508(4) or 3509(3) of this act may be enforced:

(1) Against the dissolved nonprofit corporation, to the extent of its undistributed assets; or

(2) Except as provided in section 3511(4) of this act, if the assets have been distributed in liquidation, against any person, other than a creditor of the dissolved corporation, to whom the corporation distributed its property, subject to the following restrictions:

(a) Recovery is limited to the amount of the distributee's pro rata share of the claim or the corporate assets distributed to the distributee in liquidation, whichever is less;

(b) A distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee; and

(c) A distributee is only liable to the extent permitted by existing common law or statutory remedies, and nothing in this section creates a separate cause of action against a distributee.

**NEW SECTION. Sec. 3511. COURT PROCEEDINGS.** (1) A dissolved nonprofit corporation that has published a notice under section 3508 of this act may file an application with the court for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to be presented after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 3508(3) of this act.

(2) Within ten days after the filing of the application, the dissolved

corporation shall give notice of the proceeding to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(3) The court may appoint a special representative to represent the interests of all claimants whose identities are unknown in any proceeding brought under this section. The dissolved corporation shall pay reasonable fees and expenses of the special representative, including all reasonable expert witness fees.

(4) Provision by the dissolved nonprofit corporation for security in the amount and the form ordered by the court under this section satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution. Such claims may not be enforced against a person who received assets in liquidation.

NEW SECTION. **Sec. 3512.** DIRECTORS' DUTIES. (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets in accordance with the plan of distribution after payment or provision for claims.

(2) Directors of a dissolved corporation that has disposed of claims under section 3508, 3509, or 3511 of this act are not liable for breach of subsection (1) of this section with respect to claims against the dissolved corporation that are barred or satisfied under section 3508, 3509, or 3511 of this act.

(3) Failure to dispose of claims under section 3508, 3509, or 3511 of this act is not, in and of itself, a violation of this section.

## ARTICLE 6

### ADMINISTRATIVE AND JUDICIAL DISSOLUTION

NEW SECTION. **Sec. 3601.** ADMINISTRATIVE DISSOLUTION. The secretary of state may commence a proceeding under RCW 23.95.610 to administratively dissolve a nonprofit corporation for any reason set forth in RCW 23.95.605.

NEW SECTION. **Sec. 3602.** PROCEDURE AND EFFECT OF ADMINISTRATIVE DISSOLUTION. (1) Administrative dissolution does not terminate, bar, or otherwise modify any claim against the administratively dissolved corporation.

(2) A person is not liable in contract, tort, or otherwise solely by reason of being a director, officer, or member of a nonprofit corporation that was dissolved under sections 3601 through 3608 of this act, with respect to the activities or affairs of the corporation that have been continued, without knowledge of the dissolution.

NEW SECTION. **Sec. 3603.** PROPERTY HELD FOR CHARITABLE PURPOSES. (1) If a charitable corporation, or a corporation holding property for charitable purposes, has been administratively dissolved and has not been reinstated, then neither the corporation nor any other person may transfer or distribute to any other person any property held for charitable purposes by the corporation unless the corporation has:

(a) Adopted a plan of distribution satisfying the requirements of section 3503(2) of this act and following the procedure set out in section 3503(3) of this act; and

(b) Obtained the approval or deemed approval of the attorney general of the plan of distribution, following the procedure set out in section 3503 (4) and (5) of this act.

(2) A corporation that has been administratively dissolved is not required to apply for reinstatement if its only activities will consist of adopting a plan of distribution, obtaining the approval or deemed approval of the attorney general of the plan of distribution, and distributing assets in accordance with the plan of distribution.

NEW SECTION. **Sec. 3604.** REINSTATEMENT OF ADMINISTRATIVELY DISSOLVED CORPORATION. A nonprofit corporation administratively dissolved under RCW 23.95.610 may apply to the secretary of state for reinstatement by following the procedure and meeting the requirements set forth in RCW 23.95.615. A nonprofit corporation denied reinstatement may obtain judicial review of the denial within the time specified in RCW 23.95.620.

NEW SECTION. **Sec. 3605.** JUDICIAL DISSOLUTION. The court may dissolve a nonprofit corporation:

(1) In a proceeding by the attorney general, if it is established that:

(a) The corporation obtained its articles through fraud; or

(b) The corporation has exceeded or abused, and is continuing to exceed or abuse, the authority conferred upon it by law; or

(c) The directors are deadlocked in the management of the corporate affairs; the members, if any, are unable to break the deadlock; and irreparable injury to the corporation or its purposes is threatened or being suffered because of the deadlock; or

(d) The corporation is misapplying or wasting property held for charitable purposes;

(2) Except as provided in the articles or bylaws, in a proceeding by fifty members or members holding at least five percent of the voting power, whichever is less, or by a director, if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs; the members, if any, are unable to break the deadlock; and irreparable injury to the corporation or its mission is threatened or being suffered because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting, or have expressed intent to act in a manner that is illegal, oppressive, or fraudulent;

(c) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or otherwise would have, expired;

(d) The corporate assets are being misapplied or wasted; or

(e) The corporation has insufficient assets to continue its activities and it is no longer able to assemble a quorum of directors or members;

(3) In a proceeding by a creditor, if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the

judgment returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in a record that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

NEW SECTION. **Sec. 3606.** PROCEDURE FOR JUDICIAL DISSOLUTION. (1) It is not necessary to make directors or members parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against them individually.

(2) A person commencing a proceeding to dissolve a nonprofit corporation shall notify the attorney general of the proceeding in the form of a record if:

(a) The corporation is recognized by the internal revenue service as an organization described in section 501(c)(3) of the Internal Revenue Code; or

(b) The person bringing the proceeding knows that the nonprofit corporation is a charitable corporation or has property held for charitable purposes.

(3) The court in a proceeding brought to dissolve a nonprofit corporation may issue injunctions, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

NEW SECTION. **Sec. 3607.** RECEIVERSHIP. The court in a judicial proceeding brought to dissolve a nonprofit corporation may appoint one or more receivers to wind up and liquidate, or to manage, the affairs of the corporation, pursuant to chapter 7.60 RCW.

NEW SECTION. **Sec. 3608.** DECREE OF DISSOLUTION. (1) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in section 3605 of this act exist, then it may enter a decree dissolving the nonprofit corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering a decree of dissolution, the court shall direct the

winding up and liquidation of the nonprofit corporation's affairs in accordance with section 3506 of this act and the notification of claimants in accordance with sections 3508 and 3509 of this act.

#### **PART IV**

#### **ACTIONS INVOLVING NONPROFIT CORPORATIONS**

#### **ARTICLE 1**

#### **SUPERVISION OF PROPERTY HELD FOR CHARITABLE PURPOSES**

NEW SECTION. **Sec. 4101.** NOTICE TO ATTORNEY GENERAL. (1) Every notice to the attorney general required under this chapter must be served upon the attorney general. Service upon the attorney general must be via United States mail, postage prepaid, or by other means as authorized by the attorney general.

(2) Every notice to the attorney general under this chapter shall identify the provisions of this chapter relevant to the subject matter of the notice.

(3) Any person that has commenced any proceeding which this chapter authorizes the attorney general to bring, including but not limited to any proceeding involving a charitable corporation or property held for charitable purposes brought under section 1502, 1505, 2702, 3510, 3605, or 4203 of this act, shall serve notice of the commencement of the proceeding upon the attorney general. Any other party to such a proceeding may serve notice of the commencement of the proceeding upon the attorney general. To be valid, the notice must identify that it is being given pursuant to this subsection. The attorney general may waive this notice at any time.

(4) Notice to the attorney general is effective:

(a) Five days after its deposit in the United States mail, only if the postage is paid and the notice is correctly addressed; or

(b) When given, if the notice is delivered in any other manner that the attorney general has authorized.

NEW SECTION. **Sec. 4102.** ACTIONS TO SECURE PROPERTY HELD FOR CHARITABLE PURPOSES. The attorney general may commence in the court described in section 1105 of this act any action or proceeding to:

(1) Ensure compliance by a nonprofit corporation, or its members, directors, officers, employees, or agents, with any provision of this chapter that governs the distribution, disposition, management, or expenditure of, or reporting obligations relating to, any property held for charitable purposes;

(2) Secure the proper administration of a charitable corporation, or of property held for charitable purposes by a nonprofit corporation, when reasonably necessary to protect property held for charitable purposes; and

(3) Restrain and prevent any act that violates any provision of this chapter that governs the distribution, disposition, management, or expenditure of, or reporting obligations relating to, any property held for charitable purposes.

NEW SECTION. **Sec. 4103.** ATTORNEY GENERAL'S RIGHT TO INTERVENE. The attorney general, as of right, may intervene in any proceeding that has been commenced by a person other than the attorney general if the attorney general is otherwise authorized to bring such a proceeding under this chapter.

NEW SECTION. **Sec. 4104.** ATTORNEY GENERAL'S INVESTIGATIVE POWER. Upon reasonable suspicion that there has been a violation of any provision of this chapter that governs the distribution, disposition, management, or expenditure of, or reporting obligations relating to, any property held for charitable purposes, or that a charitable corporation or property held for charitable purposes by a nonprofit corporation has been improperly administered, the attorney general may institute an investigation for the purpose of determining whether there has been such a violation or improper administration.

NEW SECTION. **Sec. 4105.** CIVIL INVESTIGATIVE DEMANDS. (1) The attorney general may, before the institution of a civil proceeding arising from an investigation instituted under section 4104 of this act, execute in writing and cause to be served upon a person a civil investigative demand requiring the person to produce documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of those demands,

whenever the attorney general believes that the person:

(a) May be in possession, custody, or control of any original or copy of any record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other document or recording, wherever situated, which the attorney general reasonably believes to be relevant to the subject matter of any investigation instituted under section 4104 of this act; or

(b) May have knowledge of any information which the attorney general reasonably believes to be relevant to the subject matter of any such investigation.

(2) The provisions of RCW 19.86.110 (2) through (9) except for RCW 19.86.110(7) (b) and (c), shall apply to every civil investigative demand issued under this section.

(3) With respect to a civil investigative demand issued under this section, the venue for filing a petition to extend a return date under RCW 19.86.110(8) or a petition for an order of enforcement under RCW 19.86.110(9) shall include any court described in section 1105 of this act.

(4) The attorney general may provide copies of documentary material, answers to written interrogatories, or transcripts of oral testimony provided under this section to an official of this state, another state, or the federal government who is charged with the enforcement of state or federal laws related to the protection or regulation of property held for charitable purposes, provided that before the disclosure the receiving official agrees in the form of a record that the information may not be disclosed to anyone other than that official or the official's authorized employees or agents. Material provided under this subsection is subject to the limitations on disclosure contained in RCW 19.86.110(7)(a), and, where applicable, Title 5 U.S.C. Sec. 552, and may not be introduced as evidence in a criminal prosecution.

(5) The attorney general may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as the attorney general determines necessary in the enforcement of any provision of this chapter that governs the distribution, disposition, management, or expenditure

of, or reporting obligations relating to, any property held for charitable purposes, including presentation before any court, provided, however, that any such material, answers to written interrogatories, or transcripts of oral testimony which contain trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing such material, answers to written interrogatories, or oral testimony.

**NEW SECTION. Sec. 4106. RELIGIOUS CORPORATIONS.** The attorney general shall not commence any action under section 4102 of this act against a religious corporation; intervene in any action under section 4103 of this act involving a religious corporation; institute any investigation under section 4104 of this act, the subject of which is a religious corporation; or serve any civil investigative demand under section 4105 of this act on a religious corporation, unless for the purposes of this section only:

(1) The basis for the action, investigation, or civil investigative demand is the attorney general's knowledge of facts, circumstances, or results that property held by the religious corporation for charitable purposes has been, is threatened to be, or is about to be distributed in violation of section 1406 of this act;

(2) The board of directors of the religious corporation has adopted a resolution in the form of a record requesting the attorney general's involvement in the action or investigation; or

(3) The attorney general has knowledge of facts, circumstances, or results indicating that the religious corporation has no directors in office, in which case the attorney general may investigate the issue of whether the religious corporation has directors in office, and, if necessary, appoint one or more directors of the religious corporation following the procedure set out in section 2410(4) of this act.

**NEW SECTION. Sec. 4107. ASSURANCES OF DISCONTINUANCE.** In the enforcement of the provisions of this chapter that govern the distribution, disposition, or expenditure of, or reporting obligations relating to, property held for charitable purposes, the attorney general may accept

an assurance of discontinuance of any act or practice deemed in violation of such provision, from any person engaging in, or who has engaged in, such act or practice. Any such assurance must be in writing and be filed with and subject to the approval of the court. Such assurance of discontinuance is not an admission of a violation for any purpose, but proof of failure to comply with the assurance of discontinuance is prima facie evidence of a violation of this chapter.

**NEW SECTION. Sec. 4108. CIVIL PENALTIES, COSTS, AND FEES.** (1) Pursuant to an action by the attorney general, a person shall forfeit and pay a civil penalty of not more than five thousand dollars for each violation if such person:

(a) Engages in conduct that violates any provision of this chapter governing the distribution, disposition, management, or expenditure of, or reporting obligations relating to, property held for charitable purposes, intending or knowing that such conduct was in violation of this chapter;

(b) As a director or officer of a corporation, votes for or assents to a distribution of property held for charitable purposes that would give rise to liability under section 2702 of this act; or

(c) Receives any portion of a distribution described in (b) of this subsection knowing that the distribution was made in violation of this chapter.

(2) Any person who shall violate the terms of any injunction issued pursuant to an action by the attorney general under section 4102 of this act shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars for each violation.

(3) At the discretion of the court, the attorney general is entitled to recovery of its costs and fees incurred in securing compliance with the provisions of this chapter governing the distribution, disposition, management, or expenditure of, or reporting obligations relating to, property held for charitable purposes.

**NEW SECTION. Sec. 4109. CHARITABLE ASSET PROTECTION ACCOUNT.** (1) The Washington state attorney general charitable asset protection account is created in the custody of the state treasurer. Only the attorney general or

the attorney general's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for:

(a) The costs associated with the attorney general's enforcement of the provisions of this chapter governing the distribution, disposition, management, or expenditure of, or reporting obligations relating to, property held for charitable purposes, or the proper administration of a charitable corporation or property held for charitable purposes;

(b) The costs associated with the attorney general's review and handling of notices and requests submitted to the attorney general under the provisions of this chapter including, but not limited to, binding agreements described in section 1504 of this act, major changes in purposes or programs reported under section 1205 of this act, and notices of proposed transactions under sections 3101 through 3608 of this act;

(c) The costs associated with the attorney general's review and handling of notices and requests submitted to the attorney general in connection with the release or modification under RCW 24.55.045 of restrictions applicable to institutional funds;

(d) The costs associated with the attorney general's supervision of charitable trusts under the authority granted in chapter 11.110 RCW, including review and handling of binding agreements under chapter 11.96A RCW, involving assets held in charitable trust; and

(e) The charitable solicitation education program.

An appropriation is not required for expenditures, but the account is subject to allotment procedures under chapter 43.88 RCW.

(2)(a) The secretary of state shall collect a charitable asset protection fee, in addition to fees that the secretary of state may set under section 1207 of this act, for filing:

(i) Annual reports under section 1204 of this act;

(ii) Articles of incorporation of newly formed corporations under section 1303 of this act;

(iii) Articles of domestication under section 3309 of this act; and

(iv) Articles of domestication and conversion under section 3318 of this act.

(b) The charitable asset protection fee is fifty dollars per year, reduced to ten dollars if the corporation certifies that its total gross revenue in the most recent fiscal year was less than five hundred thousand dollars.

(c) Revenue generated from the charitable asset protection fee must be distributed as follows:

(i) Ninety-five percent of the revenue must be deposited into the Washington state attorney general charitable asset protection account created in subsection (1) of this section; and

(ii) Five percent of the revenue must be deposited into the secretary of state's revolving fund to cover the administrative costs of assessing the fee.

## ARTICLE 2

### CONTESTED CORPORATE ACTION

NEW SECTION. **Sec. 4201.** DEFINITIONS. This section and sections 4202 and 4203 of this act apply to, and the term "corporate action" in this section and sections 4202 and 4203 of this act means, any of the following actions:

(1) The election, appointment, designation, or other selection and the suspension, removal, or expulsion of members, delegates, directors, or officers of a nonprofit corporation;

(2) The taking of any action on any matter that:

(a) Is required under this chapter or any other provision of law to be submitted for approval of or adoption by the members, delegates, directors, or officers of a nonprofit corporation;

(b) Under the articles or bylaws may be submitted for approval of or adoption by the members, delegates, directors, or officers of a nonprofit corporation; or

(c) Is in fact approved or adopted by the members, delegates, directors, or officers of a nonprofit corporation.

NEW SECTION. **Sec. 4202.** PROCEEDINGS PRIOR TO CORPORATE ACTION. (1) Where under applicable law or the articles or bylaws of a nonprofit corporation there has been a failure to hold a meeting to take corporate action and the failure has

continued for thirty days after the date designated or appropriate therefor, the court may summarily order a meeting to be held upon the application of any person entitled, either alone or in conjunction with other persons similarly seeking relief under this section, to call a meeting to consider the corporate action in issue, and, in the case of a charitable corporation, upon the application of the attorney general.

(2) The court may determine the right to vote at the meeting of persons claiming that right, may appoint an individual to hold the meeting under such orders and powers as the court may deem proper, and may take such action as may be required to give due notice of the meeting and convene and conduct the meeting in the interests of justice.

NEW SECTION. **Sec. 4203.** REVIEW OF CONTESTED CORPORATE ACTION. (1) Except as provided in subsection (3) of this section, upon petition of a person whose status as, or whose rights or duties as, a member, delegate, director, or officer of a corporation are or may be affected by any corporate action, or, in the case of a charitable corporation, the attorney general, the court may hear and determine the validity of the corporate action. The petitioner shall provide notice of the proceeding to every other person the petitioner knows, or should reasonably know, to be affected by the proceeding.

(2) The court may make such orders in any such case as may be just and proper, with power to enforce the production of any books, papers, and records of the corporation and other evidence that may relate to the issue, and may provide for notice of the proceeding to other parties if necessary. If it is determined that no valid corporate action has been taken, the court may order a meeting to be held in accordance with section 4202 of this act.

(3) If a nonprofit corporation has provided in its articles or bylaws for a means of resolving a challenge to a corporate action, then subsection (1) of this section shall not apply, except in the case of actions brought by the attorney general with respect to corporate actions of charitable corporations. The court may enforce provisions of the articles or bylaws if appropriate.

## PART V

### REVISIONS TO EXISTING STATUTES



**ARTICLE 1****SUBSTANTIVE AMENDMENTS**

**Sec. 5101.** RCW 11.110.020 and 1985 c 30 s 114 are each amended to read as follows:

~~((When used in))~~ The definitions in this section apply throughout this chapter~~((r))~~ unless the context clearly requires otherwise ~~((requires))~~.

(1) "Person" means an individual, organization, group, association, partnership, corporation, or any combination of them.

(2) (a) "Trustee" means ~~((1))~~:

(i) Any person holding property in trust for a public charitable purpose; except the United States, its states, territories, and possessions, the District of Columbia, Puerto Rico, and their agencies and subdivisions; ~~((and (2)))~~

(ii) A corporation formed for the administration of a charitable trust ~~((e))~~; and

(iii) Any person holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes ~~((+ PROVIDED, That))~~.

(b) Unless they are described in (a) (i) or (ii) of this subsection, the term "trustee" does not apply to ~~((e))~~:

(i) Washington nonprofit corporations incorporated under chapter 24.-- RCW (the new chapter created in section 6101 of this act) or to which chapter 24.-- RCW (the new chapter created in section 6101 of this act) applies through operation of section 1107 of this act;

(ii) Religious corporations duly organized and operated in good faith as religious organizations, which have received a declaration of current tax exempt status from the government of the United States; their duly organized branches or chapters; and charities, agencies, and organizations affiliated with and forming an integral part of said organization, or operated, supervised, or controlled directly by such religious corporations nor any officer of any such religious organization who holds property for religious purposes ~~((+ PROVIDED, That))~~. However, if such organization has not received from the United States government a declaration of current tax exempt status prior to the

time it receives property under the terms of a charitable trust, this exemption shall be applicable for two years only from the time of receiving such property, or until such tax exempt status is finally declared, whichever is sooner; or ~~((b))~~

(iii) An educational institution which is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts.

**Sec. 5102.** RCW 23.95.255 and 2017 c 31 s 2 are each amended to read as follows:

(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; ~~((and))~~

(g) The entity's unified business identifier number;

(h) In the case of a nonprofit corporation, the corporation's federal employer identification number; and

(i) In the case of a nonprofit corporation, any information required under section 1205 of this act.

(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 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 email may be selected only when the secretary of state makes the option available.

**Sec. 5103.** RCW 23.95.305 and 2019 c 37 s 1402 are each amended to read as follows:

(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 not be deceptively similar to the name of an existing domestic entity which is not then administratively dissolved; and

(d) 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))~~ 24.-- RCW (the new chapter created in section 6101 of this act).

(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 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.," "LLLP," "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."

(7) The name of a limited cooperative association must contain the phrase "limited cooperative association" or "limited cooperative" or the abbreviation "L.C.A." or "LCA." "Limited" may be abbreviated as "Ltd." "Cooperative" may be abbreviated as "Co-op." or "Coop." "Association" may be abbreviated as "Assoc." or "Assn."

NEW SECTION. Sec. 5104. A new section is added to chapter 74.15 RCW to read as follows:

(1) A host home program must register with the secretary of state's office. This registration may occur when the secretary of state files articles of incorporation of the host home program under chapter 24.-- RCW (the new chapter created in section 6101 of this act).

(2) The host home program registration must include a notarized statement by the host home program that it meets all of the requirements set out in RCW 74.15.020(2)(o).

(3) The secretary of state has no duty to confirm that a host home program is meeting its statutory requirements. A filing under this section does not imply an endorsement by the secretary of state.

(4) The secretary of state may adopt rules necessary to carry out its duties under this section.

## ARTICLE 2

### AMENDMENTS TO UPDATE REFERENCES

Sec. 5201. RCW 7.60.025 and 2019 c 389 s 1 are each amended to read as follows:

(1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the

appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, after commencement of any judicial action or nonjudicial proceeding to foreclose upon any lien against or for forfeiture of any interest in real or personal property, on application of any person, when the interest in the property that is the subject of such an action or proceeding of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action or proceeding is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property. For purposes of this subsection (1)(b), a judicial action is commenced as provided in superior court civil rule 3(a), a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8), and a proceeding for forfeiture is commenced under chapter 61.30 RCW upon the recording of the notice of intent to forfeit described in RCW 61.30.060;

(c) After judgment, in order to give effect to the judgment;

(d) To dispose of property according to provisions of a judgment dealing with its disposition;

(e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or

after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide dispute, or if that person is in imminent danger of insolvency;

(j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;

(k) In quo warranto proceedings under chapter 7.56 RCW;

(l) As provided under RCW 11.64.022;

(m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.430 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW

19.105.470 with respect to persons engaged in the business of camping resorts;

(n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;

(o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;

(p) In connection with a proceeding for relief with respect to a voidable transfer as to a present or future creditor under RCW 19.40.041 or a present creditor under RCW 19.40.051;

(q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;

(r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;

(s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;

(t) In an action for or relating to dissolution of a business corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or 23B.14.320, for dissolution of a nonprofit corporation under ~~((RCW 24.03.271))~~ section 3605 of this act, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

(u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;

(v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;

(w) Under and subject to RCW 30A.44.100, 30A.44.270, and 30A.56.030, in the case of a state commercial bank, RCW 30B.44B.100, in the case of a state trust company, RCW 32.24.070, 32.24.073, 32.24.080, and 32.24.090, in the case of a state savings bank;

(x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

(ee) Under RCW 64.32.200(2), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW. For purposes of this subsection (1)(ee), a judicial action is commenced as provided in superior court civil rule 3(a) and a nonjudicial proceeding is

commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(ff) Under RCW 64.34.364(10), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units. For purposes of this subsection (1)(ff), a judicial action is commenced as provided in superior court civil rule (3)(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW ~~((70.95A.050))~~ 70A.210.070(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company or wastewater company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(ll) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver must be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any other action at the time the application is made, then notice of the application for the receiver's appointment also must be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases must reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over

all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained.

**Sec. 5202.** RCW 9.46.0209 and 2020 c 150 s 1 are each amended to read as follows:

(1)(a) "Bona fide charitable or nonprofit organization," as used in this chapter, means:

(i) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapter ~~((24.03))~~ 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 19.09 or ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, religious, scientific, social, fraternal, athletic, or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of gambling activities authorized under this chapter; or

(ii) Any corporation which has been incorporated under Title 36 U.S.C. and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(b) An organization defined under (a) of this subsection must:

(i) Have been organized and continuously operating for at least twelve calendar months immediately preceding making application for any

license to operate a gambling activity, or the operation of any gambling activity authorized by this chapter for which no license is required; and

(ii) Demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the internal revenue code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

(c) Any person, association or organization which pays its employees, including members, compensation other than is reasonable therefor under the local prevailing wage scale shall be deemed paying compensation based in part or whole upon receipts relating to gambling activities authorized under this chapter and shall not be a bona fide charitable or nonprofit organization for the purposes of this chapter.

(2) For the purposes of RCW 9.46.0315 and 9.46.110, a bona fide nonprofit organization can be licensed by the commission and includes:

(a) A credit union organized and operating under state or federal law. All revenue less prizes and expenses received from raffles conducted by credit unions must be devoted to purposes authorized under this section for charitable and nonprofit organizations; and

(b) A group of executive branch state employees that:

(i) Has requested and received revocable approval from the agency's chief executive official, or such official's designee, to conduct one or more raffles in compliance with this section;

(ii) Conducts a raffle solely to raise funds for either the state combined fund drive, created under RCW 41.04.033; an entity approved to receive funds from the state combined fund drive; or a charitable or benevolent entity, including but not limited to a person or

family in need, as determined by a majority vote of the approved group of employees. No person or other entity may receive compensation in any form from the group for services rendered in support of this purpose;

(iii) Promptly provides such information about the group's receipts, expenditures, and other activities as the agency's chief executive official or designee may periodically require, and otherwise complies with this section and RCW 9.46.0315; and

(iv) Limits the participation in the raffle such that raffle tickets are sold only to, and winners are determined only from, the employees of the agency.

(3) For the purposes of RCW 9.46.0277, a bona fide nonprofit organization also includes a county, city, or town, provided that all revenue less prizes and expenses from raffles conducted by the county, city, or town must be used for community activities or tourism promotion activities.

**Sec. 5203.** RCW 15.105.020 and 2004 c 26 s 3 are each amended to read as follows:

(1) The department may cooperate with other agencies, boards, commissions, and associations in the state of Washington to establish a private, nonprofit corporation for the purpose of carrying out the program. The nonprofit corporation must be organized under chapter ~~((24.03-RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) and has the powers granted under that chapter. However, this chapter does not prohibit the department or other agencies, boards, commissions, and associations from separately continuing to promote Washington products under their existing authorities.

(2) The department may contract with the successor organization to carry out the program. The contract must require the successor organization to aggressively seek to fund its continued operation from nonstate funding sources.

(3) The successor organization must report to the department each January 1st on the amounts it has secured from both nonstate and state funding sources, its operations, and its programs.

(4) Debts and other liabilities of the successor organization are successor organization debts and liabilities only

and may be satisfied only from the resources of the successor organization. The state of Washington is not liable for the debts or liabilities of the successor organization.

**Sec. 5204.** RCW 18.100.050 and 2020 c 80 s 21 are each amended to read as follows:

(1) An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Title 23B RCW for the purpose of rendering professional service. One or more of the legally authorized individuals shall be the incorporators of the professional corporation.

(2) Notwithstanding any other provision of this chapter, registered architects and registered engineers may own stock in and render their individual professional services through one professional service corporation.

(3) Licensed health care professionals, providing services to enrolled participants either directly or through arrangements with a health maintenance organization registered under chapter 48.46 RCW or federally qualified health maintenance organization, may own stock in and render their individual professional services through one professional service corporation.

(4) Professionals may organize a nonprofit nonstock corporation under this chapter and chapter ~~((24.03-RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) to provide professional services, and the provisions of this chapter relating to stock and referring to Title 23B RCW shall not apply to any such corporation.

(5)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.225, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.57, 18.64, 18.71, 18.71A, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may own stock in and render their individual professional services through one professional service corporation and are to be considered, for the purpose of forming a professional service



corporation, as rendering the "same specific professional services" or "same professional services" or similar terms.

(b) Notwithstanding any other provision of this chapter, health care professionals who are regulated under chapters 18.59 and 18.74 RCW may own stock in and render their individual professional services through one professional service corporation formed for the sole purpose of providing professional services within their respective scope of practice.

(c) Formation of a professional service corporation under this subsection does not restrict the application of the uniform disciplinary act under chapter 18.130 RCW, or applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential.

**Sec. 5205.** RCW 18.100.130 and 1991 c 72 s 5 are each amended to read as follows:

(1) For a professional service corporation organized for pecuniary profit under this chapter, the provisions of Title 23B RCW shall be applicable except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized pursuant to the provisions of this chapter.

(2) For a professional service corporation organized under this chapter and chapter (~~(24.03 RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act) as a nonprofit (~~(nonstock)~~) corporation, the provisions of chapter (~~(24.03 RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act) shall be applicable except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized under the provisions of this chapter.

**Sec. 5206.** RCW 18.100.134 and 1991 c 72 s 7 are each amended to read as follows:

A professional corporation may amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of Title 23B RCW, or to the requirements of chapter (~~(24.03 RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act) if organized pursuant to RCW 18.100.050 as a nonprofit (~~(nonstock)~~) corporation. Upon the effective date of such amendment, the corporation shall no longer be subject to the provisions of this chapter and shall continue in existence as a corporation under Title 23B RCW or chapter (~~(24.03 RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act).

**Sec. 5207.** RCW 19.142.010 and 1990 c 55 s 1 and 1990 c 33 s 556 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Business day" means any day except a Sunday or a legal holiday.

(2) "Buyer" or "member" means a person who purchases health studio services.

(3) "Health studio" includes any person or entity engaged in the sale of instruction, training, assistance or use of facilities which purport to assist patrons to improve their physical condition or appearance through physical exercise, body building, weight loss, figure development, the martial arts, or any other similar activity. For the purposes of this chapter, "health studio" does not include: (a) Public common schools, private schools approved under RCW 28A.195.010, and public or private institutions of higher education; (b) persons providing professional services within the scope of a person's license under Title 18 RCW; (c) bona fide nonprofit organizations which have been granted tax-exempt status by the Internal Revenue Service, the functions of which as health studios are only incidental to their overall functions and purposes; (d) a person or entity which offers physical exercise, body building, figure development or similar activities as incidental features of a plan of instruction or assistance relating to diet or control of eating habits; (e) bona fide nonprofit corporations organized under chapter (~~(24.03 RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act) which have members and whose members have meaningful

voting rights to elect and remove a board of directors which is responsible for the operation of the health club and corporation; and (f) a preexisting facility primarily offering aerobic classes, where the initiation fee is less than fifty dollars and no memberships are sold which exceed one year in duration. For purposes of this subsection, "preexisting facility" means an existing building used for health studio services covered by the fees collected.

(4) "Health studio services" means instruction, services, privileges, or rights offered for sale by a health studio. "Health studio services" do not include: (a) Instruction or assistance relating to diet or control of eating habits not involving substantial on-site physical exercise, body building, figure development, or any other similar activity; or (b) recreational or social programs which either involve no physical exercise or exercise only incidental to the program.

(5) "Initiation or membership fee" means a fee paid either in a lump sum or in installments within twelve months of execution of the health studio services contract on a one-time basis when a person first joins a health studio for the privilege of belonging to the health studio.

(6) "Special offer or discount" means any offer of health studio services at a reduced price or without charge to a prospective member.

(7) "Use fees or dues" means fees paid on a regular periodic basis for use of a health studio. This does not preclude prepayment of use fees at the buyer's option.

**Sec. 5208.** RCW 23.95.105 and 2020 c 57 s 29 are each amended to read as follows:

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;

(f) A general cooperative association; or

(g) A limited 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 with present intent to authenticate or adopt a record:

(a) To sign or adopt a tangible symbol;

(b) To attach to or logically associate with the record an electronic symbol, sound, or process; 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;

(h) A director of a limited cooperative association; or

(i) 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;

(g) A share or membership in a general cooperative association; or

(h) A member's interest in a limited 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;

(h) A shareholder or member of a general cooperative association; or

(i) A member of a limited 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 cooperative association" means a domestic limited cooperative association formed under or subject to chapter 23.100 RCW or a foreign limited cooperative association.

(18) "Limited liability company" means a domestic limited liability company formed under or subject to chapter 25.15 RCW or a foreign limited liability company.

(19) "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.

(20) "Limited liability partnership" means a domestic limited liability partnership registered under or subject to chapter 25.05 RCW or a foreign limited liability partnership.

(21) "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.

(22) "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.

(23) "Nonprofit corporation" means a domestic nonprofit corporation incorporated under or subject to chapter ~~((24.03))~~ 24.-- (the new chapter created in section 6101 of this act) or 24.06 RCW or a foreign nonprofit corporation.

(24) "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.

(25) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(26) "Organic rules" means the public organic record and private organic rules of an entity.

(27) "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.

(28) "Principal office" means the principal executive office of an entity, whether or not the office is located in this state.

(29) "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;

(f) The bylaws of a general cooperative association; and

(g) The bylaws of a limited cooperative association.

(30) "Proceeding" means civil suit and criminal, administrative, and investigatory action.

(31) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(32) "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;

(f) The articles of organization of a limited cooperative association; and

(g) The document under the laws of another jurisdiction that is equivalent to a document listed in this subsection.

(33) "Receipt," as used in this chapter, means actual receipt. "Receive" has a corresponding meaning.

(34) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(35) "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.

(36) "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.

(37) "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.

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

(39) "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.

(40) "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.

**Sec. 5209.** RCW 24.50.010 and 2011 c 310 s 1 are each amended to read as follows:

(1) Washington manufacturing services is organized as a private, nonprofit corporation in accordance with chapter ~~((24-03-RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) and this section. The mission of the corporation is to operate a modernization extension system, coordinate a network of public and private modernization resources, and stimulate the competitiveness of small and midsize manufacturers in Washington.

(2) The corporation must be governed by a board of directors. A majority of the board of directors shall be representatives of small and medium-sized manufacturing firms and industry associations, networks, or consortia. The board must also include at least one member representing labor unions or labor councils and, as ex officio members, the director of the department of commerce,

the executive director of the state board for community and technical colleges, and the director of the workforce training and education coordinating board, or their respective designees.

(3) The corporation may be known as impact Washington and may:

- (a) Charge fees for services, make and execute contracts with any individual, corporation, association, public agency, or any other entity, and employ all other legal instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter; and
- (b) Receive funds from federal, state, or local governments, private businesses, foundations, or any other source for purposes consistent with this chapter.

(4) The corporation must:

(a) Develop policies, plans, and programs to assist in the modernization of businesses in targeted sectors of Washington's economy and coordinate the delivery of modernization services;

(b) Provide information about the advantages of modernization and the modernization services available in the state to federal, state, and local economic development officials, state colleges and universities, and private providers;

(c) Collaborate with the Washington quality initiative in the development of manufacturing quality standards and quality certification programs;

(d) Collaborate with industry sector and cluster associations to inform import-impacted manufacturers about federal trade adjustment assistance funding;

(e) Serve as an information clearinghouse and provide access for users to the federal manufacturing extension partnership national research and information system; and

(f) Provide, either directly or through contracts, assistance to industry or cluster associations, networks, or consortia, that would be of value to their member firms in:

(i) Adopting advanced business management practices such as strategic planning and total quality management;

(ii) Developing mechanisms for interfirm collaboration and cooperation;

(iii) Appraising, purchasing, installing, and effectively using equipment, technologies, and processes that improve the quality of goods and services and the productivity of the firm;

(iv) Improving human resource systems and workforce training in a manner that moves firms toward flexible, high-performance work organizations;

(v) Developing new products;

(vi) Conducting market research, analysis, and development of new sales channels and export markets;

(vii) Improving processes to enhance environmental, health, and safety compliance; and

(viii) Improving credit, capital management, and business finance skills.

(5) Between thirty-five and sixty-five percent of the funds received by the corporation from the state must be used by the corporation for carrying out the duties under subsection (4)(f) of this section, consistent with the intent of RCW 24.50.005(2).

**Sec. 5210.** RCW 28A.710.010 and 2016 c 241 s 101 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means a nonprofit corporation that has submitted an application to an authorizer. The nonprofit corporation must be either a public benefit nonprofit corporation as defined in ~~((RCW 24.03.490))~~ section 1701 of this act, or a nonprofit corporation ~~((as defined in RCW 24.03.005))~~ organized under chapter 24.-- RCW (the new chapter created in section 6101 of this act) that has applied for tax exempt status under section 501(c) (3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c) (3)). The nonprofit corporation may not be a sectarian or religious organization and must meet all of the requirements for a public benefit nonprofit corporation before receiving any funding under RCW 28A.710.220.

(2) "At-risk student" means a student who has an academic or economic disadvantage that requires assistance or special services to succeed in

educational programs. The term includes, but is not limited to, students who do not meet minimum standards of academic proficiency, students who are at risk of dropping out of high school, students in chronically low-performing schools, students with higher than average disciplinary sanctions, students with lower participation rates in advanced or gifted programs, students who are limited in English proficiency, students who are members of economically disadvantaged families, and students who are identified as having special educational needs.

(3) "Authorizer" means the commission established in RCW 28A.710.070 or a school district approved under RCW 28A.710.090 to review, approve, or reject charter school applications; enter into, renew, or revoke charter contracts with applicants; and oversee the charter schools the entity has authorized.

(4) "Charter contract" means a fixed term, renewable contract between a charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(5) "Charter school" or "charter public school" means a public school that is established in accordance with this chapter, governed by a charter school board, and operated according to the terms of a charter contract executed under this chapter.

(6) "Charter school board" means the board of directors appointed or selected under the terms of a charter application to manage and operate the charter school.

(7) "Commission" means the Washington state charter school commission established in RCW 28A.710.070.

(8) "Parent" means a parent, guardian, or other person or entity having legal custody of a child.

(9) "Student" means a child eligible to attend a public school in the state.

**Sec. 5211.** RCW 35.67.020 and 2003 c 394 s 1 are each amended to read as follows:

(1) Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without

its limits. Every city and town has full jurisdiction and authority to manage, regulate, and control them and, except as provided in subsection (3) of this section, to fix, alter, regulate, and control the rates and charges for their use.

(2) Subject to subsection (3) of this section, the rates charged under this section must be uniform for the same class of customers or service and facilities furnished. In classifying customers served or service and facilities furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors:

(a) The difference in cost of service and facilities to the various customers;

(b) The location of the various customers within and without the city or town;

(c) The difference in cost of maintenance, operation, repair, and replacement of the various parts of the system;

(d) The different character of the service and facilities furnished various customers;

(e) The quantity and quality of the sewage delivered and the time of its delivery;

(f) The achievement of water conservation goals and the discouragement of wasteful water use practices;

(g) Capital contributions made to the system, including but not limited to, assessments;

(h) The (~~nonprofit~~) public benefit ~~nonprofit corporation~~ status, as defined in (~~RCW 24.03.490~~) section 1701 of this act, of the land user; and

(i) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be

properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law.

**Sec. 5212.** RCW 35.67.190 and 1995 c 124 s 4 are each amended to read as follows:

(1) The legislative body of such city or town may provide by ordinance for revenues by fixing rates and charges for

the furnishing of service to those served by its system of sewerage or system for refuse collection and disposal, which rates and charges shall be uniform for the same class of customer or service. In classifying customers served or service furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors: ~~((1))~~ (a) The difference in cost of service to the various customers; ~~((2))~~ (b) the location of the various customers within and without the city or town; ~~((3))~~ (c) the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; ~~((4))~~ (d) the different character of the service furnished various customers; ~~((5))~~ (e) the quantity and quality of the sewage delivered and the time of its delivery; ~~((6))~~ (f) capital contributions made to the system, including but not limited to, assessments; ~~((7))~~ (g) the ~~((nonprofit))~~ public benefit nonprofit corporation status, as defined in ~~((RCW 24.03.490))~~ section 1701 of this act, of the land user; and ~~((8))~~ (h) any other matters which present a reasonable difference as a ground for distinction.

(2) If special indebtedness bonds or warrants are issued against the revenues, the legislative body shall by ordinance fix charges at rates which will be sufficient to take care of the costs of maintenance and operation, bond and warrant principal and interest, sinking fund requirements, and all other expenses necessary for efficient and proper operation of the system.

(3) All property owners within the area served by such sewerage system shall be compelled to connect their private drains and sewers with such city or town system, under such penalty as the legislative body of such city or town may by ordinance direct. Such penalty may in the discretion of such legislative body be an amount equal to the charge that would be made for sewer service if the property was connected to such system. All penalties collected shall be considered revenue of the system.

**Sec. 5213.** RCW 35.92.020 and 2020 c 20 s 1014 are each amended to read as follows:

(1) A city or town may construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate systems, plants, sites, or other facilities of sewerage as defined in RCW

35.67.010, or solid waste handling as defined by RCW 70A.205.015. A city or town shall have full authority to manage, regulate, operate, control, and, except as provided in subsection (3) of this section, to fix the price of service and facilities of those systems, plants, sites, or other facilities within and without the limits of the city or town.

(2) Subject to subsection (3) of this section, the rates charged shall be uniform for the same class of customers or service and facilities. In classifying customers served or service and facilities furnished by a system or systems of sewerage, the legislative authority of the city or town may in its discretion consider any or all of the following factors:

(a) The difference in cost of service and facilities to customers;

(b) The location of customers within and without the city or town;

(c) The difference in cost of maintenance, operation, repair, and replacement of the parts of the system;

(d) The different character of the service and facilities furnished to customers;

(e) The quantity and quality of the sewage delivered and the time of its delivery;

(f) Capital contributions made to the systems, plants, sites, or other facilities, including but not limited to, assessments;

(g) The ~~((nonprofit))~~ public benefit nonprofit corporation status, as defined in ~~((RCW 24.03.490))~~ section 1701 of this act, of the land user; and

(h) Any other factors that present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate



reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law.

**Sec. 5214.** RCW 36.89.080 and 2003 c 394 s 3 are each amended to read as follows:

(1) Subject to subsections (2) and (3) of this section, any county legislative authority may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits or to be served or

to receive benefits from any stormwater control facility or contributing to an increase of surface water runoff. In fixing rates and charges, the county legislative authority may in its discretion consider:

(a) Services furnished or to be furnished;

(b) Benefits received or to be received;

(c) The character and use of land or its water runoff characteristics;

(d) The ~~((nonprofit))~~ public benefit nonprofit corporation status, as defined in ~~((RCW 24.03.490))~~ section 1701 of this act, of the land user;

(e) Income level of persons served or provided benefits under this chapter, including senior citizens and ~~((disabled persons))~~ individuals with disabilities; or

(f) Any other matters which present a reasonable difference as a ground for distinction.

(2) The rate a county may charge under this section for stormwater control facilities shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(3) Rates and charges authorized under this section may not be imposed on lands taxed as forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW.

(4) The service charges and rates collected shall be deposited in a special fund or funds in the county treasury to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating stormwater control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing and improving any of such facilities, or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose.

**Sec. 5215.** RCW 36.94.140 and 2005 c 324 s 2 are each amended to read as follows:

(1) Every county, in the operation of a system of sewerage and/or water, shall have full jurisdiction and authority to manage, regulate, and control it. Except as provided in subsection (3) of this section, every county shall have full jurisdiction and authority to fix, alter, regulate, and control the rates and charges for the service and facilities to those to whom such service and facilities are available, and to levy charges for connection to the system.

(2) The rates for availability of service and facilities, and connection charges so charged must be uniform for the same class of customers or service and facility. In classifying customers served, service furnished or made available by such system of sewerage and/or water, or the connection charges, the county legislative authority may consider any or all of the following factors:

(a) The difference in cost of service to the various customers within or without the area;

(b) The difference in cost of maintenance, operation, repair and replacement of the various parts of the systems;

(c) The different character of the service and facilities furnished various customers;

(d) The quantity and quality of the sewage and/or water delivered and the time of its delivery;

(e) Capital contributions made to the system or systems, including, but not limited to, assessments;

(f) The cost of acquiring the system or portions of the system in making system improvements necessary for the public health and safety;

(g) The ((~~nonprofit~~)) public benefit nonprofit corporation status, as defined in ((RCW 24.03.490)) section 1701 of this act, of the land user; and

(h) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a county may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water

sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) A county may provide assistance to aid low-income persons in connection with services provided under this chapter.

(5) The service charges and rates shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for the efficient and proper operation of the system.

(6) A connection charge under this section for service to a manufactured housing community, as defined in RCW 59.20.030, applies to an individual lot within that community only if the system of water or sewerage provides and maintains the connection.

**Sec. 5216.** RCW 39.34.030 and 2019 c 91 s 1 are each amended to read as follows:

(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter, except that any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance,

resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter ~~((24.03))~~ 24.-- (the new chapter created in section 6101 of this act) or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 or 25.05 RCW whose partners are limited solely to participating public agencies, or a limited liability company organized under chapter 25.15 RCW whose membership is limited solely to participating public agencies, and the funds of any such corporation, partnership, or limited liability company shall be subject to audit in the manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall contain, in addition to provisions specified in subsection (3) (a), (c), (d), (e), and (f) of this section, the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint

board, public agencies that are party to the agreement shall be represented; and

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of . . . . . joint board."

(5) No agreement made pursuant to this chapter relieves any public agency of any obligation or responsibility imposed upon it by law except that:

(a) To the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made pursuant to this chapter, the performance may be offered in satisfaction of the obligation or responsibility; and

(b) With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any obligation with respect to competitive bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations, or (ii) provided an access link on the state's web portal to the notice.

(6) (a) Any two or more public agencies may enter into a contract providing for the joint utilization of architectural or engineering services if:

(i) The agency contracting with the architectural or engineering firm complies with the requirements for contracting for such services under chapter 39.80 RCW; and

(ii) The services to be provided to the other agency or agencies are related to, and within the general scope of, the services the architectural or engineering firm was selected to perform.

(b) Any agreement providing for the joint utilization of architectural or

engineering services under this subsection must be executed for a scope of work specifically detailed in the agreement and must be entered into prior to commencement of procurement of such services under chapter 39.80 RCW.

(7) Financing of joint projects by agreement shall be as provided by law.

**Sec. 5217.** RCW 39.34.055 and 2011 1st sp.s. c 43 s 246 are each amended to read as follows:

The department of enterprise services may enter into an agreement with a public benefit nonprofit corporation to allow the public benefit nonprofit corporation to participate in state contracts for purchases administered by the department. Such agreement must comply with the requirements of RCW 39.34.030 through 39.34.050. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in (~~RCW 24.03.005~~) section 1701 of this act that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or a political subdivision of another state.

**Sec. 5218.** RCW 41.04.382 and 1993 c 194 s 4 are each amended to read as follows:

In order to qualify for services under RCW 41.04.380, state employee child care organizations shall be organized as nonprofit under chapter (~~24.03 RCW~~) 24.-- RCW (the new chapter created in section 6101 of this act).

**Sec. 5219.** RCW 43.06.335 and 2004 c 245 s 1 are each amended to read as follows:

(1) The Washington quality award council shall be organized as a private, nonprofit corporation, in accordance with chapter (~~24.03 RCW~~) 24.-- RCW (the new chapter created in section 6101 of this act) and this section.

(2) The council shall oversee the governor's Washington state quality award program. The purpose of the program is to improve the overall competitiveness of the state's economy by stimulating Washington state industries, business, and organizations to bring about measurable success through setting standards of organizational excellence, encouraging organizational self-assessment, identifying successful organizations as role models, and

providing a valuable mechanism for promoting and strengthening a commitment to continuous quality improvement in all sectors of the state's economy. The governor shall annually present the award to organizations that improve the quality of their products and services and are noteworthy examples of high-performing work organizations, as determined by the council in consultation with the governor or appointed representative.

(3) The governor shall appoint a representative to serve on the board of directors of the council.

(4) The council shall establish a board of examiners, a recognition committee, and such other committees or subgroups as it deems appropriate to carry out its responsibilities.

(5) The council may conduct such public information, research, education, and assistance programs as it deems appropriate to further quality improvement in organizations operating in the state of Washington.

(6) The council shall:

(a) Approve and announce award recipients;

(b) Approve guidelines to examine applicant organizations;

(c) Approve appointment of board of examiners; and

(d) Arrange appropriate annual awards and recognition for recipients.

**Sec. 5220.** RCW 43.07.120 and 2019 c 132 s 3 are each amended to read as follows:

(1) The secretary of state must establish by rule and collect the fees in this subsection:

(a) For a copy of any law, resolution, record, or other document or paper on file in the secretary's office;

(b) For any certificate under seal;

(c) For filing and recording trademark;

(d) For each deed or patent of land issued by the governor;

(e) For recording miscellaneous records, papers, or other documents.

(2) The secretary of state may adopt rules under chapter 34.05 RCW establishing reasonable fees for the following services rendered under

chapter 23.95 RCW, Title 23B RCW, chapter 18.100, 19.09, 19.77, 23.86, 23.90, (~~24.03~~) 24.-- (the new chapter created in section 6101 of this act), 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, 25.04, 25.15, 25.10, 25.05, or 26.60 RCW:

(a) Any service rendered in-person at the secretary of state's office;

(b) Any expedited service;

(c) The electronic or facsimile transmittal of information from corporation records or copies of documents;

(d) The providing of information by micrographic or other reduced-format compilation;

(e) The handling of checks, drafts, or credit or debit cards upon adoption of rules authorizing their use for which sufficient funds are not on deposit; and

(f) Special search charges.

(3) To facilitate the collection of fees, the secretary of state may establish accounts for deposits by persons who may frequently be assessed such fees to pay the fees as they are assessed. The secretary of state may make whatever arrangements with those persons as may be necessary to carry out this section.

(4) The secretary of state may adopt rules for the use of credit or debit cards for payment of fees.

(5) No member of the legislature, state officer, justice of the supreme court, judge of the court of appeals, or judge of the superior court may be charged for any search relative to matters pertaining to the duties of his or her office; nor may such official be charged for a certified copy of any law or resolution passed by the legislature relative to his or her official duties, if such law has not been published as a state law.

**Sec. 5221.** RCW 43.07.190 and 2016 c 202 s 62 are each amended to read as follows:

Where the secretary of state determines that a summary face sheet or cover sheet would expedite review of any documents made under Title 23B RCW, or chapter 18.100, 23.86, 23.90, (~~24.03~~) 24.-- (the new chapter created in section 6101 of this act), 24.06, 24.12, 24.20, 24.24, 24.36, 25.10, or 25.15 RCW, the secretary of state may require the use of

a summary face sheet or cover sheet that accurately reflects the contents of the attached document. The secretary of state may, by rule adopted under chapter 34.05 RCW, specify the required contents of any summary face sheet and the type of document or documents in which the summary face sheet will be required, in addition to any other filing requirements which may be applicable.

**Sec. 5222.** RCW 43.15.030 and 2020 c 114 s 18 are each amended to read as follows:

(1) The Washington state leadership board is organized as a private, nonprofit, nonpartisan corporation in accordance with chapter (~~24.03~~ RCW) 24.-- RCW (the new chapter created in section 6101 of this act) and this section.

(2) The purpose of the Washington state leadership board is to:

(a) Provide the state a means of extending formal recognition for an individual's outstanding services to the state;

(b) Bring together those individuals to serve the state as ambassadors of trade, tourism, and international goodwill; and

(c) Expand educational, sports, leadership, and/or employment opportunities for youth, veterans, and people with disabilities in Washington state.

(3) The Washington state leadership board may conduct activities in support of their mission.

(4) The Washington state leadership board is governed by a board of directors. The board of directors is composed of the governor, the lieutenant governor, and the secretary of state, who serve as ex officio, nonvoting members, and other officers and members as the Washington state leadership board designates. In addition, four legislators may be appointed to the board of directors as ex officio members in the following manner: One legislator from each of the two largest caucuses of the senate, appointed by the president of the senate, and one legislator from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives.

(5) The board of directors shall adopt bylaws and establish governance and transparency policies.

(6) The lieutenant governor's office may provide technical and financial assistance for the Washington state leadership board, where the work of the board aligns with the mission of the office. Assistance from the lieutenant governor's office may include, but is not limited to:

(a) Collaboration with the Washington state leadership board on the Washington world fellows program, a college readiness and study abroad fellowship administered by the office of the lieutenant governor;

(b) Beginning January 1, 2019, collaboration with the Washington state leadership board to administer the sports mentoring program as established under RCW 43.15.100, a mentoring program to encourage underserved youth to join sports or otherwise participate in the area of sports. If approved by the board, boundless Washington, an outdoor leadership program for young people with disabilities, shall satisfy the terms of the sports mentoring program; and

(c) The compilation of a yearly financial report, which shall be made available to the legislature no later than January 15th of each year, detailing all revenues and expenditures associated with the Washington world fellows program and the sports mentoring program. Any expenditures made by the Washington state leadership board in support of the Washington world fellows program and the sports mentoring program shall be made available to the office of the lieutenant governor for the purpose of inclusion in the annual financial report.

(7) The legislature may make appropriations in support of the Washington state leadership board subject to the availability of funds.

(8) The office of the lieutenant governor must post on its web site detailed information on all funds received by the Washington state leadership board and all expenditures by the Washington state leadership board.

**Sec. 5223.** RCW 43.105.020 and 2017 c 92 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means the consolidated technology services agency.

(2) "Board" means the technology services board.

(3) "Customer agencies" means all entities that purchase or use information technology resources, telecommunications, or services from the consolidated technology services agency.

(4) "Director" means the state chief information officer, who is the director of the consolidated technology services agency.

(5) "Enterprise architecture" means an ongoing activity for translating business vision and strategy into effective enterprise change. It is a continuous activity. Enterprise architecture creates, communicates, and improves the key principles and models that describe the enterprise's future state and enable its evolution.

(6) "Equipment" means the machines, devices, and transmission facilities used in information processing, including but not limited to computers, terminals, telephones, wireless communications system facilities, cables, and any physical facility necessary for the operation of such equipment.

(7) "Information" includes, but is not limited to, data, text, voice, and video.

(8) "Information security" means the protection of communication and information resources from unauthorized access, use, disclosure, disruption, modification, or destruction in order to:

(a) Prevent improper information modification or destruction;

(b) Preserve authorized restrictions on information access and disclosure;

(c) Ensure timely and reliable access to and use of information; and

(d) Maintain the confidentiality, integrity, and availability of information.

(9) "Information technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data,

computer programming, information storage and retrieval, telecommunications, requisite system controls, simulation, electronic commerce, radio technologies, and all related interactions between people and machines.

(10) "Information technology portfolio" or "portfolio" means a strategic management process documenting relationships between agency missions and information technology and telecommunications investments.

(11) "K-20 network" means the network established in RCW 43.41.391.

(12) "Local governments" includes all municipal and quasi-municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately.

(13) "Office" means the office of the state chief information officer within the consolidated technology services agency.

(14) "Oversight" means a process of comprehensive risk analysis and management designed to ensure optimum use of information technology resources and telecommunications.

(15) "Proprietary software" means that software offered for sale or license.

(16) "Public agency" means any agency of this state or another state; any political subdivision or unit of local government of this state or another state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any public benefit nonprofit corporation; any agency of the United States; and any Indian tribe recognized as such by the federal government.

(17) "Public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in (~~RCW 24.03.005~~) section 1701 of this act that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or political subdivision of another state.

(18) "Public record" has the definitions in RCW 42.56.010 and chapter 40.14 RCW and includes legislative records and court records that are available for public inspection.

(19) "Public safety" refers to any entity or services that ensure the welfare and protection of the public.

(20) "Security incident" means an accidental or deliberative event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources.

(21) "State agency" means every state office, department, division, bureau, board, commission, or other state agency, including offices headed by a statewide elected official.

(22) "Telecommunications" includes, but is not limited to, wireless or wired systems for transport of voice, video, and data communications, network systems, requisite facilities, equipment, system controls, simulation, electronic commerce, and all related interactions between people and machines.

(23) "Utility-based infrastructure services" includes personal computer and portable device support, servers and server administration, security administration, network administration, telephony, email, and other information technology services commonly used by state agencies.

**Sec. 5224.** RCW 43.210.020 and 1998 c 109 s 1 are each amended to read as follows:

A nonprofit corporation, to be known as the small business export finance assistance center, and branches subject to its authority, may be formed under chapter (~~(24.03-RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act) for the following public purposes:

(1) To assist small and medium-sized businesses in both urban and rural areas in the financing of export transactions.

(2) To provide, singly or in conjunction with other organizations, information and assistance to these businesses about export opportunities and financing alternatives.

**Sec. 5225.** RCW 43.210.040 and 2010 c 166 s 1 are each amended to read as follows:

(1) The small business export finance assistance center formed under RCW 43.210.020 and 43.210.030 has the powers granted under chapter (~~(24.03-RCW)~~) 24.--

- RCW (the new chapter created in section 6101 of this act). In exercising such powers, the center may:

(a) Solicit and accept grants, contributions, and any other financial assistance from the federal government, federal agencies, and any other sources to carry out its purposes;

(b) Make loans or provide loan guarantees on loans made by financial institutions to Washington businesses with annual sales of two hundred million dollars or less for the purpose of financing exports of goods or services by those businesses to buyers in foreign countries and for the purpose of financing business growth to accommodate increased export sales. Loans or loan guarantees made under the authority of this section may only be considered upon a financial institution's assurance that such loan or loan guarantee is otherwise not available;

(c) Provide assistance to businesses with annual sales of two hundred million dollars or less in obtaining loans and guarantees of loans made by financial institutions for the purpose of financing export of goods or services from the state of Washington;

(d) Provide export finance and risk mitigation counseling to Washington exporters with annual sales of two hundred million dollars or less, provided that such counseling is not practicably available from a Washington for-profit business. For such counseling, the center may charge reasonable fees as it determines are necessary;

(e) Provide assistance in obtaining export credit insurance or alternate forms of foreign risk mitigation to facilitate the export of goods and services from the state of Washington;

(f) Be available as a teaching resource to both public and private sponsors of workshops and programs relating to the financing and risk mitigation aspects of exporting products and services from the state of Washington;

(g) Develop a comprehensive inventory of export-financing resources, both public and private, including information on resource applicability to specific countries and payment terms;

(h) Contract with the federal government and its agencies to become a

program administrator for federally provided loan guarantee and export credit insurance programs; and

(i) Take whatever action may be necessary to accomplish the purposes set forth in this chapter.

(2) The center may not use any Washington state funds or funds which come from the public treasury of the state of Washington to make loans or to make any payment under a loan guarantee agreement. Under no circumstances may the center use any funds received under RCW 43.210.050 to make or assist in making any loan or to pay or assist in paying any amount under a loan guarantee agreement. Debts of the center shall be center debts only and may be satisfied only from the resources of the center. The state of Washington shall not in any way be liable for such debts.

(3) The small business export finance assistance center shall make every effort to seek nonstate funds for its continued operation.

(4) The small business export finance assistance center may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the small business export finance assistance center and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

**Sec. 5226.** RCW 43.330.135 and 2009 c 565 s 8 are each amended to read as follows:

(1) The department of commerce shall distribute such funds as are appropriated for the statewide technical support, development, and enhancement of court-appointed special advocate programs.

(2) In order to receive money under subsection (1) of this section, an organization providing statewide technical support, development, and enhancement of court-appointed special advocate programs must meet all of the following requirements:

(a) The organization must provide statewide support, development, and enhancement of court-appointed special advocate programs that offer guardian ad litem services as provided in RCW 26.12.175, 26.44.053, and 13.34.100;

(b) All guardians ad litem working under court-appointed special advocate



programs supported, developed, or enhanced by the organization must be volunteers and may not receive payment for services rendered pursuant to the program. The organization may include paid positions that are exclusively administrative in nature, in keeping with the scope and purpose of this section; and

(c) The organization providing statewide technical support, development, and enhancement of court-appointed special advocate programs must be a public benefit nonprofit corporation as defined in (~~RCW 24.03.490~~) section 1701 of this act.

(3) If more than one organization is eligible to receive money under this section, the department shall develop criteria for allocation of appropriated money among the eligible organizations.

**Sec. 5227.** RCW 46.19.020 and 2017 c 151 s 1 are each amended to read as follows:

(1) The following organizations may apply for special parking privileges:

- (a) Public transportation authorities;
- (b) Nursing homes licensed under chapter 18.51 RCW;
- (c) Assisted living facilities licensed under chapter 18.20 RCW;
- (d) Senior citizen centers;
- (e) Accessible van rental companies registered with the department;

(f) ~~Private nonprofit corporations (as defined in RCW 24.03.005))~~ organized under chapter 24.-- RCW (the new chapter created in section 6101 of this act);

(g) Cabulance companies that regularly transport persons with disabilities who have been determined eligible for special parking privileges under this section and who are registered with the department under chapter 46.72 RCW; and

(h) Companies that dispatch taxicab vehicles under chapter 81.72 RCW or vehicles for hire under chapter 46.72 RCW, for such vehicles that are equipped with wheelchair accessible lifts or ramps for the transport of persons with disabilities and that are regularly dispatched and used in the transport of such persons. However, qualifying vehicles under this subsection (1) (h) may utilize special parking privileges only while in service. For the purposes of

this subsection (1) (h), "in service" means while in the process of picking up, transporting, or discharging a passenger.

(2) An organization that qualifies for special parking privileges may receive, upon application, special license plates or parking placards, or both, for persons with disabilities as defined by the department.

(3) An organization that qualifies for special parking privileges under subsection (1) of this section and receives parking placards or special license plates under subsection (2) of this section is responsible for ensuring that the parking placards and special license plates are not used improperly and is responsible for all fines and penalties for improper use.

(4) The department shall adopt rules to determine organization eligibility.

**Sec. 5228.** RCW 48.30.135 and 2015 c 272 s 4 are each amended to read as follows:

(1) An insurance producer may sponsor events for, or make contributions to a bona fide charitable or nonprofit organization, if the sponsorship or contribution is not conditioned upon the organization applying for or obtaining insurance through the insurance producer.

(2) For purposes of this section, a bona fide charitable or nonprofit organization is:

(a) Any nonprofit corporation duly existing under the provisions of chapter (~~24.03 RCW~~) 24.-- RCW (the new chapter created in section 6101 of this act) for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, cultural, athletic, scientific, agricultural, or horticultural purposes;

(b) Any professional, commercial, industrial, or trade association;

(c) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW;

(d) Any agricultural fair authorized under the provisions of chapter 15.76 or 36.37 RCW; or

(e) Any nonprofit organization, whether incorporated or otherwise, when determined by the commissioner to be organized and operated for one or more of

the purposes described in (a) through (d) of this subsection.

(3) RCW 48.30.140 and 48.30.150 do not apply to sponsorships or charitable contributions that are provided or given in compliance with subsection (1) of this section.

**Sec. 5229.** RCW 48.62.021 and 2015 c 109 s 2 are each reenacted and amended to read as follows:

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

(1) "Health and welfare benefits" means a plan or program established by a local government entity or entities for the purpose of providing its employees and their dependents, and in the case of school districts, its district employees, students, directors, or any of their dependents, with health care, accident, disability, death, and salary protection benefits.

(2) "Local government entity" or "entity" means every unit of local government, both general purpose and special purpose, and includes, but is not limited to, counties, cities, towns, port districts, public utility districts, water-sewer districts, school districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, quasi-municipal corporations, nonprofit corporations comprised of only units of local government, or a group comprised of local governments joined by an interlocal agreement authorized by chapter 39.34 RCW.

(3) "Nonprofit corporation" or "corporation" has the same meaning as defined in (~~RCW 24.03.005(3)~~) section 1102 of this act or a similar statute with similar intent within the entity's state of domicile.

(4) "Property and liability risks" includes the risk of property damage or loss sustained by a local government entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the local government entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the local government entity.

(5) "Risk assumption" means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

(6) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(7) "State risk manager" means the risk manager of the office of risk management within the department of enterprise services.

**Sec. 5230.** RCW 48.180.010 and 2015 c 109 s 6 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Nonprofit corporation" or "corporation" has the same meaning as defined in (~~RCW 24.03.005~~) section 1102 of this act.

(2) "Property and liability risks" includes the risk of property damage or loss sustained by a nonprofit corporation and the risk of claims arising from the tortious or negligent conduct or any error or omission of the entity, its officers, employees, agents, or volunteers as a result of a claim that may be made against the entity.

(3) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(4) "State risk manager" means the risk manager of the office of risk management within the department of enterprise services.

**Sec. 5231.** RCW 64.34.300 and 1992 c 220 s 14 are each amended to read as follows:

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination

entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between Title 23B RCW, the business corporation act, chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act), the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control.

**Sec. 5232.** RCW 64.38.025 and 2019 c 238 s 222 are each amended to read as follows:

(1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act).

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Except as provided in RCW 64.90.080, 64.90.405(1) (b) and (c), and 64.90.525, within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a

subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all owners, the board of directors shall disclose to the owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each owner per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per owner per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

(5) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause.

**Sec. 5233.** RCW 64.90.400 and 2018 c 277 s 301 are each amended to read as follows:

(1) A unit owners association must be organized no later than the date the first unit in the common interest community is conveyed to a purchaser.

(2) The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under RCW 64.90.290 or their heirs, successors, or assigns.

(3) The association must have a board and be organized as a for-profit or nonprofit corporation or limited liability company.

(4) In case of any conflict between Title 23B RCW or chapter 23.86, (~~(24.03)~~) 24.-- (the new chapter created in section 6101 of this act), 24.06, or 25.15 RCW and this chapter, this chapter controls.

**Sec. 5234.** RCW 66.24.495 and 1997 c 321 s 33 are each amended to read as follows:

(1) There shall be a license to be designated as a nonprofit arts organization license. This shall be a special license to be issued to any nonprofit arts organization which sponsors and presents productions or performances of an artistic or cultural nature in a specific theater or other appropriate designated indoor premises approved by the board. The license shall permit the licensee to sell liquor to patrons of productions or performances for consumption on the premises at these events. The fee for the license shall be two hundred fifty dollars per annum.

(2) For the purposes of this section, the term "nonprofit arts organization" means an organization which is organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (3) of this section, for viewing or attendance by the

general public. The organization must be a not-for-profit corporation under chapter (~~(24.03 RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act) and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The proceeds derived from sales of liquor, except for reasonable operating costs, must be used in furtherance of the purposes of the organization;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The liquor (~~(control)~~) and cannabis board shall have access to its books in order to determine whether the corporation is entitled to a license.

(3) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

**Sec. 5235.** RCW 66.24.680 and 2014 c 78 s 1 are each amended to read as follows:

(1) There shall be a license to be designated as a senior center license. This shall be a license issued to a nonprofit organization whose primary service is providing recreational and social activities for seniors on the licensed premises. This license shall permit the licensee to sell spirits by the individual glass, including mixed drinks and cocktails mixed on the premises only, beer and wine, at retail for consumption on the premises.

(2) To qualify for this license, the applicant entity must:

(a) Be a nonprofit organization under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act);

(b) Be open at times and durations established by the board; and

(c) Provide limited food service as defined by the board.

(3) All alcohol servers must have a valid mandatory alcohol server training permit.

(4) The board shall adopt rules to implement this section.

(5) The annual fee for this license shall be seven hundred twenty dollars.

**Sec. 5236.** RCW 68.20.020 and 1983 c 3 s 167 are each amended to read as follows:

Any private corporation authorized by its articles so to do, may establish, maintain, manage, improve, or operate a cemetery, and conduct any or all of the businesses of a cemetery, either for or without profit to its members or stockholders. A nonprofit cemetery corporation may be organized in the manner provided in chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act). A profit corporation may be organized in the manner provided in the general corporation laws of the state of Washington.

**Sec. 5237.** RCW 70.45.070 and 1997 c 332 s 7 are each amended to read as follows:

The department shall only approve an application if the parties to the acquisition have taken the proper steps to safeguard the value of charitable assets and ensure that any proceeds from the acquisition are used for appropriate charitable health purposes. To this end, the department may not approve an application unless, at a minimum, it determines that:

(1) The acquisition is permitted under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act), the Washington nonprofit corporation act, and other laws governing nonprofit entities, trusts, or charities;

(2) The nonprofit corporation that owns the hospital being acquired has exercised due diligence in authorizing the acquisition, selecting the acquiring person, and negotiating the terms and conditions of the acquisition;

(3) The procedures used by the nonprofit corporation's board of trustees and officers in making its decision fulfilled their fiduciary duties, that the board and officers were sufficiently informed about the proposed acquisition and possible alternatives, and that they used appropriate expert assistance;

(4) No conflict of interest exists related to the acquisition, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the nonprofit corporation, acquiring person, or other parties to the acquisition;

(5) The nonprofit corporation will receive fair market value for its assets. The attorney general or the department may employ, at the expense of the acquiring person, reasonably necessary expert assistance in making this determination. This expense must be in addition to the fees charged under RCW 70.45.030;

(6) Charitable funds will not be placed at unreasonable risk, if the acquisition is financed in part by the nonprofit corporation;

(7) Any management contract under the acquisition will be for fair market value;

(8) The proceeds from the acquisition will be controlled as charitable funds independently of the acquiring person or parties to the acquisition, and will be used for charitable health purposes consistent with the nonprofit corporation's original purpose, including providing health care to the disadvantaged, the uninsured, and the underinsured and providing benefits to promote improved health in the affected community;

(9) Any charitable entity established to hold the proceeds of the acquisition will be broadly based in and representative of the community where the hospital to be acquired is located, taking into consideration the structure and governance of such entity; and

(10) A right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the hospital is subsequently sold to, acquired by, or merged with another entity.

**Sec. 5238.** RCW 70.290.030 and 2013 c 144 s 48 are each amended to read as follows:

(1) The association is comprised of all health carriers issuing or renewing health benefit plans in Washington state and all third-party administrators conducting business on behalf of residents of Washington state or Washington health care providers and facilities. Third-party administrators are subject to registration under RCW 70.290.075.

(2) The association is a nonprofit corporation under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) and has the powers granted under that chapter.

(3) The board of directors includes the following voting members:

(a) Four members, selected from health carriers or third-party administrators, excluding health maintenance organizations, that have the most fully insured and self-funded covered lives in Washington state. The count of total covered lives includes enrollment in all companies included in their holding company system. Each health carrier or third-party administrator is entitled to no more than a single position on the board to represent all entities under common ownership or control.

(b) One member selected from the health maintenance organization having the most fully insured and self-insured covered lives in Washington state. The count of total lives includes enrollment in all companies included in its holding company system. Each health maintenance organization is entitled to no more than a single position on the board to represent all entities under common ownership or control.

(c) One member, representing health carriers not otherwise represented on the board under (a) or (b) of this subsection, who is elected from among the health carrier members not designated under (a) or (b) of this subsection.

(d) One member, representing Taft Hartley plans, appointed by the secretary from a list of nominees submitted by the Northwest administrators association.

(e) One member representing Washington state employers offering self-funded health coverage, appointed by the secretary from a list of nominees submitted by the Puget Sound health alliance.

(f) Two physician members appointed by the secretary, including at least one board certified pediatrician.

(g) The secretary, or a designee of the secretary with expertise in childhood immunization purchasing and distribution.

(4) The directors' terms and appointments must be specified in the plan of operation adopted by the association.

(5) The board of directors of the association must:

(a) Prepare and adopt articles of association and bylaws;

(b) Prepare and adopt a plan of operation. The plan of operation must include a dispute mechanism through which a carrier or third-party administrator can challenge an assessment determination by the board under RCW 70.290.040. The board must include a means to bring unresolved disputes to an impartial decision maker as a component of the dispute mechanism;

(c) Submit the plan of operation to the secretary for approval;

(d) Conduct all activities in accordance with the approved plan of operation;

(e) Enter into contracts as necessary or proper to collect and disburse the assessment;

(f) Enter into contracts as necessary or proper to administer the plan of operation;

(g) Sue or be sued, including taking any legal action necessary or proper for the recovery of any assessment for, on behalf of, or against members of the association or other participating person;

(h) Appoint, from among its directors, committees as necessary to provide technical assistance in the operation of the association, including the hiring of independent consultants as necessary;

(i) Obtain such liability and other insurance coverage for the benefit of the association, its directors, officers, employees, and agents as may in the judgment of the board of directors be helpful or necessary for the operation of the association;

(j) On an annual basis, beginning no later than November 1, 2010, and by November 1st of each year thereafter, establish the estimated amount of the assessment;

(k) Notify, in writing, each health carrier and third-party administrator of the health carrier's or third-party administrator's estimated total assessment by November 15th of each year;

(l) Submit a periodic report to the secretary listing those health carriers or third-party administrators that failed to remit their assessments and audit health carrier and third-party administrator books and records for accuracy of assessment payment submission;

(m) Allow each health carrier or third-party administrator no more than ninety days after the notification required by (k) of this subsection to remit any amounts in arrears or submit a payment plan, subject to approval by the association and initial payment under an approved payment plan;

(n) Deposit annual assessments collected by the association, less the association's administrative costs, with the state treasurer to the credit of the universal vaccine purchase account established in RCW 43.70.720;

(o) Borrow and repay such working capital, reserve, or other funds as, in the judgment of the board of directors, may be helpful or necessary for the operation of the association; and

(p) Perform any other functions as may be necessary or proper to carry out the plan of operation and to affect any or all of the purposes for which the association is organized.

(6) The secretary must convene the initial meeting of the association board of directors.

**Sec. 5239.** RCW 74.15.020 and 2020 c 331 s 10 and 2020 c 265 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter and RCW 74.13.031 unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers, or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 43.185C.295 through 43.185C.310;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency

and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis. "Group care facility" includes but is not limited to:

(i) Qualified residential treatment programs as defined in RCW 13.34.030;

(ii) Facilities specializing in providing prenatal, postpartum, or parenting supports for youth; and

(iii) Facilities providing high-quality residential care and supportive services to children who are, or who are at risk of becoming, victims of sex trafficking;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or

her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, excluding Saturdays, Sundays, and holidays to children who have been removed from their parent's or guardian's care by child protective services or law enforcement;

(j) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(k) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;



(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection (2), even after the marriage is terminated;

(v) Relatives, as named in (a)(i), (ii), (iii), or (iv) of this subsection (2), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States citizenship and immigration services, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter

18.51 RCW and assisted living facilities licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(o)(i) A host home program, and host home, operated by a tax exempt organization for youth not in the care of or receiving services from the department, if that program: (A) Recruits and screens potential homes in the program, including performing background checks on individuals over the age of eighteen residing in the home through the Washington state patrol or equivalent law enforcement agency and performing physical inspections of the home; (B) screens and provides case management services to youth in the program; (C) obtains a notarized permission slip or limited power of attorney from the parent or legal guardian of the youth authorizing the youth to participate in the program and the authorization is updated every six months when a youth remains in a host home longer than six months; (D) obtains insurance for the program through an insurance provider authorized under Title 48 RCW; (E) provides mandatory reporter and confidentiality training; and (F) registers with the secretary of state

((as provided in RCW 24.03.550)) under section 5104 of this act.

(ii) For purposes of this section, a "host home" is a private home that volunteers to host youth in need of temporary placement that is associated with a host home program.

(iii) For purposes of this section, a "host home program" is a program that provides support to individual host homes and meets the requirements of (o)(i) of this subsection.

(iv) Any host home program that receives local, state, or government funding shall report the following information to the office of homeless youth prevention and protection programs annually by December 1st of each year: The number of children the program served, why the child was placed with a host home, and where the child went after leaving the host home, including but not limited to returning to the parents, running away, reaching the age of majority, or becoming a dependent of the state;

(p) Receiving centers as defined in RCW 7.68.380.

(3) "Department" means the department of children, youth, and families.

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Performance-based contracts" or "contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts may also include provisions that link the performance of the contractor to the level and timing of the reimbursement.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(8) "Secretary" means the secretary of the department.

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the workforce innovation and opportunity act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs.

**Sec. 5240.** RCW 79A.30.030 and 2013 c 31 s 2 are each amended to read as follows:

(1) A nonprofit corporation may be formed under the nonprofit corporation provisions of chapter ((24.03-RCW)) 24.- - RCW (the new chapter created in section 6101 of this act) to carry out the purposes of this chapter. Except as provided in RCW 79A.30.040, the corporation shall have all the powers and be subject to the same restrictions as are permitted or prescribed to nonprofit corporations and shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The nonprofit corporation shall be known as

the Washington state horse park authority. The articles of incorporation shall provide that it is the responsibility of the authority to develop, promote, operate, manage, and maintain the Washington state horse park. The articles of incorporation shall provide for appointment of directors and other conduct of business consistent with the requirements of this chapter.

(2) (a) The articles of incorporation shall provide for an eleven-member board of directors for the authority, all appointed by the commission. Board members shall serve three-year terms, except that two of the original appointees shall serve one-year terms, and two of the original appointees shall serve two-year terms. Of the board members appointed pursuant to chapter 31, Laws of 2013, one shall serve an initial one-year term, one shall serve an initial two-year term, and two shall serve an initial term of three years. A board member may serve consecutive terms.

(b) The articles of incorporation shall provide that the commission appoint board members as follows:

(i) One board member shall represent the interests of the commission;

(ii) One board member shall represent the interests of the county in which the park is located. In making this appointment, the commission shall solicit recommendations from the county legislative authority; and

(iii) Nine board members shall represent the geographic and sports discipline diversity of equestrian interests in the state, and at least three of these members shall have business experience relevant to the organization of horse shows or operation of a horse show facility. In making these appointments, the commission shall solicit recommendations from a variety of active horse-related organizations in the state.

(3) The articles of incorporation shall include a policy that provides for the preferential use of a specific area of the horse park facilities at nominal cost for horse groups associated with youth groups and individuals with disabilities.

(4) The commission shall make appointments to fill board vacancies for positions authorized under subsection (2) of this section, upon additional

solicitation of recommendations from the board of directors.

(5) The board of directors shall perform their duties in the best interests of the authority, consistent with the standards applicable to directors of nonprofit corporations under (~~RCW 24.03.127~~) section 2402 of this act.

**Sec. 5241.** RCW 79A.30.040 and 1995 c 200 s 5 are each amended to read as follows:

To meet its responsibility for developing, promoting, operating, managing, and maintaining the state horse park, the authority is empowered to do the following:

(1) Exercise the general powers authorized for any nonprofit corporation as specified in (~~RCW 24.03.035~~) section 1403 of this act. All debts of the authority shall be in the name of the authority and shall not be debts of the state of Washington for which the state or any state agency shall have any obligation to pay; and the authority may not issue bonds. Neither the full faith and credit of the state nor the state's taxing power is pledged for any indebtedness of the authority;

(2) Employ and discharge at its discretion employees, agents, advisors, and other personnel;

(3) Apply for or solicit, accept, administer, and dispose of grants, gifts, and bequests of money, services, securities, real estate, or other property. However, if the authority accepts a donation designated for a specific purpose, the authority shall use the donation for the designated purpose;

(4) Establish, revise, collect, manage, and expend such fees and charges at the state horse park as the authority deems necessary to accomplish its responsibilities;

(5) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority and the state horse park;

(6) Authorize use of the state horse park facilities by the general public and by and for compatible nonequestrian events as the authority deems reasonable, so long as the primacy of the center for horse-related purposes is not compromised;

(7) Insure its obligations and potential liability;

(8) Enter into cooperative agreements with and provide for private nonprofit groups to use the state horse park facilities and property to raise money to contribute gifts, grants, and support to the authority for the purposes of this chapter;

(9) Grant concessions or leases at the state horse park upon such terms and conditions as the authority deems appropriate, but in no event shall the term of a concession or lease exceed twenty-five years. Concessions and leases shall be consistent with the purposes of this chapter and may be renegotiated at least every five years; and

(10) Generally undertake any and all lawful acts necessary or appropriate to carry out the purposes for which the authority and the state horse park are created.

**Sec. 5242.** RCW 79A.35.130 and 2011 c 56 s 1 are each amended to read as follows:

Participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided:

(1) The nonprofit organization must be registered as a nonprofit corporation pursuant to chapter ~~((24.03-RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act);

(2) The nonprofit organization's management and administrative headquarters must be located in Washington;

(3) Participants in the program spend at least fifteen percent of their time in the program on education and training activities; and

(4) Participants in the program receive a stipend or living allowance as authorized by federal or state law.

Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted

pursuant to the conservation corps program.

**Sec. 5243.** RCW 79A.70.030 and 2014 c 86 s 8 are each amended to read as follows:

(1) By September 1, 2000, the commission shall file articles of incorporation in accordance with the Washington nonprofit corporation act, chapter ~~((24.03-RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act), to establish the Washington state parks foundation. The foundation shall not be an agency, instrumentality, or political subdivision of the state and shall not disburse public funds.

(2) The foundation shall have a board of directors consisting of up to fifteen members, whose terms, method of appointment, and authority must be in accordance with the Washington nonprofit corporation act, chapter ~~((24.03-RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act).

**Sec. 5244.** RCW 82.04.4251 and 2006 c 310 s 1 are each amended to read as follows:

This chapter does not apply to amounts received by a nonprofit corporation organized under chapter ~~((24.03-RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) as payments or contributions from the state or any county, city, town, municipal corporation, quasi-municipal corporation, federally recognized Indian tribe, port district, or public corporation for the promotion of conventions and tourism.

**Sec. 5245.** RCW 82.04.4264 and 2012 c 10 s 71 are each amended to read as follows:

(1) This chapter does not apply to amounts received by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility.

(2) As used in this section:

(a) "Domiciliary care" has the meaning provided in RCW 18.20.020.

(b) "Nonprofit assisted living facility" means an assisted living facility that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3), is incorporated under

chapter (~~(24.03 RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act), is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

**Sec. 5246.** RCW 82.04.431 and 2011 1st sp.s. c 19 s 3 are each amended to read as follows:

(1) The term "health or social welfare organization" means an organization, including any community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a domestic or foreign (~~(not-for-profit)~~) nonprofit corporation under chapter (~~(24.03 RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act) and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. Health or social welfare organization does not include a corporation providing professional services as authorized in chapter 18.100 RCW. In addition a corporation in order to be exempt under RCW 82.04.4297 must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(e) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue must have access to its books in order to determine whether the corporation is exempt from taxes within the intent of RCW 82.04.4297 and this section.

(2) The term "health or social welfare services" includes and is limited to:

(a) Mental health, drug, or alcoholism counseling or treatment;

(b) Family counseling;

(c) Health care services;

(d) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically, developmentally, or emotionally-disabled individuals;

(e) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(f) Care of orphans or foster children;

(g) Day care of children;

(h) Employment development, training, and placement;

(i) Legal services to the indigent;

(j) Weatherization assistance or minor home repair for low-income homeowners or renters;

(k) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households;

(l) Community services to low-income individuals, families, and groups, which are designed to have a measurable and potentially major impact on causes of poverty in communities of the state; and

(m) Temporary medical housing, as defined in RCW 82.08.997, if the housing is provided only:

(i) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(ii) By a person that does not furnish lodging or related services to the general public.

**Sec. 5247.** RCW 82.04.4328 and 2020 c 139 s 9 are each amended to read as follows:

(1) For the purposes of RCW 82.04.4327, 82.08.031, and 82.12.031, the term "artistic or cultural organization" means an organization that is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (2) of this section, for viewing or attendance by the general public. The organization must be a (~~(not-for-profit)~~) nonprofit corporation under chapter ((24.03-RCW)) 24.-- RCW (the new chapter created in section 6101 of this act) and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation under RCW 82.04.4327, 82.08.031, and 82.12.031, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The amounts received that qualify for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue must have access to its books in order to determine whether the corporation is exempt from taxes.

(2) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

**Sec. 5248.** RCW 82.08.0203 and 2008 c 260 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 does not apply to sales of trail grooming services to the state of Washington or nonprofit corporations organized under chapter (~~((24.03-RCW))~~) 24.-- RCW (the new chapter created in section 6101 of this act). For the purposes of this section, "trail grooming" means the activity of snow compacting, snow redistribution, or snow removal on state-owned or privately owned trails.

**Sec. 5249.** RCW 82.08.0293 and 2019 c 8 s 401 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume;

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco; and

(c) Marijuana, useable marijuana, or marijuana-infused products.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, or dietary supplements. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Bottled water" means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

(b) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(c) (i) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

(C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(I) Food that is only cut, repackaged, or pasteurized by the seller; or

(II) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

(ii) Food is "sold with eating utensils provided by the seller" if:

(A) The seller's customary practice for that item is to physically deliver or hand a utensil to the customer with the food or food ingredient as part of the sales transaction. If the food or food ingredient is prepackaged with a utensil, the seller is considered to have physically delivered a utensil to the customer unless the food and utensil are prepackaged together by a food manufacturer classified under sector 311 of the North American industry classification system (NAICS);

(B) A plate, glass, cup, or bowl is necessary to receive the food or food ingredient, and the seller makes those utensils available to its customers; or

(C) (I) The seller makes utensils available to its customers, and the seller has more than seventy-five percent prepared food sales. For purposes of this subsection (2)(c)(ii)(C), a seller has more than seventy-five percent prepared food sales if the seller's gross retail sales of prepared food under (c) (i) (A), (c) (i) (C), and (c) (ii) (B) of this subsection equal more than seventy-five percent of the seller's gross retail sales of all food and food ingredients, including prepared food, soft drinks, and dietary supplements.

(II) However, even if a seller has more than seventy-five percent prepared food sales, four servings or more of food or

food ingredients packaged for sale as a single item and sold for a single price are not "sold with utensils provided by the seller" unless the seller's customary practice for the package is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction. Whenever available, the number of servings included in a package of food or food ingredients must be determined based on the manufacturer's product label. If no label is available, the seller must reasonably determine the number of servings.

(III) The seller must determine a single prepared food sales percentage annually for all the seller's establishments in the state based on the prior year of sales. The seller may elect to determine its prepared food sales percentage based either on the prior calendar year or on the prior fiscal year. A seller may not change its elected method for determining its prepared food percentage without the written consent of the department. The seller must determine its annual prepared food sales percentage as soon as possible after accounting records are available, but in no event later than ninety days after the beginning of the seller's calendar or fiscal year. A seller may make a good faith estimate of its first annual prepared food sales percentage if the seller's records for the prior year are not sufficient to allow the seller to calculate the prepared food sales percentage. The seller must adjust its good faith estimate prospectively if its relative sales of prepared foods in the first ninety days of operation materially depart from the seller's estimate.

(iii) "Prepared food" does not include the following items, if sold without eating utensils provided by the seller:

(A) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system-United States, 2002";

(B) Food sold in an unheated state by weight or volume as a single item; or

(C) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(d) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a (~~not for profit~~) nonprofit organization organized under chapter (~~(24.03)~~) 24.-- (the new chapter created in section 6101 of this act) or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under 42 U.S.C. Sec. 1485; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42 of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine. Except as provided in



(b) of this subsection, the selling price of food and food ingredients sold through a vending machine for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) For soft drinks, bottled water, and hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine, the selling price is the total gross receipts of such sales divided by the sum of one plus the sales tax rate expressed as a decimal.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived.

**Sec. 5250.** RCW 82.12.0293 and 2017 3rd sp.s. c 28 s 102 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, or dietary supplements. "Prepared food," "soft drinks," "bottled water," and "dietary supplements" have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) Which are provided to senior citizens, individuals with disabilities, or low-income persons by a (~~not-for-profit~~) nonprofit organization organized under chapter (~~(24.03)~~) 24.-- (the new chapter created in section 6101 of this act) or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the

facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293.

**Sec. 5251.** RCW 88.46.065 and 1994 sp.s. c 9 s 853 are each amended to read as follows:

A nonprofit corporation established for the sole purpose of providing contingency plan coverage for any vessel in compliance with RCW 88.46.060 is entitled to liability protection as provided in this section. Obligations incurred by the corporation and any other liabilities or claims against the corporation may be enforced only against the assets of the corporation, and no liability for the debts or actions of the corporation exists against a director, officer, member, employee, incident commander, agent, contractor, or subcontractor of the corporation in his or her individual or representative capacity. Except as otherwise provided in this chapter, neither the directors, officers, members, employees, incident (~~commander(s)~~) commanders, or agents of the corporation, nor the business entities by whom they are regularly employed may be held individually responsible for discretionary decisions, errors in judgment, mistakes, or other acts, either of commission or omission, that are directly related to the operation or implementation of contingency plans, other than for acts of gross negligence or willful or wanton misconduct. The corporation may insure and defend and indemnify the directors, officers, members, employees, incident commanders, and agents to the extent permitted by chapters 23B.08 and (~~(24.03)~~) 24.-- (the new chapter created in section 6101 of this act) RCW. This section does not alter or limit the responsibility or liability of any person for the operation of a motor vehicle.

**Sec. 5252.** RCW 89.08.405 and 2015 c 88 s 1 are each amended to read as follows:

(1) Any county legislative authority may approve by resolution revenues to a conservation district by fixing rates and charges. The county legislative

authority may provide for this system of rates and charges as an alternative to, but not in addition to, a special assessment provided by RCW 89.08.400. In fixing rates and charges, the county legislative authority may in its discretion consider the information proposed to the county legislative authority by a conservation district consistent with this section.

(2) A conservation district, in proposing a system of rates and charges, may consider:

(a) Services furnished, to be furnished, or available to the landowner;

(b) Benefits received, to be received, or available to the property;

(c) The character and use of land;

(d) The ~~((nonprofit))~~ public benefit ~~nonprofit corporation~~ status, as defined in ~~((RCW 24.03.490))~~ section 1701 of this act, of the land user;

(e) The income level of persons served or provided benefits under this chapter, including senior citizens and disabled persons; or

(f) Any other matters that present a reasonable difference as a ground for distinction, including the natural resource needs within the district and the capacity of the district to provide either services or improvements, or both.

(3) (a) The system of rates and charges may include an annual per acre amount, an annual per parcel amount, or an annual per parcel amount plus an annual per acre amount. If included in the system of rates and charges, the maximum annual per acre rate or charge shall not exceed ten cents per acre. The maximum annual per parcel rate shall not exceed five dollars, except that for counties with a population of over four hundred eighty thousand persons, the maximum annual per parcel rate shall not exceed ten dollars, and for counties with a population of over one million five hundred thousand persons, the maximum annual per parcel rate shall not exceed fifteen dollars.

(b) Public land, including lands owned or held by the state, shall be subject to rates and charges to the same extent as privately owned lands. The procedures provided in chapter 79.44 RCW shall be followed if lands owned or held by the state are subject to the rates and charges of a conservation district.

(c) Forestlands used solely for the planting, growing, or harvesting of trees may be subject to rates and charges if such lands are served by the activities of the conservation district. However, if the system of rates and charges includes an annual per acre amount or an annual per parcel amount plus an annual per acre amount, the per acre rate or charge on such forestlands shall not exceed one-tenth of the weighted average per acre rate or charge on all other lands within the conservation district that are subject to rates and charges. The calculation of the weighted average per acre shall be a ratio calculated as follows: (i) The numerator shall be the total amount of money estimated to be derived from the per acre special rates and charges on the nonforestlands in the conservation district; and (ii) the denominator shall be the total number of nonforestland acres in the conservation district that are served by the activities of the conservation district and that are subject to the rates or charges of the conservation district. No more than ten thousand acres of such forestlands that is both owned by the same person or entity and is located in the same conservation district may be subject to the rates and charges that are imposed for that conservation district in any year. Per parcel charges shall not be imposed on forestland parcels. However, in lieu of a per parcel charge, a charge of up to three dollars per forestland owner may be imposed on each owner of forestlands whose forestlands are subject to a per acre rate or charge.

(4) The consideration, development, adoption, and implementation of a system of rates and charges shall follow the same public notice and hearing process and be subject to the same procedure and authority of RCW 89.08.400(2).

(5) (a) Following the adoption of a system of rates and charges, the conservation district board of supervisors shall establish by resolution a process providing for landowner appeals of the individual rates and charges as applicable to a parcel or parcels.

(b) Any appeal must be filed by the landowner with the conservation district no later than twenty-one days after the date property taxes are due. The decision of the board of supervisors regarding any appeal shall be final and conclusive.

(c) Any appeal of the decision of the board shall be to the superior court of the county in which the district is located, and served and filed within twenty-one days of the date of the board's written decision.

(6) A conservation district shall prepare a roll that implements the system of rates and charges approved by the county legislative authority. The rates and charges from the roll shall be spread by the county assessor as a separate item on the tax rolls and shall be collected and accounted for with property taxes by the county treasurer. The amount of the rates and charges shall constitute a lien against the land that shall be subject to the same conditions as a tax lien, and collected by the treasurer in the same manner as delinquent real property taxes, and subject to the same interest and penalty as for delinquent property taxes. The county treasurer shall deduct an amount from the collected rates and charges, as established by the county legislative authority, to cover the costs incurred by the county assessor and county treasurer in spreading and collecting the rates and charges, but not to exceed the actual costs of such work. All remaining funds collected under this section shall be transferred to the conservation district and used by the conservation district in accordance with this section.

(7) The rates and charges for a conservation district shall not be spread on the tax rolls and shall not be allocated with property tax collections in the following year if, after the system of rates and charges has been approved by the county legislative authority but before the fifteenth day of December in that year, a petition has been filed with the county legislative authority objecting to the imposition of such rates and charges, which petition has been signed by at least twenty percent of the owners of land that would be subject to the rate or charge to be imposed for a conservation district.

### **ARTICLE 3**

#### **REPEALER**

NEW SECTION. **Sec. 5301.** The following acts or parts of acts are each repealed:

(1)RCW 24.03.005 (Definitions) and 2020 c 57 s 80, 2015 c 176 s 3101, 2004 c 265 s 1, 2002 c 74 s 4, 1989 c 291 s 3, 1986 c 240 s 1, 1982 c 35 s 72, & 1967 c 235 s 2;

(2)RCW 24.03.009 (Notice by electronic transmission—Consent required—When effective) and 2004 c 265 s 4;

(3)RCW 24.03.010 (Applicability) and 1971 ex.s. c 53 s 1 & 1967 c 235 s 3;

(4)RCW 24.03.015 (Purposes) and 1986 c 240 s 2, 1983 c 106 s 22, & 1967 c 235 s 4;

(5)RCW 24.03.017 (Corporation may elect to have chapter apply to it—Procedure) and 2015 c 176 s 3102, 2004 c 265 s 5, 1982 c 35 s 73, & 1971 ex.s. c 53 s 2;

(6)RCW 24.03.020 (Incorporators) and 2004 c 265 s 6, 1986 c 240 s 3, 1982 c 35 s 74, & 1967 c 235 s 5;

(7)RCW 24.03.025 (Articles of incorporation) and 1987 c 212 s 703, 1982 c 35 s 75, & 1967 c 235 s 6;

(8)RCW 24.03.027 (Filing false statements—Penalty);

(9)RCW 24.03.030 (Limitations) and 1986 c 240 s 4 & 1967 c 235 s 7;

(10)RCW 24.03.035 (General powers) and 1991 c 72 s 42, 1986 c 240 s 5, & 1967 c 235 s 8;

(11)RCW 24.03.040 (Defense of ultra vires) and 1967 c 235 s 9;

(12)RCW 24.03.043 (Indemnification of agents of any corporation authorized);

(13)RCW 24.03.045 (Corporate name) and 2015 c 176 s 3103, 2004 c 265 s 7, 1998 c 102 s 3, 1994 c 211 s 1305, 1989 c 291 s 10, 1987 c 55 s 39, 1986 c 240 s 6, 1982 c 35 s 76, & 1967 c 235 s 10;

(14)RCW 24.03.046 (Reservation of exclusive right to use a corporate name) and 2015 c 176 s 3104, 1993 c 356 s 1, & 1982 c 35 s 77;

(15)RCW 24.03.047 (Registration of corporate name) and 2015 c 176 s 3105, 1994 c 211 s 1306, 1993 c 356 s 2, 1987 c 55 s 40, 1986 c 240 s 7, & 1982 c 35 s 78;

(16)RCW 24.03.048 (Renewal of registration of corporate name) and 2015 c 176 s 3106, 1986 c 240 s 8, & 1982 c 35 s 79;

(17)RCW 24.03.050 (Registered agent) and 2015 c 176 s 3107, 2009 c 202 s 1, 2004 c 265 s 8, 1986 c 240 s 9, 1982 c 35 s 80, 1969 ex.s. c 163 s 1, & 1967 c 235 s 11;

(18)RCW 24.03.055 (Change of registered agent) and 2015 c 176 s 3108, 2004 c 265 s 9, 1993 c 356 s 3, 1986 c 240 s 10, 1982 c 35 s 81, & 1967 c 235 s 12;

(19)RCW 24.03.060 (Service of process on corporation) and 2015 c 176 s 3109, 1986 c 240 s 11, 1982 c 35 s 82, & 1967 c 235 s 13;

(20)RCW 24.03.065 (Members—Member committees) and 2004 c 98 s 1, 1986 c 240 s 12, & 1967 c 235 s 14;

(21)RCW 24.03.070 (Bylaws) and 1991 c 72 s 43, 1986 c 240 s 13, & 1967 c 235 s 15;

(22)RCW 24.03.075 (Meetings of members and committees of members) and 2004 c 98 s 2, 1986 c 240 s 14, & 1967 c 235 s 16;

(23)RCW 24.03.080 (Notice of members' meetings) and 2004 c 265 s 10, 1969 ex.s. c 115 s 1, & 1967 c 235 s 17;

(24)RCW 24.03.085 (Voting) and 2004 c 265 s 11, 1969 ex.s. c 115 s 2, & 1967 c 235 s 18;

(25)RCW 24.03.090 (Quorum) and 1967 c 235 s 19;

(26)RCW 24.03.095 (Board of directors) and 1967 c 235 s 20;

(27)RCW 24.03.100 (Number and election or appointment of directors) and 1986 c 240 s 15 & 1967 c 235 s 21;

(28)RCW 24.03.103 (Removal of directors) and 1986 c 240 s 16;

(29)RCW 24.03.1031 (Judicial removal of directors) and 1999 c 32 s 1;

(30)RCW 24.03.105 (Vacancies) and 2011 c 336 s 655, 1986 c 240 s 17, & 1967 c 235 s 22;

(31)RCW 24.03.110 (Quorum of directors) and 1986 c 240 s 18 & 1967 c 235 s 23;

(32)RCW 24.03.113 (Assent presumed—Procedures for dissent or abstention) and 2004 c 265 s 12 & 1986 c 240 s 19;

(33)RCW 24.03.115 (Committees) and 2011 c 336 s 656, 1986 c 240 s 20, & 1967 c 235 s 24;

(34)RCW 24.03.120 (Place and notice of directors' meetings) and 2004 c 265 s 13, 1986 c 240 s 21, & 1967 c 235 s 25;

(35)RCW 24.03.125 (Officers) and 1986 c 240 s 22 & 1967 c 235 s 26;

(36)RCW 24.03.127 (Duties of a director) and 1986 c 240 s 23;

(37)RCW 24.03.130 (Removal of officers) and 1967 c 235 s 27;

(38)RCW 24.03.135 (Required documents in the form of a record—Inspection—Copying) and 2004 c 265 s 14, 1986 c 240 s 24, & 1967 c 235 s 28;

(39)RCW 24.03.140 (Loans to directors and officers prohibited) and 1967 c 235 s 29;

(40)RCW 24.03.145 (Filing of articles of incorporation) and 2015 c 176 s 3110, 2002 c 74 s 7, 1982 c 35 s 83, & 1967 c 235 s 30;

(41)RCW 24.03.150 (Effect of filing the articles of incorporation) and 1986 c 240 s 25, 1982 c 35 s 84, & 1967 c 235 s 31;

(42)RCW 24.03.155 (Organization meetings) and 2004 c 265 s 15, 1986 c 240 s 26, & 1967 c 235 s 32;

(43)RCW 24.03.160 (Right to amend articles of incorporation) and 1967 c 235 s 33;

(44)RCW 24.03.165 (Procedure to amend articles of incorporation) and 2004 c 265 s 16, 1986 c 240 s 27, & 1967 c 235 s 34;

(45)RCW 24.03.170 (Articles of amendment) and 2004 c 265 s 17, 1982 c 35 s 85, & 1967 c 235 s 35;

(46)RCW 24.03.175 (Filing of articles of amendment) and 2015 c 176 s 3111, 2002 c 74 s 8, 1982 c 35 s 86, & 1967 c 235 s 36;

(47)RCW 24.03.180 (Effect of filing of articles of amendment) and 2015 c 176 s 3112, 1986 c 240 s 28, 1982 c 35 s 87, & 1967 c 235 s 37;

(48)RCW 24.03.183 (Restated articles of incorporation) and 2015 c 176 s 3113, 2004 c 265 s 18, 2002 c 74 s 9, 1986 c 240 s 29, & 1982 c 35 s 88;

(49)RCW 24.03.185 (Procedure for merger) and 1986 c 240 s 30 & 1967 c 235 s 38;

(50)RCW 24.03.190 (Procedure for consolidation) and 1986 c 240 s 31 & 1967 c 235 s 39;

(51)RCW 24.03.195 (Approval of merger or consolidation) and 2004 c 265 s 19, 1986 c 240 s 32, & 1967 c 235 s 40;

(52)RCW 24.03.200 (Articles of merger or consolidation) and 2015 c 176 s 3114,

2004 c 265 s 20, 2002 c 74 s 10, 1986 c 240 s 33, 1982 c 35 s 89, & 1967 c 235 s 41;

(53)RCW 24.03.205 (Merger or consolidation—When effective) and 2015 c 176 s 3115, 1986 c 240 s 34, 1982 c 35 s 90, & 1967 c 235 s 42;

(54)RCW 24.03.207 (Merger or consolidation of domestic and foreign corporation) and 2015 c 176 s 3116, 2004 c 265 s 21, 1986 c 240 s 35, & 1982 c 35 s 91;

(55)RCW 24.03.210 (Effect of merger or consolidation) and 1967 c 235 s 43;

(56)RCW 24.03.215 (Sale, lease, exchange, or other disposition of assets not in the ordinary course of business) and 2004 c 265 s 22, 1986 c 240 s 36, & 1967 c 235 s 44;

(57)RCW 24.03.217 (Sale, lease, exchange, or disposition of assets in course of business—Mortgage and pledge of assets) and 1986 c 240 s 37;

(58)RCW 24.03.220 (Voluntary dissolution) and 2004 c 265 s 23, 1986 c 240 s 38, 1982 c 35 s 92, & 1967 c 235 s 45;

(59)RCW 24.03.225 (Distribution of assets) and 1967 c 235 s 46;

(60)RCW 24.03.230 (Plan of distribution) and 2011 c 336 s 657, 2004 c 265 s 24, 1969 ex.s. c 115 s 3, & 1967 c 235 s 47;

(61)RCW 24.03.235 (Revocation of voluntary dissolution proceedings) and 2004 c 265 s 25 & 1967 c 235 s 48;

(62)RCW 24.03.240 (Articles of dissolution) and 2004 c 265 s 26, 1993 c 356 s 4, 1982 c 35 s 93, & 1967 c 235 s 49;

(63)RCW 24.03.245 (Filing of articles of dissolution) and 2015 c 176 s 3117, 2002 c 74 s 11, 1982 c 35 s 94, & 1967 c 235 s 50;

(64)RCW 24.03.250 (Involuntary dissolution) and 1969 ex.s. c 163 s 2 & 1967 c 235 s 51;

(65)RCW 24.03.255 (Notification to attorney general) and 1982 c 35 s 95, 1969 ex.s. c 163 s 3, & 1967 c 235 s 52;

(66)RCW 24.03.260 (Venue and process) and 1967 c 235 s 53;

(67)RCW 24.03.266 (Dissolution of a nonprofit corporation—Superior courts) and 2010 c 212 s 1;

(68)RCW 24.03.271 (Dissolution of a nonprofit corporation—Venue—Proceedings—Court's authority—Distribution of assets) and 2010 c 212 s 2;

(69)RCW 24.03.276 (Dissolution of a nonprofit corporation—Decree) and 2010 c 212 s 3;

(70)RCW 24.03.295 (Filing of decree of dissolution) and 1986 c 240 s 40 & 1967 c 235 s 60;

(71)RCW 24.03.300 (Survival of remedy after dissolution—Extension of duration of corporation) and 2015 c 176 s 3118, 1986 c 240 s 41, 1982 c 35 s 96, & 1967 c 235 s 61;

(72)RCW 24.03.302 (Administrative dissolution—Reinstatement—Survival of actions) and 2015 c 176 s 3119, 1994 c 287 s 8, 1993 c 356 s 5, 1987 c 117 s 3, 1986 c 240 s 42, 1982 c 35 s 97, 1971 ex.s. c 128 s 1, & 1969 ex.s. c 163 s 9;

(73)RCW 24.03.305 (Registration of foreign corporation—Authority to conduct affairs) and 2015 c 176 s 3120, 1993 c 181 s 12, 1986 c 240 s 43, & 1967 c 235 s 62;

(74)RCW 24.03.310 (Powers of foreign corporation—Effect of registration—Governing law) and 2015 c 176 s 3121 & 1967 c 235 s 63;

(75)RCW 24.03.315 (Corporate name of foreign corporation—Fictitious name) and 2015 c 176 s 3122, 1982 c 35 s 98, & 1967 c 235 s 64;

(76)RCW 24.03.325 (Foreign registration statement) and 2015 c 176 s 3123, 2002 c 74 s 12, 1986 c 240 s 45, & 1967 c 235 s 66;

(77)RCW 24.03.332 (Certificate of authority as insurance company—Filing of records) and 2004 c 265 s 28 & 1998 c 23 s 12;

(78)RCW 24.03.334 (Certificate of authority as insurance company—Registration or reservation of name) and 1998 c 23 s 13;

(79)RCW 24.03.335 (Effect of foreign registration statement—Right of state to terminate registration) and 2015 c 176 s 3124, 1982 c 35 s 100, & 1967 c 235 s 68;

(80)RCW 24.03.340 (Registered agent of foreign corporation) and 2015 c 176 s

3125, 2004 c 265 s 29, 1982 c 35 s 101, & 1967 c 235 s 69;

(81)RCW 24.03.345 (Change of registered agent of foreign corporation) and 2015 c 176 s 3126, 2004 c 265 s 30, 1993 c 356 s 6, 1986 c 240 s 47, 1982 c 35 s 102, & 1967 c 235 s 70;

(82)RCW 24.03.350 (Service on foreign corporation) and 2015 c 176 s 3127, 2011 c 336 s 658, 1986 c 240 s 48, 1982 c 35 s 103, & 1967 c 235 s 71;

(83)RCW 24.03.360 (Merger of foreign corporation authorized to conduct affairs in this state) and 1986 c 240 s 49 & 1967 c 235 s 73;

(84)RCW 24.03.365 (Amended foreign registration statement) and 2015 c 176 s 3128, 2004 c 265 s 31, & 1967 c 235 s 74;

(85)RCW 24.03.370 (Withdrawal of foreign corporation) and 2015 c 176 s 3129, 1993 c 356 s 7, 1982 c 35 s 104, & 1967 c 235 s 75;

(86)RCW 24.03.380 (Termination of registration) and 2015 c 176 s 3130, 2004 c 265 s 32, 1986 c 240 s 50, 1982 c 35 s 106, & 1967 c 235 s 77;

(87)RCW 24.03.390 (Conducting affairs without registering) and 2015 c 176 s 3131, 1986 c 240 s 52, & 1967 c 235 s 79;

(88)RCW 24.03.395 (Annual report of domestic and foreign corporations) and 2015 c 176 s 3132, 1993 c 356 s 10, 1989 c 291 s 2, 1987 c 117 s 4, 1986 c 240 s 53, 1982 c 35 s 108, & 1967 c 235 s 80;

(89)RCW 24.03.405 (Applicable fees, charges, and penalties) and 2015 c 176 s 3133, 2010 1st sp.s. c 29 s 3, 1993 c 269 s 5, 1991 c 223 s 1, 1987 c 117 s 5, 1986 c 240 s 55, 1982 c 35 s 110, 1981 c 230 s 5, 1969 ex.s. c 163 s 5, & 1967 c 235 s 82;

(90)RCW 24.03.417 (Fees for services by secretary of state);

(91)RCW 24.03.420 (Penalties imposed upon corporation) and 1969 ex.s. c 163 s 7 & 1967 c 235 s 85;

(92)RCW 24.03.425 (Penalties imposed upon directors and officers) and 2015 c 176 s 3134, 2004 c 265 s 34, & 1967 c 235 s 86.

(93)RCW 24.03.430 (Interrogatories by secretary of state) and 2004 c 265 s 35, 1982 c 35 s 112, & 1967 c 235 s 87;

(94)RCW 24.03.435 (Confidential nature of information disclosed by

interrogatories) and 1982 c 35 s 113 & 1967 c 235 s 88;

(95)RCW 24.03.440 (Power and authority of secretary of state) and 1982 c 35 s 114 & 1967 c 235 s 89;

(96)RCW 24.03.445 (Duty of secretary of state to file—Review of refusal to file) and 2015 c 176 s 3135, 2004 c 265 s 36, 1986 c 240 s 56, 1982 c 35 s 115, & 1967 c 235 s 90;

(97)RCW 24.03.455 (Greater voting requirements) and 1967 c 235 s 92;

(98)RCW 24.03.460 (Waiver of notice) and 2004 c 265 s 38 & 1967 c 235 s 93;

(99)RCW 24.03.465 (Action by members or directors without a meeting) and 2004 c 265 s 39 & 1967 c 235 s 94;

(100)RCW 24.03.470 (Unauthorized assumption of corporate powers) and 1967 c 235 s 95;

(101)RCW 24.03.480 (Postsecondary education loans—Interest rates) and 1989 c 166 s 1;

(102)RCW 24.03.490 (Public benefit nonprofit corporation designation established) and 1989 c 291 s 4;

(103)RCW 24.03.500 (Public benefit nonprofit corporations—Temporary designation) and 1989 c 291 s 5;

(104)RCW 24.03.510 (Public benefit nonprofit corporations—Application) and 1989 c 291 s 6;

(105)RCW 24.03.520 (Public benefit nonprofit corporations—Renewal) and 1989 c 291 s 7;

(106)RCW 24.03.530 (Public benefit nonprofit corporations—Fees) and 1989 c 291 s 8;

(107)RCW 24.03.540 (Public benefit nonprofit corporations—Removal of status) and 1989 c 291 s 9;

(108)RCW 24.03.550 (Host home programs—Registration) and 2016 c 166 s 3;

(109)RCW 24.03.900 (Short title) and 1967 c 235 s 1;

(110)RCW 24.03.905 (Savings—1967 c 235) and 1967 c 235 s 96;

(111)RCW 24.03.915 (Notice to existing corporations) and 1982 c 35 s 117, 1969 ex.s. c 163 s 8, & 1967 c 235 s 98;

(112)RCW 24.03.920 (Repealer-Exception) and 1967 c 235 s 100; and

(113)RCW 24.03.925 (Effective date-1967 c 235) and 1967 c 235 s 99.

**PART VI**

**IMPLEMENTATION**

NEW SECTION. **Sec. 6101.** CODIFICATION. Sections 1101 through 4203 of this act constitute a new chapter in Title 24 RCW.

NEW SECTION. **Sec. 6102.** SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 6103.** EFFECTIVE DATE. Except for section 5204 of this act, this act takes effect January 1, 2022.

NEW SECTION. **Sec. 6104.** EFFECTIVE DATE. Section 5204 of this act takes effect July 1, 2022."

Correct the title.

Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno; Davis; Entenman; Goodman; Kirby; Klippert; Orwall; Peterson; Thai; Valdez; Walen and Ybarra.

Referred to Committee on Appropriations.

March 19, 2021

ESSB 5097 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Expanding coverage of the paid family and medical leave program. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

MINORITY recommendation: Do not pass. Signed by Representatives Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member and Harris.

Referred to Committee on Appropriations.

March 18, 2021

ESSB 5118 Prime Sponsor, Committee on Human Services, Reentry & Rehabilitation: Supporting successful reentry. Reported by Committee on Children, Youth & Families

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.98.010 and 2011 c 336 s 345 are each amended to read as follows:

(1) Whenever a person has entered upon a term of imprisonment in a penal (~~(or)~~), correctional, or juvenile rehabilitation institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the (~~(prisoner)~~) person, he or she shall be brought to trial within (~~(one hundred twenty)~~) 120 days after he or she shall have caused to be delivered to the prosecuting attorney and the (~~(superior)~~) court (~~(of the county)~~) in which the indictment, information, or complaint is pending written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of the indictment, information, or complaint (~~(+ PROVIDED, That for)~~). The following time periods shall be excluded from the 120-day calculation:

(a) Arraignment, pretrial proceedings, trial, and sentencing on an unrelated charge in a different county than the court where the charge is pending;

(b) Proceedings related to competency to stand trial on the pending charge, from the entry of an evaluation order to the entry of a court order finding the person competent to proceed; and

(c) Time during which the person is detained in a federal jail or prison and subject to conditions of release not imposed by the state of Washington.

(2) The superintendent or the superintendent's designee who provides the certificate under subsection (4) of this section shall inform any prosecuting attorney or court requesting transportation of the person to resolve an untried indictment, information, or complaint of the person's current location and availability for trial. If the person is unavailable for

transportation due to court proceedings in another county, the superintendent shall inform the prosecuting attorney or court when the person becomes available for transportation and provide a new certificate containing the information under subsection (4) of this section.

(3) For good cause shown in open court, with the ~~((prisoner))~~ person or his or her counsel ~~((shall have))~~ having the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) The request of the ~~((prisoner))~~ person shall be accompanied by a certificate of the superintendent or the superintendent's designee having custody of the ~~((prisoner))~~ person, stating the term of commitment under which the ~~((prisoner))~~ person is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the ~~((time of parole eligibility))~~ earned release date of the ~~((prisoner))~~ person, and any decisions of the indeterminate sentence review board relating to the ~~((prisoner))~~ person.

~~((2))~~ (5) The written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the ~~((prisoner))~~ person to the superintendent or the superintendent's designee having custody of him or her, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior, district, municipal, or juvenile court by certified mail, return receipt requested.

~~((3))~~ (6) The superintendent or the superintendent's designee having custody of the ~~((prisoner))~~ person shall promptly inform him or her in writing of the source and contents of any untried indictment, information, or complaint against him or her concerning which the superintendent or the superintendent's designee has knowledge and of his or her right to make a request for final disposition thereof.

~~((4))~~ (7) Escape from custody by the ~~((prisoner))~~ person subsequent to his or her execution of the request for final disposition referred to in subsection (1) of this section shall void the request.

**Sec. 2.** RCW 36.70A.200 and 2020 c 128 s 1 and 2020 c 20 s 1027 are each reenacted and amended to read as follows:

(1) (a) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, community facilities as defined in RCW 72.05.020, and secure community transition facilities as defined in RCW 71.09.020.

(b) Unless a facility is expressly listed in (a) of this subsection, essential public facilities do not include facilities that are operated by a private entity in which persons are detained in custody under process of law pending the outcome of legal proceedings but are not used for punishment, correction, counseling, or rehabilitation following the conviction of a criminal offense. Facilities included under this subsection (1)(b) shall not include facilities detaining persons under RCW 71.09.020 (6) or (15) or chapter 10.77 or 71.05 RCW.

(c) The department of children, youth, and families may not attempt to site new community facilities as defined in RCW 72.05.020 east of the crest of the Cascade mountain range unless there is an equal or greater number of sited community facilities as defined in RCW 72.05.020 on the western side of the crest of the Cascade mountain range.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary



to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW 42.17A.005, corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with RCW 71.09.341.

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW 43.155.070 or 70A.135.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(3); or

(c) A basis for any petition under RCW 36.70A.280 or for any private cause of action.

NEW SECTION. **Sec. 3.** A new section is added to chapter 13.40 RCW to read as follows:

(1) At least 30 days before release from a residential facility, the secretary shall send written notice of the planned release to the person's health care insurance provider. The notice shall include the person's current location and contact information as well as the person's expected location and contact information upon release. The notice shall not disclose the person's

incarceration status unless their consent is given.

(2) If the person is not enrolled in a health insurance program, the secretary and the health care authority shall assist the person in obtaining coverage for which they are eligible in accordance with the time frames specified in subsection (1) of this section.

(3) The secretary may share with the health insurance provider additional health information related to the person to assist with care coordination and continuity of care consistent with RCW 70.02.230(2)(u) and other provisions of chapter 70.02 RCW."

Correct the title.

Signed by Representatives Senn, Chair; Harris-Talley, Vice Chair; Rule, Vice Chair; Callan; Goodman; Ortiz-Self and Wicks.

MINORITY recommendation: Do not pass. Signed by Representatives Klippert and Young.

MINORITY recommendation: Without recommendation. Signed by Representatives Dent, Ranking Minority Member; Chase, Assistant Ranking Minority Member; McCaslin, Assistant Ranking Minority Member and Eslick.

Referred to Committee on Appropriations.

March 18, 2021

ESSB 5122 Prime Sponsor, Committee on Human Services, Reentry & Rehabilitation: Concerning the jurisdiction of juvenile court. Reported by Committee on Children, Youth & Families

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that the goal of the juvenile justice system should be to protect public safety, connect youth with age-appropriate services that reduce the risk of recidivism, and provide meaningful rehabilitation so all youth can have the opportunity for success in life. The legislature declares that responses to problematic behaviors of youth should be guided by evidence-based practices and that policy changes to the system should be strongly rooted in eliminating racial inequities.

The legislature recognizes that a scientific consensus has developed that demonstrates that youth continue to develop neurologically until age 26. The legislature finds that youth ages eight through 12 are less capable of making fully informed decisions and youth ages 18 and 19 are particularly susceptible to outside factors influencing their decision making.

The legislature recognizes that on January 18, 2021, the Washington state board of health released a review regarding the health impacts of raising the age of the juvenile court's jurisdiction to likely decrease the juvenile criminal legal system's involvement for some youth ages eight through 12 and to likely decrease the adult criminal legal system's involvement for some emerging adults ages 18 and 19. The board further found very strong evidence that this would decrease juvenile recidivism and improve health outcomes, access to employment opportunities, housing access, and economic stability.

The legislature intends to amend jurisdiction of juvenile court to include youth ages 13 through 19, with certain exceptions, and consider expanding juvenile court jurisdiction to include individuals over age 19. The legislature recognizes the important role that local governments play in ensuring access to justice in the juvenile court system. The legislature recognizes that amended jurisdiction in juvenile court may increase expenses for juvenile court systems despite significant offset savings in the adult system through reduced adult caseloads. The legislature intends to partner with local governments, courts, and other stakeholders to ensure successful expansion of juvenile court jurisdiction. The legislature therefore resolves to convene the raise the age juvenile justice task force to examine and plan for implementation of expanded juvenile court jurisdiction.

NEW SECTION. Sec. 2. A new section is added to chapter 43.216 RCW to read as follows:

(1) The raise the age juvenile justice task force is established, with members as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(c) The president of the senate and the speaker of the house of representatives jointly shall appoint one member as follows unless specified representing the:

(i) Juvenile rehabilitation administration;

(ii) Department of corrections;

(iii) Washington association of sheriffs and police chiefs;

(iv) Office of public defense;

(v) Washington association of prosecuting attorneys;

(vi) District and municipal court judges' association;

(vii) Administrative office of the courts;

(viii) Washington state association of counties, with one member representing the Washington state association of counties generally and one member representing the Washington state association of counties having expertise in county facilities;

(ix) Association of Washington cities;

(x) Washington state council of county and city employees;

(xi) Office of the superintendent of public instruction;

(xii) Minority and justice commission;

(xiii) Superior court judges' association, one member representing western Washington and one representing eastern Washington;

(xiv) Washington association of juvenile court administrators, one member representing western Washington and one representing eastern Washington;

(xv) Washington state school directors' association, a member representing a school district that provides education services to a juvenile rehabilitation residential facility;

(xvi) Department of health;

(xvii) Statewide organization representing public defense attorneys;

(xviii) Department of children, youth, and families;

(xix) Communities who have been impacted or served by the juvenile justice system, with two members from these communities;

(xx) Medical community with expertise in adolescent brain development;

(xxi) Organizations representing the interests of incarcerated persons, with two representatives each representing different programs and serving different constituencies; and

(xxii) Organizations representing the interests of youth involved in the juvenile justice system, with three representatives from different regions of the state or representing different programs.

(2) The legislative membership shall convene the initial meeting of the task force no later than September 1, 2021. The task force shall choose its chair from among its legislative membership.

(3) Staff support for the task force must be provided by the office of juvenile justice.

(4) Taking into consideration research and case law regarding adolescent brain development, the task force shall consider and provide recommendations regarding:

(a) Implementation of juvenile jurisdiction expansion to encompass persons 18 years old and 19 years old; and

(b) Expansion of juvenile court jurisdiction to include ages above 19 years of age.

(5) On or before December 1, 2022, the task force shall report to the governor and appropriate committees of the legislature on the status and plan for the expansion, including necessary funding, essential personnel and programmatic resources, measures necessary to avoid a negative impact on the state's child protection response, and specific milestones related to operations and policy, including:

(a) A timeline for structural and systemic changes within the juvenile justice system for the juvenile rehabilitation division, the department of children, youth, and families, the department of corrections, and the juvenile court pursuant to chapter 13.04 RCW;

(b) An operations and business plan that defines benchmarks, including possible changes to resource allocations;

(c) Review of the estimated costs avoided by local and state governments with the reduction of recidivism and an analysis of cost savings reinvestment options;

(d) Anticipated county and state facility changes and modifications, including a timeline or planning needed to successfully expand juvenile court jurisdiction;

(e) Estimated new costs incurred to provide juvenile justice services to persons 18 years old and 19 years old; and

(f) A clearly defined path for geographic consistency given varying local resources, staff, physical plant limitations, training, services, and partnering needs.

(6) (a) Legislative members of the task force may be reimbursed for travel expenses in accordance with RCW 44.04.120. Except as provided in (b) of this subsection, nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(b) Nonlegislative members of the task force who demonstrate financial hardship must be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060, as well as other expenses as needed for each day a nonlegislative task force member attends a task force meeting to provide consultative assistance.

(7) The expenses of the task force must be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(8) The task force must hold at least one meeting a month. The task force may form work groups and may consult experts in fields that will inform and assist the work of the task force.

(9) This section expires January 1, 2023.

**Sec. 3.** RCW 9A.04.050 and 2011 c 336 s 347 are each amended to read as follows:

Children under the age of (~~eight~~) 13 years are incapable of committing crime. Children of eight (~~and under~~) through twelve years of age who are charged with murder in the first or second degree are presumed to be incapable of committing crime, but this presumption may be (~~removed by proof~~) rebutted by clear and convincing evidence that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he or she may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his or her examination by one or more physicians, whose opinion shall be competent evidence upon the question of his or her age.

**Sec. 4.** RCW 13.40.590 and 2002 c 237 s 10 are each amended to read as follows:

(1) The administrative office of the courts shall encourage the juvenile courts to work with cities and counties to implement, expand, or use youth court programs for juveniles who commit diversion-eligible offenses, civil, or traffic infractions. Program operations of youth court programs may be funded by government and private grants. Youth court programs are limited to those that:

(a) Are developed using the guidelines for creating and operating youth court programs developed by nationally recognized experts in youth court projects;

(b) Target offenders age (~~eight~~) 13 through (~~seventeen~~) 17; and

(c) Emphasize the following principles:

(i) Youth must be held accountable for their problem behavior;

(ii) Youth must be educated about the impact their actions have on themselves and others including their victims, their families, and their community;

(iii) Youth must develop skills to resolve problems with their peers more effectively; and

(iv) Youth should be provided a meaningful forum to practice and enhance newly developed skills.

(2) Youth court programs under this section may be established by private nonprofit organizations and schools, upon prior approval and under the supervision of juvenile court.

**Sec. 5.** RCW 13.40.600 and 2002 c 237 s 11 are each amended to read as follows:

(1) Youth courts have authority over juveniles ages (~~eight~~) 13 through (~~seventeen~~) 17 who:

(a) Along with their parent, guardian, or legal custodian, voluntarily and in writing request youth court involvement;

(b) Admit they have committed the offense they are referred for;

(c) Along with their parent, guardian, or legal custodian, waive any privilege against self-incrimination concerning the offense; and

(d) Along with their parent, guardian, or legal custodian, agree to comply with the youth court disposition of the case.

(2) Youth courts shall not exercise authority over youth who are under the continuing jurisdiction of the juvenile court for law violations, including a youth with a matter pending before the juvenile court but which has not yet been adjudicated.

(3) Youth courts may decline to accept a youth for youth court disposition for any reason and may terminate a youth from youth court participation at any time.

(4) A youth or his or her parent, guardian, or legal custodian may withdraw from the youth court process at any time.

(5) Youth courts shall give any victims of a juvenile the opportunity to be notified, present, and heard in any youth court proceeding.

NEW SECTION. **Sec. 6.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2021, in the omnibus appropriations act, this act is null and void."

Correct the title.

Signed by Representatives Senn, Chair; Harris-Talley, Vice Chair; Rule, Vice Chair; Callan; Goodman; Ortiz-Self and Wicks.

MINORITY recommendation: Do not pass. Signed by Representatives Dent, Ranking Minority Member; Chase, Assistant Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Eslick; Klippert and Young.

Referred to Committee on Appropriations.

March 19, 2021

**SSB 5127** Prime Sponsor, Committee on Law & Justice: Concerning courthouse facility dogs. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno; Davis; Entenman; Goodman; Kirby; Klippert; Orwall; Peterson; Thai; Valdez; Walen and Ybarra.

Referred to Committee on Rules for second reading.

March 18, 2021

**E2SSB 5128** Prime Sponsor, Committee on Ways & Means: Concerning student transportation funding during a local, state, or national emergency. Reported by Committee on Education

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature recognizes that the COVID-19 pandemic has significantly changed the delivery of education across the state, as school districts transition to remote learning environments to protect the health of students and staff. The legislature also recognizes that the role of transportation services has evolved alongside remote learning programs to help students equitably access the instructional program of basic education. As permitted by emergency proclamation, many school districts have adapted to remote learning by transporting meals, learning materials, and technology supports directly to students' homes or neighborhoods. Other school districts have used transportation resources to bring students to learning centers or other agencies where support services are provided.

This flexibility has allowed school districts to creatively use the resources at their disposal to equitably address the needs of students during an ongoing emergency.

With this act, the legislature intends to preserve this principle of flexibility for qualifying transportation services during a future local, state, or national emergency.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.160 RCW to read as follows:

(1) If a school or school district is providing full remote or partial remote instruction under the authority of RCW 28A.150.290 due to a local, state, or national emergency that causes a substantial disruption to full in-person instruction then, in addition to the transportation services allowed under this chapter, the district may use student transportation allocations to provide the following expanded services to students, regardless of whether those students would qualify as eligible students under RCW 28A.160.160:

(a) Delivery of educational services necessary to provide students with the opportunity to equitably access educational services during the period of remote instruction. Delivery of educational services include the transportation of materials, hardware, and other supports that assist students in accessing remote instruction, internet connectivity, or the curriculum;

(b) Delivery of meals to students;

(c) Providing for the transportation of students to and from learning centers or other public or private agencies where educational and support services are being provided to students during the period of remote instruction. "Providing for" includes the provision of payments to allow students to use public transit to access the educational and support services; and

(d) Providing for the transportation of students to and from interscholastic and extracurricular activities.

(2) Nothing in this section is intended to limit a district's ability to use transportation allocations to pay for fixed transportation costs, such as school bus maintenance and basic

administrative, regulatory, safety, or operational expenses.

(3) If a district provides expanded services under subsection (1) of this section, the district must track by a separate accounting code the expenditures incurred by the district in providing such services. This data must be included in the report required under RCW 28A.160.170(2).

**Sec. 3.** RCW 28A.160.160 and 2009 c 548 s 305 are each amended to read as follows:

For purposes of RCW 28A.160.150 through 28A.160.190, except where the context shall clearly indicate otherwise, the following definitions apply:

(1) "Eligible student" means any student served by the transportation program of a school district or compensated for individual transportation arrangements authorized by RCW 28A.160.030 whose route stop is outside the walk area for a student's school, except if the student to be transported is disabled under RCW 28A.155.020 and is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from the school or agency where special education services are provided, in which case no mileage distance restriction applies.

(2) "Superintendent" means the superintendent of public instruction.

(3) "To and from school" means the transportation of students for the following purposes:

(a) Transportation to and from route stops and schools;

(b) Transportation to and from schools pursuant to an interdistrict agreement pursuant to RCW 28A.335.160;

(c) Transportation of students between schools and learning centers for instruction specifically required by statute; (~~and~~)

(d) Transportation of students with disabilities to and from schools and agencies for special education services; and

(e) Transportation of students to and from interscholastic and extracurricular activities under section 2 of this act.

Academic extended day transportation for the instructional program of basic education under RCW 28A.150.220 shall be considered part of transportation of students "to and from school" for the purposes of this section. Transportation for field trips may not be considered part of transportation of students "to and from school" under this section.

(4) "Transportation services" for students living within the walk area includes the coordination of walk-to-school programs, the funding of crossing guards, and matching funds for local and state transportation projects intended to mitigate hazardous walking conditions. Priority for transportation services shall be given to students in grades kindergarten through five.

(5) As used in this section, "walk area" means that area around a school with an adequate roadway configuration to provide students access to school with a walking distance of less than one mile. Mileage must be measured along the shortest roadway or maintained public walkway where hazardous conditions do not exist. The hazardous conditions must be documented by a process established in rule by the superintendent of public instruction and must include roadway, environmental, and social conditions. Each elementary school shall identify walk routes within the walk area.

**Sec. 4.** RCW 28A.160.170 and 2009 c 548 s 306 are each amended to read as follows:

Each district shall submit three times each year to the superintendent of public instruction during October, February, and May of each year a report containing the following:

(1) (a) The number of eligible students transported to and from school as provided for in RCW 28A.160.150, along with identification of stop locations and school locations, and (b) the number of miles driven for pupil transportation services as authorized in RCW 28A.160.150 the previous school year; and

(2) Other operational data and descriptions as required by the superintendent to determine allocation requirements for each district. The superintendent shall require that districts separate the costs of operating the program for the transportation of eligible students to and from school as defined by RCW 28A.160.160(3) (~~from~~), pupil non-to-and-from-school

transportation costs, and costs to provide expanded services under section 2(1) of this act in the annual financial statement. The cost, quantity, and type of all fuel purchased by school districts for use in to-and-from-school transportation shall be included in the annual financial statement.

Each district shall submit the information required in this section on a timely basis as a condition of the continuing receipt of school transportation moneys.

NEW SECTION. Sec. 5. A new section is added to chapter 28A.710 RCW to read as follows:

Section 2 of this act governs school operation and management under RCW 28A.710.040 and applies to charter schools established under this chapter.

NEW SECTION. Sec. 6. A new section is added to chapter 28A.715 RCW to read as follows:

Section 2 of this act governs school operation and management under RCW 28A.715.020 and applies to state-tribal compact schools established under this chapter.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Santos, Chair; Dolan, Vice Chair; Ybarra, Ranking Minority Member; Berg; Bergquist; Callan; McCaslin; Ortiz-Self; Rude; Steele and Stonier.

MINORITY recommendation: Without recommendation. Signed by Representatives Walsh, Assistant Ranking Minority Member and McEntire.

Referred to Committee on Rules for second reading.

March 19, 2021

SB 5133 Prime Sponsor, Senator Conway: Concerning the definition of confidential employee for the purposes of state collective bargaining. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair;

Mosbrucker, Assistant Ranking Minority Member; Bronoske and Ortiz-Self.

MINORITY recommendation: Without recommendation. Signed by Representative Harris.

MINORITY recommendation: Do not pass. Signed by Representative Hoff, Ranking Minority Member.

Referred to Committee on Appropriations.

March 19, 2021

SB 5146 Prime Sponsor, Senator Van De Wege: Authorizing the fish and wildlife commission to indemnify the federal government as a condition of securing certain funds. Reported by Committee on Rural Development, Agriculture & Natural Resources

MAJORITY recommendation: Do pass. Signed by Representatives Chapman, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Fitzgibbon; Klicker; Kloba; Kretz; Lekanoff; McEntire; Morgan; Orcutt; Ramos; Schmick and Springer.

Referred to Committee on Capital Budget.

March 19, 2021

SSB 5185 Prime Sponsor, Committee on Law & Justice: Concerning capacity to provide informed consent for health care decisions. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 7.70.065 and 2020 c 312 s 705 are each amended to read as follows:

(1) Informed consent for health care for a patient who (~~is a minor or, to consent~~) does not have the capacity to make a health care decision may be obtained from a person authorized to consent on behalf of such patient. For purposes of this section, a person who is of the age of consent to make a particular health care decision is presumed to have capacity, unless a health care provider reasonably determines the person lacks capacity to make the health care decision due to the person's demonstrated inability to understand and appreciate the nature and consequences of a health condition, the

proposed treatment, including the anticipated results, benefits, risks, and alternatives to the proposed treatment, including nontreatment, and reach an informed decision as a result of cognitive impairment; and the health care provider documents the basis for the determination in the medical record.

(a) Persons authorized to provide informed consent to health care on behalf of ~~((a))~~ an adult patient who ~~((has been placed under a guardianship under RCW 11.130.265 a minor or,))~~ does not have the capacity to make a health care decision shall be a member of one of the following classes of persons in the following order of priority:

(i) The appointed guardian of the patient, if any;

(ii) The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;

(iii) The patient's spouse or state registered domestic partner;

(iv) Children of the patient who are at least eighteen years of age;

(v) Parents of the patient;

(vi) Adult brothers and sisters of the patient;

(vii) Adult grandchildren of the patient who are familiar with the patient;

(viii) Adult nieces and nephews of the patient who are familiar with the patient;

(ix) Adult aunts and uncles of the patient who are familiar with the patient; and

(x) (A) An adult who:

(I) Has exhibited special care and concern for the patient;

(II) Is familiar with the patient's personal values;

(III) Is reasonably available to make health care decisions;

(IV) Is not any of the following: A physician to the patient or an employee of the physician; the owner, administrator, or employee of a health care facility, nursing home, or long-term care facility where the patient resides or receives care; or a person who

receives compensation to provide care to the patient; and

(V) Provides a declaration under (a) (x) (B) of this subsection.

(B) An adult who meets the requirements of (a) (x) (A) of this subsection shall provide a declaration, which is effective for up to six months from the date of the declaration, signed and dated under penalty of perjury pursuant to chapter 5.50 RCW, that recites facts and circumstances demonstrating that he or she is familiar with the patient and that he or she:

(I) Meets the requirements of (a) (x) (A) of this subsection;

(II) Is a close friend of the patient;

(III) Is willing and able to become involved in the patient's health care;

(IV) Has maintained such regular contact with the patient as to be familiar with the patient's activities, health, personal values, and morals; and

(V) Is not aware of a person in a higher priority class willing and able to provide informed consent to health care on behalf of the patient.

(C) A health care provider may, but is not required to, rely on a declaration provided under (a) (x) (B) of this subsection. The health care provider or health care facility where services are rendered is immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration provided in compliance with (a) (x) (B) of this subsection.

(b) If the health care provider seeking informed consent for proposed health care of the patient who ~~((has been placed under a guardianship under RCW 11.130.265,))~~ does not have the capacity to make a particular health care decision, other than a person who is under the age of consent for the particular health care decision, makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descending priority. However, no person under this section may provide informed consent to health care:



(i) If a person of higher priority under this section has refused to give such authorization; or

(ii) If there are two or more individuals in the same class and the decision is not unanimous among all available members of that class.

(c) Before any person authorized to provide informed consent on behalf of a patient who (~~has been placed under a guardianship under RCW 11.130.265,~~) does not have the capacity to make a health care decision exercises that authority, the person must first determine in good faith that that patient, if (~~competent~~) he or she had the capacity to make the health care decision, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests. This subsection (1)(c) does not apply to informed consent provided on behalf of a patient who has not reached the age of consent required to make a particular health care decision.

(d) No rights under Washington's death with dignity act, chapter 70.245 RCW, may be exercised through a person authorized to provide informed consent to health care on behalf of a patient who (~~is a minor or has been placed under a guardianship under RCW 11.130.265~~) does not have the capacity to make a health care decision.

(2) Informed consent for health care, including mental health care, for a patient who is under the age of majority and who is not otherwise authorized to provide informed consent, may be obtained from a person authorized to consent on behalf of such a patient.

(a) Persons authorized to provide informed consent to health care, including mental health care, on behalf of a patient who is under the age of majority and who is not otherwise authorized to provide informed consent, shall be a member of one of the following classes of persons in the following order of priority:

(i) The appointed guardian, or legal custodian authorized pursuant to Title 26 RCW, of the minor patient, if any;

(ii) A person authorized by the court to consent to medical care for a child in

out-of-home placement pursuant to chapter 13.32A or 13.34 RCW, if any;

(iii) Parents of the minor patient;

(iv) The individual, if any, to whom the minor's parent has given a signed authorization to make health care decisions for the minor patient; and

(v) A competent adult representing himself or herself to be a relative responsible for the health care of such minor patient or a competent adult who has signed and dated a declaration under penalty of perjury pursuant to chapter 5.50 RCW stating that the adult person is a relative responsible for the health care of the minor patient. Such declaration shall be effective for up to six months from the date of the declaration.

(b)(i) Informed consent for health care on behalf of a patient who is under the age of majority and who is not otherwise authorized to provide informed consent may be obtained from a school nurse, school counselor, or homeless student liaison when:

(A) Consent is necessary for nonemergency, outpatient, primary care services, including physical examinations, vision examinations and eyeglasses, dental examinations, hearing examinations and hearing aids, immunizations, treatments for illnesses and conditions, and routine follow-up care customarily provided by a health care provider in an outpatient setting, excluding elective surgeries;

(B) The minor patient meets the definition of a "homeless child or youth" under the federal McKinney-Vento homeless education assistance improvements act of 2001, P.L. 107-110, January 8, 2002, 115 Stat. 2005; and

(C) The minor patient is not under the supervision or control of a parent, custodian, or legal guardian, and is not in the care and custody of the department of social and health services.

(ii) A person authorized to consent to care under this subsection (2)(b) and the person's employing school or school district are not subject to administrative sanctions or civil damages resulting from the consent or nonconsent for care, any care, or payment for any care, rendered pursuant to this section. Nothing in this section prevents a health care facility or a health care

provider from seeking reimbursement from other sources for care provided to a minor patient under this subsection (2) (b).

(iii) Upon request by a health care facility or a health care provider, a person authorized to consent to care under this subsection (2) (b) must provide to the person rendering care a declaration signed and dated under penalty of perjury pursuant to chapter 5.50 RCW stating that the person is a school nurse, school counselor, or homeless student liaison and that the minor patient meets the elements under (b) (i) of this subsection. The declaration must also include written notice of the exemption from liability under (b) (ii) of this subsection.

(c) A health care provider may, but is not required to, rely on the representations or declaration of a person claiming to be a relative responsible for the care of the minor patient, under (a) (v) of this subsection, or a person claiming to be authorized to consent to the health care of the minor patient under (b) of this subsection, if the health care provider does not have actual notice of the falsity of any of the statements made by the person claiming to be a relative responsible for the health care of the minor patient, or person claiming to be authorized to consent to the health care of the minor patient.

(d) A health care facility or a health care provider may, in its discretion, require documentation of a person's claimed status as being a relative responsible for the health care of the minor patient, or a person claiming to be authorized to consent to the health care of the minor patient under (b) of this subsection. However, there is no obligation to require such documentation.

(e) The health care provider or health care facility where services are rendered shall be immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration signed under penalty of perjury pursuant to chapter 5.50 RCW stating that the adult person is a relative responsible for the health care of the minor patient under (a) (v) of this subsection, or a person claiming to be authorized to consent to the health care of the minor patient under (b) of this subsection.

(3) For the purposes of this section, "health care," "health care provider," and "health care facility" shall be defined as established in RCW 70.02.010.

(4) A person who knowingly provides a false declaration under this section shall be subject to criminal penalties under chapter 9A.72 RCW.

**Sec. 2.** RCW 7.70.050 and 2011 c 336 s 252 are each amended to read as follows:

(1) The following shall be necessary elements of proof that injury resulted from health care in a civil negligence case or arbitration involving the issue of the alleged breach of the duty to secure an informed consent by a patient or his or her representatives against a health care provider:

(a) That the health care provider failed to inform the patient of a material fact or facts relating to the treatment;

(b) That the patient consented to the treatment without being aware of or fully informed of such material fact or facts;

(c) That a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts;

(d) That the treatment in question proximately caused injury to the patient.

(2) Under the provisions of this section a fact is defined as or considered to be a material fact, if a reasonably prudent person in the position of the patient or his or her representative would attach significance to it deciding whether or not to submit to the proposed treatment.

(3) Material facts under the provisions of this section which must be established by expert testimony shall be either:

(a) The nature and character of the treatment proposed and administered;

(b) The anticipated results of the treatment proposed and administered;

(c) The recognized possible alternative forms of treatment; or

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment administered and in the recognized possible alternative forms of treatment, including nontreatment.

(4) If a recognized health care emergency exists and the patient (~~is not legally competent~~) does not have the capacity to give an informed consent and/or a person legally authorized to consent on behalf of the patient is not readily available, his or her consent to required treatment will be implied.

**Sec. 3.** RCW 7.70.060 and 2012 c 101 s 1 are each amended to read as follows:

(1) If a patient (~~while legally competent~~) who has capacity to make a health care decision, or his or her representative if he or she (~~is not competent~~) does not have the capacity to make a health care decision, signs a consent form which sets forth the following, the signed consent form shall constitute prima facie evidence that the patient gave his or her informed consent to the treatment administered and the patient has the burden of rebutting this by a preponderance of the evidence:

(a) A description, in language the patient could reasonably be expected to understand, of:

(i) The nature and character of the proposed treatment;

(ii) The anticipated results of the proposed treatment;

(iii) The recognized possible alternative forms of treatment; and

(iv) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment, including nontreatment;

(b) Or as an alternative, a statement that the patient elects not to be informed of the elements set forth in (a) of this subsection.

(2) If a patient (~~while legally competent~~) who has capacity to make a health care decision, or his or her representative if he or she (~~is not competent~~) does not have the capacity to make a health care decision, signs an acknowledgment of shared decision making as described in this section, such acknowledgment shall constitute prima facie evidence that the patient gave his or her informed consent to the treatment administered and the patient has the burden of rebutting this by clear and convincing evidence. An acknowledgment of shared decision making shall include:

(a) A statement that the patient, or his or her representative, and the health care provider have engaged in shared decision making as an alternative means of meeting the informed consent requirements set forth by laws, accreditation standards, and other mandates;

(b) A brief description of the services that the patient and provider jointly have agreed will be furnished;

(c) A brief description of the patient decision aid or aids that have been used by the patient and provider to address the needs for (i) high-quality, up-to-date information about the condition, including risk and benefits of available options and, if appropriate, a discussion of the limits of scientific knowledge about outcomes; (ii) values clarification to help patients sort out their values and preferences; and (iii) guidance or coaching in deliberation, designed to improve the patient's involvement in the decision process;

(d) A statement that the patient or his or her representative understands: The risk or seriousness of the disease or condition to be prevented or treated; the available treatment alternatives, including nontreatment; and the risks, benefits, and uncertainties of the treatment alternatives, including nontreatment; and

(e) A statement certifying that the patient or his or her representative has had the opportunity to ask the provider questions, and to have any questions answered to the patient's satisfaction, and indicating the patient's intent to receive the identified services.

(3) As used in this section, "shared decision making" means a process in which the physician or other health care practitioner discusses with the patient or his or her representative the information specified in subsection (2) of this section with the use of a patient decision aid and the patient shares with the provider such relevant personal information as might make one treatment or side effect more or less tolerable than others.

(4) (a) As used in this section, "patient decision aid" means a written, audiovisual, or online tool that provides a balanced presentation of the condition and treatment options, benefits, and harms, including, if appropriate, a discussion of the limits of scientific

knowledge about outcomes, for any medical condition or procedure, including abortion as defined in RCW 9.02.170 and:

(i) (A) That is certified by one or more national certifying organizations recognized by the medical director of the health care authority; or

(B) That has been evaluated based on the international patient decision aid standards by an organization located in the United States or Canada and has a current overall score satisfactory to the medical director of the health care authority; or

(ii) That, if a current evaluation is not available from an organization located in the United States or Canada, the medical director of the health care authority has independently assessed and certified based on the international patient decision aid standards.

(b) The health care authority may charge a fee to the certification applicant to defray the costs of the assessment and certification under this subsection.

(5) Failure to use a form or to engage in shared decision making, with or without the use of a patient decision aid, shall not be admissible as evidence of failure to obtain informed consent. There shall be no liability, civil or otherwise, resulting from a health care provider choosing either the signed consent form set forth in subsection (1)(a) of this section or the signed acknowledgment of shared decision making as set forth in subsection (2) of this section.

**Sec. 4.** RCW 69.50.317 and 2019 c 314 s 17 are each amended to read as follows:

(1) Any practitioner who writes the first prescription for an opioid during the course of treatment to any patient must, under professional rules, discuss the following with the patient:

(a) The risks of opioids, including risk of dependence and overdose;

(b) Pain management alternatives to opioids, including nonopioid pharmacological treatments, and nonpharmacological treatments available to the patient, at the discretion of the practitioner and based on the medical condition of the patient; and

(c) A written copy of the warning language provided by the department under RCW 43.70.765.

(2) If the patient is under eighteen years old or (~~is not competent~~) does not have the capacity to make a health care decision, the discussion required by subsection (1) of this section must include the patient's parent, guardian, or the person identified in RCW 7.70.065, unless otherwise provided by law.

(3) The practitioner shall document completion of the requirements in subsection (1) of this section in the patient's health care record.

(4) To fulfill the requirements of subsection (1) of this section, a practitioner may designate any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to conduct the discussion.

(5) Violation of this section constitutes unprofessional conduct under chapter 18.130 RCW.

(6) This section does not apply to:

(a) Opioid prescriptions issued for the treatment of pain associated with terminal cancer or other terminal diseases, or for palliative, hospice, or other end-of-life care of where the practitioner determines the health, well-being, or care of the patient would be compromised by the requirements of this section and documents such basis for the determination in the patient's health care record; or

(b) Administration of an opioid in an inpatient or outpatient treatment setting.

(7) This section does not apply to practitioners licensed under chapter 18.92 RCW.

(8) The department shall review this section by March 31, 2026, and report to the appropriate committees of the legislature on whether this section should be retained, repealed, or amended.

**Sec. 5.** RCW 70.02.220 and 2017 3rd sp.s. c 6 s 332 are each amended to read as follows:

(1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this section, RCW 70.02.210, or chapter 70.24 RCW.

(2) No person may disclose or be compelled to disclose information and records related to sexually transmitted diseases, except as authorized by this section, RCW 70.02.210, 70.02.205, or chapter 70.24 RCW. A person may disclose information related to sexually transmitted diseases about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is to:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor fourteen years of age or over and otherwise ~~((competent))~~ capable of making health care decisions;

(b) The state ~~((public))~~ health officer as defined in RCW 70.24.017, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(c) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that was provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(d) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, so long as the record was obtained by means of court-ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(e) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure must: (i) Limit disclosure to those parts of the patient's record

deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services;

(f) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(g) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board of health in rule pursuant to RCW 70.24.340~~((4))~~, who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340~~((4))~~, if a state or local public health officer performs the test;

(h) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection must be confidential and may not be released or available to persons who are not involved in handling or determining medical claims payment; and

(i) A department of children, youth, and families worker, a child-placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of children, youth, and families or a licensed child-placing agency. This information may also be received by a person responsible for providing

residential care for such a child when the department of social and health services, the department of children, youth, and families, or a licensed child-placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2) (d) of this section, is governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving

facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370, must be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to blood-borne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure must also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member must also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition, as defined in RCW 70.24.017, may not be disclosed to a staff person except as provided in this section and RCW 70.02.050(1) (d) and 70.24.340(~~(4)~~). A health care administrator or infection control coordinator may provide the staff member

with information about how to obtain the offender's or detainee's test results under this section and RCW 70.02.050(1)(d) and 70.24.340(~~(4)~~).

(5) The requirements of this section do not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor do they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(6) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW must be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. The disclosure must be accompanied by appropriate counseling, including information regarding follow-up testing.

(7) A person, including a health care facility or health care provider, shall disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease and information and records related to sexually transmitted diseases to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal certification or registration rules or laws; or when needed to protect the public health. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42.56 RCW.

**NEW SECTION. Sec. 6.** This act takes effect January 1, 2022."

Correct the title.

Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno; Davis; Entenman; Goodman; Kirby; Klippert; Orwall; Peterson; Thai; Valdez; Walen and Ybarra.

Referred to Committee on Rules for second reading.

March 19, 2021

**ESSB 5190** Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Providing health care workers with presumptive benefits during a public health emergency. Reported by Committee on Labor & Workplace Standards

**MAJORITY recommendation:** Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"Sec. 1.** RCW 50.04.294 and 2006 c 13 s 9 are each amended to read as follows:

With respect to claims that have an effective date on or after January 4, 2004:

(1) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;

(b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or

(d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The following acts are considered misconduct because the acts signify a willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include, but are not limited to:

(a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) Repeated inexcusable tardiness following warnings by the employer;

(c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(d) Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(g) Violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

(3) "Misconduct" does not include:

(a) Inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(b) Inadvertence or ordinary negligence in isolated instances; (~~(e)~~)

(c) Good faith errors in judgment or discretion; or

(d)(i) A health care worker who left work for the period of quarantine consistent with the recommended guidance from the United States centers for disease control and prevention or subject to the direction of the state or local health jurisdiction because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(ii) For purposes of this subsection, "health care worker" means an individual who worked at a health care facility as defined in RCW 9A.50.010, and was directly involved in the delivery of health services.

(4) "Gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee.

**Sec. 2.** RCW 50.20.010 and 2021 c 2 s 8 are each amended to read as follows:

(1) An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that:

(a) The individual has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commissioner finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

(b) The individual has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(c) The individual is able to work, and is available for work in any trade, occupation, profession, or business for which the individual is reasonably fitted.

(i) To be available for work, an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents. If a labor agreement or dispatch rules apply, customary trade practices must be in accordance with the applicable agreement or rules.

(ii) Until June 30, 2021, an individual under quarantine or isolation, as defined by the department of health, as directed by a public health official during the novel coronavirus outbreak pursuant to the gubernatorial declaration of emergency of February 29, 2020, will meet the requirements of this subsection (1)(c) if the individual is able to perform, available to perform, and actively seeking work which can be performed while under quarantine or isolation.

(iii) For the purposes of this subsection, "customary trade practices" includes compliance with an electrical apprenticeship training program that includes a recognized referral system under apprenticeship program standards approved by the Washington state apprenticeship and training council;

(d) The individual has been unemployed for a waiting period of one week;



(e) The individual participates in reemployment services if the individual has been referred to reemployment services pursuant to the profiling system established by the commissioner under RCW 50.20.011, unless the commissioner determines that:

(i) The individual has completed such services; or

(ii) There is justifiable cause for the claimant's failure to participate in such services; and

(f) As to weeks which fall within an extended benefit period as defined in RCW 50.22.010, the individual meets the terms and conditions of RCW 50.22.020 with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

(2) An individual's eligibility period for regular benefits shall be coincident to his or her established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits.

(3)(a) For any weeks of unemployment insurance benefits when the one week waiting period is fully paid or fully reimbursed by the federal government, subsection (1)(d) of this section is waived.

(b) For any weeks of unemployment insurance benefits when the one week waiting period is partially paid or partially reimbursed by the federal government, the department may, by rule, elect to waive subsection (1)(d) of this section.

(4) During the weeks of a public health emergency, an unemployed individual may also meet the requirements of subsection (1)(c) of this section if:

(a) The unemployed individual is able to perform, available to perform, and actively seeking suitable work which can be performed for an employer from the individual's home; and

(b) The unemployed individual or another individual residing with the unemployed individual is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual:

(i) Was in an age category that is defined as high risk for the disease that

is the subject of the public health emergency by:

(A) The federal centers for disease control and prevention;

(B) The department of health; or

(C) The equivalent agency in the state where the individual resides; or

(ii) Has an underlying health condition, verified as required by the department by rule, that is identified as a risk factor for the disease that is the subject of the public health emergency by:

(A) The federal centers for disease control and prevention;

(B) The department of health; or

(C) The equivalent agency in the state where the individual resides.

(5)(a) During the weeks of a public health emergency, an unemployed health care worker may also meet the requirements of subsection (1)(c) of this section if the unemployed health care worker described in RCW 50.20.050(3) and 50.29.021(1)(c)(iii) is able to perform, available to perform, and actively seeking suitable work which will commence after quarantine or which can be performed for an employer from the individual's home.

(b) For purposes of this subsection, "health care worker" means an individual who worked at a health care facility as defined in RCW 9A.50.010, and was directly involved in the delivery of health services.

**Sec. 3.** RCW 50.20.050 and 2021 c 2 s 10 are each amended to read as follows:

(1) With respect to separations that occur on or after September 6, 2009, and for separations that occur before April 4, 2021:

(a) A claimant shall be disqualified from benefits beginning with the first day of the calendar week in which the claimant left work voluntarily without good cause and thereafter for seven calendar weeks and until the claimant obtains bona fide work in employment covered by this title and earned wages in that employment equal to seven times the claimant's weekly benefit amount. Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of ~~(the)~~ the claimant's training and experience.

(b) A claimant has good cause and is not disqualified from benefits under (a) of this subsection only under the following circumstances:

- (i) The claimant has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve the claimant's employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated the claimant's employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) The claimant: (A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The claimant's usual compensation was reduced by twenty-five percent or more;

(vi) The claimant's usual hours were reduced by twenty-five percent or more;

(vii) The claimant's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the claimant's job classification and labor market;

(viii) The claimant's worksite safety deteriorated, the claimant reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The claimant left work because of illegal activities in the claimant's worksite, the claimant reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The claimant's usual work was changed to work that violates the claimant's religious convictions or sincere moral beliefs; or

(xi) The claimant left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the claimant begins active participation in the apprenticeship program.

(2) With respect to separations that occur on or after April 4, 2021:

(a) A claimant shall be disqualified from benefits beginning with the first day of the calendar week in which the claimant has left work voluntarily without good cause and thereafter for seven calendar weeks and until the claimant has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times the claimant's weekly benefit amount. Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the claimant's training and experience.

(b) A claimant has good cause and is not disqualified from benefits under (a) of this subsection only under the following circumstances:

(i) The claimant has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant made reasonable efforts to preserve the claimant's employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated the claimant's employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) The claimant: (A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The claimant's usual compensation was reduced by twenty-five percent or more;

(vi) The claimant's usual hours were reduced by twenty-five percent or more;

(vii) The claimant's worksite changed, such change caused a material increase in

distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The claimant's worksite safety deteriorated, the claimant reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The claimant left work because of illegal activities in the claimant's worksite, the claimant reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The claimant's usual work was changed to work that violates the claimant's religious convictions or sincere moral beliefs;

(xi) The claimant left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the claimant begins active participation in the apprenticeship program; or

(xii) During a public health emergency:

(A) The claimant was unable to perform the claimant's work for the employer from the claimant's home;

(B) The claimant is able to perform, available to perform, and can actively seek suitable work which can be performed for an employer from the claimant's home; and

(C) The claimant or another individual residing with the claimant is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual:

(I) Was in an age category that is defined as high risk for the disease that is the subject of the public health emergency by the federal centers for disease control and prevention, the department of health, or the equivalent agency in the state where the individual resides; or

(II) Has an underlying health condition, verified as required by the department by rule, that is identified as a risk factor for the disease that is the

subject of the public health emergency by the federal centers for disease control and prevention, the department of health, or the equivalent agency in the state where the individual resides.

(3) With respect to claims that occur on or after July 4, 2021, a claimant has good cause and is not disqualified from benefits under subsection (2)(a) of this section under the following circumstances, in addition to those listed under subsection (2)(b) of this section, if, during a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and left work for the period of quarantine consistent with the recommended guidance from the United States centers for disease control and prevention or subject to the direction of the state or local health jurisdiction because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(4) Notwithstanding subsection (1) of this section, a claimant who was simultaneously employed in full-time employment and part-time employment and is otherwise eligible for benefits from the loss of the full-time employment shall not be disqualified from benefits because the claimant:

(a) Voluntarily quit the part-time employment before the loss of the full-time employment; and

(b) Did not have prior knowledge that the claimant would be separated from full-time employment.

**Sec. 4.** RCW 50.29.021 and 2021 c 2 s 16 are each amended to read as follows:

(1)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio

that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; ~~((x))~~

(ii) RCW 50.20.050 (1)(b)(v) through (x) or (2)(b)(v) through (x); or

(iii) During a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(2) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer, except as provided in subsection (4) of this section.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b)(iv) or (xi) ~~((x))~~, (2)(b)(iv), (xi), or (xii), or (3), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) Benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (2)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(h) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(i)(i) Benefits paid during the one week waiting period when the one week waiting period is fully paid or fully reimbursed by the federal government shall not be charged to the experience rating account of any contribution paying employer.

(ii) In the event the one week waiting period is partially paid or partially reimbursed by the federal government, the

department may, by rule, elect to not charge, in full or in part, benefits paid during the one week waiting period to the experience rating account of any contribution paying employer.

(j) Benefits paid for all weeks starting with the week ending March 28, 2020, and ending with the week ending May 30, 2020, shall not be charged to the experience rating account of any contribution paying employer.

(3)(a) A contribution paying base year employer, except employers as provided in subsection (5) of this section, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster, or to the presence of any dangerous, contagious, or infectious disease that is the subject of a public health emergency at the employer's plant, building, worksite, or other facility;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW;

(v) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who qualified for two consecutive unemployment claims where wages were attributable to at least one employer who employed the individual in both base years. Benefit charge relief ceases when the employment relationship between the

employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW;

(vi) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035;

(vii) Worked for an employer for ~~((twenty))~~ 20 weeks or less, and was laid off at the end of temporary employment when that employee temporarily replaced a permanent employee receiving family or medical leave benefits under Title 50A RCW, and the layoff is due to the return of that permanent employee. This subsection (3) (a) (vii) applies to claims with an effective date on or after January 1, 2020; or

(viii) Was discharged because the individual was unable to satisfy a job prerequisite required by law or administrative rule.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

(4) When a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(5) An employer's experience rating account may not be relieved of charges for a benefit payment and an employer who reimburses the trust fund for benefit payments may not be credited for a benefit payment if a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure and the employer or employer's agent has a pattern of such failures. The commissioner has the authority to determine whether the employer has good cause under this subsection.

(a) For the purposes of this subsection, "adequately" means providing accurate information of sufficient quantity and quality that would allow a reasonable person to determine eligibility for benefits.

(b) (i) For the purposes of this subsection, "pattern" means a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to a claim or claims without establishing good cause for the failure, if the greater of the following calculations for an employer is met:

(A) At least three times in the previous two years; or

(B) Twenty percent of the total current claims against the employer.

(ii) If an employer's agent is utilized, a pattern is established based on each individual client employer that the employer's agent represents.

**NEW SECTION. Sec. 5.** If any part of sections 1 through 4 of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of sections 1 through 4 of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of sections 1 through 4 of this act. Rules adopted under sections 1 through 4 of this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the

granting of federal unemployment tax credits to employers in this state.

NEW SECTION. **Sec. 6.** A new section is added to chapter 51.32 RCW to read as follows:

(1) For health care employees who are covered under this title, there exists a prima facie presumption that any infectious or contagious diseases which are the subject of a public health emergency are occupational diseases under RCW 51.08.140 during a public health emergency.

(2) The health care employee must provide verification, as required by the department by rule, to the department or the self-insurer that the employee is in quarantine or has contracted the disease after exposure to the infectious or contagious disease that is the subject of the public health emergency.

(3) This presumption of occupational disease may be rebutted by clear and convincing evidence that:

(a) The exposure to the infectious or contagious disease which is the subject of the public health emergency occurred from other employment or nonemployment activities; or

(b) The employee was working from the employee's home or other location not under the employer's control, on leave from the employee's employment, or some combination thereof, for the period of quarantine outlined for the disease immediately prior to the employee's date of disease contraction or period of incapacity resulting from exposure to the disease which is the subject of the public health emergency.

(4) (a) RCW 51.32.090(7) does not apply to an occupational disease under this section except that no worker shall receive compensation for or during the day on which the occupational disease was contracted. For the purposes of this subsection (4), the day on which the occupational disease was contracted is whichever date occurs first of the following:

(i) The date that the worker first missed work due to symptoms of the infectious or contagious disease;

(ii) The date the worker was quarantined by a medical provider or public health official; or

(iii) The date the worker received a positive test result confirming contraction of the infectious or contagious disease.

(b) If leave or similar benefits are paid to the worker as part of a federal or state program for these employees during the public health emergency, total temporary disability benefits are not payable for the same period of time covered by this federal or state program.

(5) (a) When a determination involving the presumption established under this section is appealed to the board of industrial insurance appeals and the final decision allows the claim of benefits, the board of industrial insurance appeals shall order that all reasonable costs of the appeal, including attorneys' fees and witness fees, be paid to the worker or the worker's beneficiary by the opposing party. If the opposing party is a state fund employer or retrospective rating group, the costs and fees are paid by the employer or retrospective rating group.

(b) When a determination involving the presumption established in this section is appealed to any court and the final decision allows the claim for benefits, the court shall order that all reasonable costs of appeal, including attorneys' fees and witness fees, be paid to the worker or the worker's beneficiary by the opposing party. If the opposing party is a state fund employer or retrospective rating group, the costs and fees are paid by the employer or retrospective rating group.

(c) When reasonable costs of the appeal must be paid by the department as the opposing party in a state fund case, the costs shall be paid from the accident fund and charged to the costs of the claim.

(6) Costs of claims allowed under this section shall not affect the experience rating of employers insured by the state fund. When calculating assessments due to the department for which total claim costs are the basis, self-insured employers and self-insurance hospital groups formed under RCW 51.14.150 and 51.14.160 may deduct the cost of payments made under this section from the total of all claim costs reported.

(7) For purposes of this section:

(a) "Health care employee" means an employee of any health care facility or

other organization that provides emergency or medical services who has or likely has had direct contact with any person who has been exposed to or tested positive for any infectious or contagious diseases which are the subject of a public health emergency.

(b) "Health care facility" has the same meaning as in RCW 9A.50.010.

(c) "Public health emergency" means a declaration or order that covers the jurisdiction where the employee was working on the date of exposure concerning any dangerous, contagious, or infectious diseases, including a pandemic, and is issued as follows:

(i) The president of the United States has declared a national or regional emergency; or

(ii) The governor of Washington declared a state of emergency under RCW 43.06.010(12).

(8) The presumption in subsection (1) of this section takes effect on the day the national, regional, or state emergency is declared and continues until this declaration is revoked.

(9) The provisions of RCW 51.28.055 concerning time limits for filing claims for occupational disease apply to claims covered under this section.

**Sec. 7.** RCW 51.52.130 and 2007 c 490 s 4 are each amended to read as follows:

(1) If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court.

(a) In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may

be, in addition to the fee fixed for the services in the court.

(b) If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department.

(c) In the case where the employer or other person or persons aggrieved by the decision of the board appeal and the worker or beneficiary's right to relief is sustained, the attorneys' fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the person or persons filing the appeal.

(d) In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

(2) In an appeal to the superior or appellate court involving the presumption established under RCW 51.32.185, the attorney's fee and costs shall be payable as set forth under RCW 51.32.185.

(3) In an appeal to the superior or appellate court involving the presumption established under section 6 of this act, the attorneys' fees and costs shall be payable as set forth under section 6 of this act.

**NEW SECTION. Sec. 8.** A new section is added to chapter 51.32 RCW to read as follows:

(1) Where an appealing party, other than the department or a self-insured employer, is ordered to pay attorneys' fees and costs and that party fails, refuses, or neglects to comply with the award, which has become final and is not subject to review or appeal, the director or any person entitled to compensation



under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for the county in which that party may be served with process.

(2) The court shall ensure compliance to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title.

NEW SECTION. **Sec. 9.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

Signed by Representatives Sells, Chair; Berry, Vice Chair; Mosbrucker, Assistant Ranking Minority Member; Bronoske and Ortiz-Self.

MINORITY recommendation: Do not pass. Signed by Representative Hoff, Ranking Minority Member.

MINORITY recommendation: Without recommendation. Signed by Representative Harris.

Referred to Committee on Appropriations.

March 19, 2021

ESSB 5193 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Concerning unemployment insurance systems enhancements, including creating a reserve force of unemployment claim adjudicators, effective and equitable claims processing, and transparent performance metrics. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds with roughly \$4,700,000,000 in the state unemployment insurance trust fund, Washington entered the COVID-19 pandemic

with one of the strongest and best-funded trust funds in the nation. During an unprecedented time, the state's unemployment insurance trust fund provided critical economic support to Washington workers and businesses through unemployment benefits and helped bolster the state's economy.

The legislature recognizes that the employment security department maintains a recession readiness team that prepares the agency to respond to economic changes, helping employers and employees plan for the future. Based on experience with past recessions, the employment security department's readiness team prepared contingency plans for a possible economic crisis. During the great recession, there were approximately 61,000 continued unemployment insurance claims in September 2008, rising to a high of approximately 173,000 claims in January of 2010, a period of 16 months. During the first three months of COVID-19, unemployment insurance claims were more than double those filed during the great recession, a time period that was seven times longer. From February 2020 to April 2020, unemployment insurance claims went from approximately 62,000 to approximately 447,000 claims. The sudden magnitude of claimants overwhelmed the system; contributing to Washingtonians waiting months for their earned benefits and facing deep economic insecurity.

The legislature finds that, despite conscientious economic emergency planning by the employment security department, claims processing issues are central problems encumbering the employment security department's ability to timely meet a suddenly increased demand for benefits. Immediate additional measures to facilitate rapid and equitable provision of unemployment benefits now, and enhanced preparation to do so in future economic downturns or emergencies, are critically important.

The legislature further finds that a federal retroactive funding model that looks back instead of preparing for potential economic shocks ahead was a major contributing factor to the challenges faced by all states during the COVID-19 pandemic in quickly paying benefits to unemployed workers. Our employment security department cannot quickly scale up for increased workloads and new programs if its administrative funding is based on funding that looks backward instead of forward.

Amid an unprecedented need for benefits and stresses on our unemployment insurance program, the legislature intends to create a pool of qualified unemployment insurance claim adjudicators, reduce claimants' need for assistance, assure transparency of claims processing performance measures, and make other system enhancements. Together, these systems enhancements will ensure quicker claim resolution and benefit payment; thus providing critical economic support during future unemployment crises.

**NEW SECTION. Sec. 2.** A new section is added to chapter 50.12 RCW to read as follows:

(1) The employment security department must create a training program to prepare a reserve force of skilled unemployment insurance claim adjudicators who can be available quickly when claims volume demands.

(2) The program must:

(a) Be open to both state and other public employees and private citizens;

(b) Be of sufficient quality that persons completing the training and any required continuing education would be ready to work as an unemployment insurance claim adjudicator within one week of commencing employment with the employment security department; and

(c) Provide a certification of completion to participants who complete the program.

(3) The office of financial management must collaborate with the employment security department to assist the department in identifying agencies with current state employees who meet the minimum qualifications for unemployment insurance claims' adjudicator. Employees at other agencies, who meet the minimum qualifications of the unemployment insurance claims' adjudicator classification, may, upon approval of their agency, attend required training provided by the department. In designated times of high unemployment claims, current state employees who have completed required training and who are otherwise qualified may be selected to assist the department in processing unemployment insurance claims or related activities. The office of financial management may adopt rules or issue guidance to assist in the implementation of this provision.

(4) By October 1, 2021, and each year thereafter, the employment security department must provide a report to the house of representatives committee on labor and workplace standards and the senate committee on labor, commerce, and tribal affairs, or successor committees, on the number of persons with current certifications under subsection (2)(c) of this section, the number of people employed by the department and over what period of time, and the adjudicator training and hiring costs.

**NEW SECTION. Sec. 3.** A new section is added to chapter 50.12 RCW to read as follows:

(1) The department must designate department employees to assure that letters, alerts, and notices produced manually or by the department's unemployment insurance technology system are written in plainly understood language and tested on claimants before they are approved for use. Criteria for approval must include comprehensibility, clarity, and readability. If the messaging of any letter, alert, or notice falls short of those criteria, manual methods of producing a comprehensible version shall be considered while the department waits for their unemployment insurance technology system to incorporate required modifications.

(2) Determinations and redeterminations must clearly convey applicable statute numbers, a brief explanation of pertinent law, outline of relevant facts, reasoning, decision, and result.

(3) The department will work with an unemployment insurance advisory committee comprised of business and worker advocates to explore:

(a) Establishing thresholds that will trigger automatic adjustments in department staffing assignments and phone agent staffing levels;

(b) Establishing a pilot to provide a caseworker approach to the claims of a group of claimants with that casework carrying over to reemployment services;

(c) Increasing language access, including by providing translation of notices sent to claimants as part of their unemployment insurance claims; and

(d) Frequency of the initial and continuing training to meet the needs of section 2 of this act.

(4) Dedicated toll-free phone lines must be established for claimants who lack computer skills or access to computers, claimants with disabilities, and claimants with limited English proficiency.

NEW SECTION. Sec. 4. A new section is added to chapter 50.12 RCW to read as follows:

The department must:

- (1) Maintain an online data dashboard.
- (2) Provide quarterly reports with performance metrics that include:
  - (a) Updates of unemployment rates;
  - (b) Total numbers of claims paid, amount compensated, claims denied, claims pending in adjudication, claims on which payment has been halted for review, pending appeals, appeals redetermined by the department, and appeals sent to the office of administrative hearings;
  - (c) Claims center phone statistics including call volume, hold times, abandoned calls, repeat calls, and all-circuits-busy messages for both claimants and employers;
  - (d) Ratio of staff phone agents to employers and ratio of staff phone agents to claimants;
  - (e) Number and dollar total of overpayments imposed and overpayment waiver approval rate; and
  - (f) The percentage of unemployed persons in the state receiving benefits (reciency rate).

NEW SECTION. Sec. 5. (1) By September 1, 2021, and at least quarterly through September 1, 2022, the employment security department must provide a report to the house of representatives committee on labor and workplace standards and the senate committee on labor, commerce, and tribal affairs, or successor committees, that includes:

- (a) The department's progress in implementing this act;
- (b) Updates on any new federal programs or funds received by the department for unemployment compensation and administration and the use of such funds;
- (c) Any software or technology issues related to claims processing, including any issues causing claim delays or inaccurate automated notifications;

(d) Updates on the department's protocols and process for protecting sensitive data; and

(e) Any other relevant unemployment issues, or information related to enhancing the unemployment insurance system, as determined by the department.

(2) This section expires December 1, 2022."

Correct the title.

Signed by Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Bronoske; Harris and Ortiz-Self.

Referred to Committee on Rules for second reading.

March 19, 2021

SB 5201 Prime Sponsor, Senator Van De Wege: Concerning department of natural resources' timber and land sales. Reported by Committee on Rural Development, Agriculture & Natural Resources

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 79.11.130 and 2003 c 381 s 4 and 2003 c 334 s 346 are each reenacted and amended to read as follows:

(1) The department shall give notice of the sale by advertisement published not fewer than two times during a four-week period prior to the time of sale in at least one newspaper of general circulation in the county in which the whole, or any part of any lot, block, or tract of land to be sold is situated, and by posting a copy of the notice (~~(in a conspicuous place in the department's Olympia office,)~~) on the department's public website and in the region headquarters administering such sale (~~(7 and in the office of the county auditor of such county)~~). The notice shall specify the place, date, and time of sale, the appraised value of the land, describe with particularity each parcel of land to be sold, and specify that the terms of sale will be available in the region headquarters and the department's (~~Olympia office~~) public website.

(2) The advertisement is for informational purposes only, and under no circumstances does the information in the notice of sale constitute a warranty that

the purchaser will receive the stated values, volumes, or acreage. All purchasers are expected to make their own measurements, evaluations, and appraisals.

(3) The department shall print a list of all public lands and the appraised value thereof, that are to be sold. This list should be ~~((published in a pamphlet form to be issued))~~ made available at least four weeks prior to the date of any sale of the lands. The list should be organized by county and by alphabetical order, and provide sale information to prospective buyers. The department shall retain for free distribution in the ~~((Olympia office and the))~~ region offices sufficient copies of the ~~((pamphlet))~~ list, to be kept in a conspicuous place, and, when requested so to do, shall mail copies of the ~~((pamphlet))~~ list as issued to any requesting applicant. The department may seek additional means of publishing the information in the ~~((pamphlet))~~ list, such as on the internet, to increase the number of prospective buyers.

~~((4) The sale of valuable materials appraised at an amount not exceeding two hundred fifty thousand dollars, as described in RCW 79.01.200 and as authorized by the board of natural resources, are exempt from the requirements of subsection (3) of this section.))~~

**Sec. 2.** RCW 79.15.070 and 2003 c 334 s 350 are each amended to read as follows:

It is the duty of the department to fix the date, time, and place of sale.

(1) All valuable materials shall have been appraised prior to the date fixed for sale as prescribed in RCW 79.15.060.

(2) No sale may be conducted on any day that is a legal holiday.

(3) Sales must be held between the hours of 10:00 a.m. and 4:00 p.m. If all sales cannot be offered within this time period, the sale must continue on the following day between the hours of 10:00 a.m. and 4:00 p.m.

(4) Sales must take place(+

~~(a) At))~~ at the department's ~~((regional office))~~ region headquarters having jurisdiction over the respective sale(+)) or

~~((b) On county property designated by the board of county commissioners or county legislative authority of the county in which the whole or majority of valuable materials are situated)) at an alternate location designated by the department.~~

**Sec. 3.** RCW 79.15.080 and 2006 c 42 s 2 are each amended to read as follows:

(1) Sales, other than direct sales, appraised at an amount not exceeding two hundred fifty thousand dollars, when such sales have been authorized by the board ~~((for sale))~~, shall be advertised by publishing not less than ten days prior to sale a notice of such sale in either a newspaper of general circulation ~~((located nearest to the property from which the valuable material is to be sold))~~, the department's public website, or another method deemed most practical by the department.

(2) Except as provided in RCW 79.15.050, all other proposed sales of valuable materials must be advertised through individual notice of sale and publication of a statewide list of sales.

(a) The notice of sale:

(i) Must specify the place, date, and time of sale, the appraised value thereof, and describe with particularity each parcel of land from which valuable materials are to be sold. The estimated volume will be identified and the terms of sale will be available in the region headquarters and the department's Olympia office;

(ii) May prescribe that the bid deposit required in RCW 79.15.110 be considered an opening bid;

(iii) May be advertised by newspaper or by other means of publishing the information such as on the ~~((internet))~~ department's public website; and

(iv) Must be posted in a conspicuous place in ~~((the department's Olympia office and in))~~ the region headquarters administering the sale ~~((, and in the office of the county auditor of the county where the material is located))~~.

(b) The department shall ~~((print))~~ make available a list of all valuable material on public lands that are to be sold. The list should be organized by county and by alphabetical order.

(i) The list should be ~~((published in a pamphlet form, issued))~~ made available

at least four weeks prior to the date of any sale and provide sale information to prospective buyers.

(ii) The department must retain for free distribution in ~~((the Olympia office and))~~ the region headquarters offices sufficient copies of the ~~((pamphlet))~~ list, to be kept in a conspicuous place, and ~~((, when requested to do so, must mail copies of the pamphlet as issued to any requesting applicant))~~ made available upon request.

(iii) The department may seek additional means of publishing the information in the ~~((pamphlet))~~ list, such as on the ~~((internet))~~ department's public website and other means of communication, to increase the number of prospective buyers.

(3) The department is authorized to expend any sum in additional advertising of the sales as it deems necessary.

**Sec. 4.** RCW 79.15.150 and 2003 c 334 s 351 are each amended to read as follows:

A sale of valuable materials that has been offered, and for which there are no bids received, ~~((shall not be reoffered until it has been readvertised as prescribed in RCW 79.11.130))~~ may be reoffered consistent with RCW 79.15.060 and 79.15.080(2)(a).

**Sec. 5.** RCW 79.11.340 and 2003 c 334 s 399 are each amended to read as follows:

(1) Except as provided in RCW 79.10.030(2), the department shall manage and control all lands acquired by the state by escheat, deed of sale, gift, devise, or under RCW 79.19.010 through 79.19.110, except such lands that are conveyed or devised to the state for a particular purpose.

(2) When the department determines to sell the lands, they shall initially be offered for sale either at public auction or direct sale to public agencies as provided in this chapter ~~((=~~

~~((3) If the lands are not sold at public auction,))~~ or the department may, with approval of the board, market the lands through persons licensed under chapter 18.85 RCW or through other commercially feasible means at a price not lower than the land's appraised value.

~~((4))~~ (3) Necessary marketing costs may be paid from the sale proceeds. For

the purpose of this subsection, necessary marketing costs include reasonable costs associated with advertising the property and paying commissions.

~~((5))~~ (4) Proceeds of the sale shall be deposited into the appropriate fund in the state treasury unless the grantor in any deed or the testator in case of a devise specifies that the proceeds of the sale be devoted to a particular purpose.

**Sec. 6.** RCW 79.11.120 and 2003 c 334 s 344 are each amended to read as follows:

When the department decides to sell any state lands, or with the consent of the board of regents of the University of Washington, or by legislative directive, decides to sell any lot, block, tract, or tracts of university lands, it is the duty of the department to fix the date, place, and time of sale.

(1) No sale may be conducted on any day that is a legal holiday.

(2) Sales must be held between the hours of 10:00 a.m. and 4:00 p.m. If all sales cannot be offered within this time period, the sale must continue on the following day between the hours of 10:00 a.m. and 4:00 p.m.

(3) Sales must take place ~~((=~~

~~((a) At))~~ at the department's ~~((regional office))~~ region headquarters administering the respective sale ~~((=~~

~~((b) On county property designated by the board of county commissioners or county legislative authority of the county in which the whole or majority of state lands are situated))~~ or at an alternate location designated by the department."

Correct the title.

Signed by Representatives Chapman, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Fitzgibbon; Klicker; Kloba; Lekanoff; McEntire; Morgan; Orcutt; Ramos; Schmick and Springer.

Referred to Committee on Rules for second reading.

March 18, 2021

E2SSB 5227 Prime Sponsor, Committee on Ways & Means: Concerning diversity, equity, inclusion, and antiracism training and assessments at institutions of higher

education. Reported by Committee on College & Workforce Development

**MAJORITY recommendation: Do pass as amended.**

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that a postsecondary credential such as a degree, apprenticeship, or certificate is increasingly necessary to obtain a job that offers a good salary and advancement opportunities and that increasing the number of students in Washington who obtain such a credential is essential to the state's economic success. The legislature also recognizes that equity gaps remain among postsecondary students and that those gaps particularly impact students from historically marginalized communities.

The legislature finds that developing and maintaining a culture of belonging and support for students, faculty, and staff at institutions of higher education is essential to student success, and that faculty and staff play a key role. The legislature therefore seeks to ensure that public institutions of higher education provide faculty and staff, as well as students, with training to give them tools to address matters related to antiracism, diversity, equity, and inclusion.

The legislature further finds it necessary to regularly analyze the impact of that training on the campus community and to identify any measures needed to increase diversity, equity, and inclusion. Accordingly, the legislature intends that each public institution of higher education assess the learning, working, and living environment on campus that students, faculty, and staff experience to better understand the evolving state of diversity, equity, and inclusion.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Each institution of higher education must:

(a) Provide professional development, either existing or new, focused on diversity, equity, inclusion, and antiracism for faculty and staff. This program must be developed in partnership with the institution's administration, faculty, staff, and student leadership

groups. Efforts must be made to ensure the program is developed and delivered by individuals with innate and acquired experience and expertise in the field of diversity, equity, and inclusion. The content framework for professional development must be posted on each institution's public website for parents and community members. The professional development must begin in the 2022-23 academic year;

(b) Create an evaluation for professional development participants. The evaluations must, at minimum, capture a participant's level of satisfaction with the professional development opportunity, the degree to which the learning objectives were achieved, and how the knowledge gained may be applied to their work;

(c) (i) Share completed evaluations of program participants annually with either the state board for community and technical colleges or an organization representing the presidents of the public four-year institutions of higher education, depending on the institution; and (ii) submit curriculum and other pertinent information regarding the program beginning July 1, 2023, and, subsequently, if there is a meaningful change or by request of the reporting entity.

(2) The purpose of each professional development program curriculum must be rooted in eliminating structural racism against all races and promoting diversity, equity, and inclusion while improving academic, social, and health and wellness outcomes for students from historically marginalized communities. Institutions of higher education may further develop a curriculum that is reflective of the needs of the campus community.

(3) (a) Beginning with the 2022-23 academic year, every new faculty and staff member at an institution of higher education must participate in the program, regardless of whether they are a full-time or part-time employee. All faculty and staff participating in the professional development program must complete an evaluation. Other faculty and staff may participate in the professional development program as needed or required by their institution. Each institution must develop a goal of at least 80 percent of their total faculty and staff completing the professional development program every two years and report on

their goal's progress in the report established in section 5 of this act. Each institution may determine how to show progress towards their goal. Part-time faculty and staff who are employed at more than one institution of higher education are only required to complete the professional development program at one institution if they provide proof of completion to their other institution of higher education employers to receive credit for participation.

(b) Beginning with the 2024-25 academic year, 35 percent of tenured faculty and 35 percent of administrators at each institution of higher education must complete the professional development program every two years, regardless of whether they are a full-time or part-time employee.

(4) The state board for community and technical colleges and an organization representing the presidents of the public four-year institutions of higher education may conduct further analysis of the professional development programs through participant evaluation data, use of focus groups, or other methods to determine promising practices. The state board for community and technical colleges and an organization representing the presidents of the public four-year institutions of higher education must post a list of model standards and promising practices for professional development on their public websites for parents and community members.

(5) The institutions of higher education shall adopt rules as necessary or appropriate for effecting the provisions of this section, not in conflict with this chapter, and in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28B.10 RCW to read as follows:

(1)(a) The institutions of higher education as defined in RCW 28B.10.016 shall each conduct a campus climate assessment to understand the current state of diversity, equity, and inclusion in the learning, working, and living environment on campus for students, faculty, and staff. The assessment shall occur, at minimum, every five years. Institutions of higher education shall use the results of the campus climate

assessment to inform the professional development, established in section 2 of this act, and program, established in section 4 of this act. Institutions may use an existing campus climate assessment to meet this requirement.

(b) The state board for community and technical colleges shall develop a model campus climate assessment for the community and technical colleges that the colleges may use or modify to meet the requirements of this section.

(2) The design of an existing or new campus climate assessment must involve, at minimum, students, college and university diversity officers, faculty, and staff. The campus climate assessment must include, at minimum, an evaluation of student and employee attitudes and awareness of campus diversity, equity, and inclusion issues. The campus climate assessment may also include questions evaluating the prevalence of discrimination, sexual assault, harassment, and retaliation on and off campus, in addition to student, faculty, and staff knowledge of campus policies and procedures addressing discrimination, sexual assault, harassment, and retaliation. College and university diversity officers and students must be consulted in the development of recommendations.

(3) Institutions of higher education must, at minimum, conduct annual listening and feedback sessions for diversity, equity, and inclusion for the entire campus community during periods between campus climate assessments. Institutions of higher education must, to the maximum extent practicable, compensate students for their participation in the annual listening and feedback sessions.

(4) Beginning July 1, 2022, the institutions of higher education shall report findings or progress in completing their campus climate assessment and, when applicable, information on their listening and feedback sessions annually to either the state board for community and technical colleges or an organization representing the presidents of the public four-year institutions of higher education. The institutions of higher education must also publish annually on the institution's public website the results of either the campus climate assessment or listening and feedback sessions.

(5) The state board for community and technical colleges may require colleges to repeat their campus climate assessment. An organization representing the presidents of the public four-year institutions of higher education may also request state universities, regional universities, and The Evergreen State College to repeat their campus climate assessment.

NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Each institution of higher education must:

(a) Provide a program, either existing or new, on diversity, equity, inclusion, and antiracism to students beginning with the 2024-25 academic year. Institutions of higher education may expand the focus of its program to reflect the needs of the campus community. This program must be developed in partnership with the institution's administration, faculty, staff, and student leadership groups. Efforts should be made to ensure the program is developed and delivered by individuals with innate and acquired experience and expertise in the field of diversity, equity, and inclusion. The content framework for each program must be posted on each institution's public website for parents and community members; and

(b) Create an evaluation for program participants. The evaluation must, at minimum, capture a participant's level of satisfaction with the program and how they will apply the program to their education.

(2) The purpose of each program must be rooted in eliminating structural racism against all races and promoting diversity, equity, and inclusion while improving outcomes for students from historically marginalized communities. Institutions of higher education may further develop a curriculum that is reflective of the needs of the campus community.

(3) During the 2024-25 academic year, all degree-seeking students at institutions of higher education must participate in the program, regardless of whether they are a full-time or part-time student. Beginning with the 2025-26 academic year, the program is only required for degree-seeking students who are new or have transferred to the institution and have not yet participated

in a required diversity, equity, inclusion, and antiracism program at an institution of higher education. Students must be allowed to opt out of participation in the program if they self-attest to taking a diversity, equity, inclusion, and antiracism training at an institution of higher education within the previous five years.

(4) The state board for community and technical colleges and an organization representing the presidents of the public four-year institutions of higher education may conduct further analysis of the programs, through participant evaluation data, use of focus groups, or other methods to determine promising practices. The state board for community and technical colleges and an organization representing the presidents of the public four-year institutions of higher education must post a list of model standards and promising practices for programs on their public websites for parents and community members.

(5) The institutions of higher education shall adopt rules as necessary or appropriate for effecting the provisions of this section, not in conflict with this chapter, and in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act.

(6) For purposes of this section, "student" or "students" does not include nonmatriculated students.

NEW SECTION. **Sec. 5.** A new section is added to chapter 28B.10 RCW to read as follows:

By December 31, 2024, and biennially thereafter, the state board for community and technical colleges and an organization representing the presidents of the public four-year institutions of higher education shall each submit a report to the higher education committees of the legislature in accordance with RCW 43.01.036 for their respective institutions of higher education. The reports must include the following:

(1) Information on the professional development programs implemented by each institution of higher education, including updates on progress towards meeting the goal outlined in section 1 of this act;

(2) A summary of results of the campus climate assessments and other relevant



information received by the institutions of higher education; and

(3) By December 31, 2026, and biennially thereafter, the reports must also include information on the student diversity, equity, inclusion, and antiracism programs implemented by each institution of higher education.

NEW SECTION. Sec. 6. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state."

Correct the title.

Signed by Representatives Slatter, Chair; Entenman, Vice Chair; Leavitt, Vice Chair; Hansen; Paul; Pollet and Sells.

MINORITY recommendation: Do not pass. Signed by Representatives Chambers, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Chandler and Kraft.

MINORITY recommendation: Without recommendation. Signed by Representatives Hoff and Sutherland.

Referred to Committee on Appropriations.

March 19, 2021

SSB 5254 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Concerning the use of protective devices and equipment during a public health emergency. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Bronoske; Harris and Ortiz-Self.

Referred to Committee on Appropriations.

March 19, 2021

SSB 5267 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Requiring electrical licensing for electrical work associated with flipping property. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair; Bronoske; Harris and Ortiz-Self.

MINORITY recommendation: Without recommendation. Signed by Representative Mosbrucker, Assistant Ranking Minority Member.

MINORITY recommendation: Do not pass. Signed by Representative Hoff, Ranking Minority Member.

Referred to Committee on Rules for second reading.

March 19, 2021

SSB 5271 Prime Sponsor, Committee on Law & Justice: Amending the necessary elements of proof of injury during the state of emergency declared due to the COVID-19 pandemic. Reported by Committee on Civil Rights & Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno; Davis; Entenman; Goodman; Kirby; Klippert; Orwall; Peterson; Thai; Valdez; Walen and Ybarra.

Referred to Committee on Rules for second reading.

March 19, 2021

ESSB 5275 Prime Sponsor, Committee on Housing & Local Government: Enhancing opportunity in limited areas of more intense rural development. Reported by Committee on Local Government

MAJORITY recommendation: Do pass. Signed by Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Berg; Robertson and Senn.

Referred to Committee on Rules for second reading.

March 19, 2021

ESSB 5284 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Eliminating subminimum wage certificates for persons with disabilities. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Bronoske; Harris and Ortiz-Self.

Referred to Committee on Rules for second reading.

March 19, 2021

SB 5300 Prime Sponsor, Senator Van De Wege: Prohibiting the feeding of garbage to swine. Reported by Committee on Rural Development, Agriculture & Natural Resources

MAJORITY recommendation: Do pass. Signed by Representatives Chapman, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Fitzgibbon; Klicker; Kloba; Lekanoff; McEntire; Morgan; Orcutt; Ramos; Schmick and Springer.

Referred to Committee on Rules for second reading.

March 19, 2021

SSB 5384 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Concerning volunteer firefighters. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Bronoske; Harris and Ortiz-Self.

Referred to Committee on Rules for second reading.

March 19, 2021

SB 5385 Prime Sponsor, Senator Keiser: Concerning the size of the airport a municipality must control or operate for that municipality to enact minimum labor standards for employees at the airport. Reported by Committee on Labor & Workplace Standards

MAJORITY recommendation: Do pass. Signed by Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

MINORITY recommendation: Do not pass. Signed by Representatives Hoff, Ranking Minority Member and Harris.

MINORITY recommendation: Without recommendation. Signed by Representative Mosbrucker, Assistant Ranking Minority Member.

Referred to Committee on Rules for second reading.

March 19, 2021

SSB 5403 Prime Sponsor, Committee on State Government & Elections: Concerning the interagency, multijurisdictional system improvement team. Reported by Committee on Community & Economic Development

MAJORITY recommendation: Do pass. Signed by Representatives Ryu, Chair; Paul, Vice Chair; Boehnke, Ranking Minority Member; Corry; Frame; Jacobsen; Johnson, J.; Lovick; Rule and Taylor.

MINORITY recommendation: Without recommendation. Signed by Representatives Chase, Assistant Ranking Minority Member; Kraft and Sutherland.

Referred to Committee on Rules for second reading.

There being no objection, the bills listed on the day's committee reports under the fifth order of business were referred to the committees so designated.

There being no objection, the House adjourned until 9:55 a.m., March 23, 2021, the 72nd Legislative Day of the Regular Session.

LAURIE JINKINS, Speaker

BERNARD DEAN, Chief Clerk

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