

CHAPTER 190.

[Engrossed House Bill No. 497.]

BUSINESS CORPORATIONS.

AN ACT relating to corporations; amending section 6, chapter 53, Laws of 1965 and RCW 23A.08.030; amending section 13, chapter 53, Laws of 1965 and RCW 23A.08.100; amending section 14, chapter 53, Laws of 1965 and RCW 23A.08.110; and amending section 46, chapter 53, Laws of 1965 and RCW 23A.08.430; amending section 51, chapter 53, Laws of 1965 and RCW 23A.08.480; amending section 64, chapter 53, Laws of 1965 and RCW 23A.16.050; amending section 66, chapter 53, Laws of 1965 and RCW 23A.16.070; amending section 111, chapter 53, Laws of 1965 and RCW 23A.32.030; amending section 135, chapter 53, Laws of 1965 and RCW 23A.40.020; and adding a new section to Title 23A RCW.

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

RCW 23A.08-.100 amended.

Section 1. Section 13, chapter 53, Laws of 1965 and RCW 23A.08.100 are each amended to read as follows:

Business corporations. Change of registered office or registered agent—Requirement.

A corporation may change its registered office or change its registered agent or both, by executing and filing in the manner hereinafter provided a statement setting forth:

- (1) The name of the corporation.
- (2) The address of its then registered office.
- (3) If the address of its registered office be changed, the address to which the registered office is to be changed.
- (4) The name of its then registered agent.
- (5) If its registered agent be changed, the name of its successor registered agent.
- (6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
- (7) That such change was authorized by resolution duly adopted by its board of directors.
- (8) The date such change is to become effective.

Such statement shall be executed in triplicate by the corporation by its president or a vice-president, and verified by him and delivered to the secretary of state on or before the date such change is to become effective. If the secretary of state finds that such statement conforms to the provisions of this title he shall endorse on each of such triplicate originals the word "Filed," and the month, day and year of the filing thereof, file one original in his office, and return the other two originals to the corporation or its representative.

On or before the day when such change is to become effective an original of such statement shall be filed with the auditor of the county in which the registered office is then located, and, if the registered office is to be moved to another county, an original of such statement, together with a certified copy of the corporation's articles of incorporation and all amendments thereto, shall also be filed with the auditor of such other county.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in triplicate, with the secretary of state, who shall forthwith mail one copy thereof to the auditor of the county in which the registered office is then located, and one copy to the corporation at its registered office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

Sec. 2. Section 14, chapter 53, Laws of 1965 and RCW 23A.08.110 are each amended to read as follows:

RCW 23A.08-
.110 amended.

The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

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Service of
process upon
corporation.

Business corporations—
Service of
process upon
corporation.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by certified mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

RCW 23A.08-
.480 amended

Sec. 3. Section 51, chapter 53, Laws of 1965 and RCW 23A.08.480 are each amended to read as follows:

Filing lists of
corporate
officers.

Every corporation hereafter organized under this title shall, within thirty days after it shall have filed its articles of incorporation with the county auditor of the county in which the corporation has its registered office, and every corporation heretofore or hereafter organized under the laws of the territory or state of Washington shall, within thirty days

after its annual meeting and at such additional times as it may elect, file with the secretary of state and with the county auditor of the county in which said corporation has its registered office an annual report, sworn to by its president and attested by its secretary, containing, as of the date of execution of the report:

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

(2) The address of the registered office of the corporation in this state including street and number and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this state.

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

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

For every violation of this section there shall become due and owing to the state of Washington the sum of twenty-five dollars which sum shall be collected by the secretary of state who shall call

upon the attorney general to institute a civil action for the recovery thereof if necessary.

RCW 23A.16-.050 amended.

Sec. 4. Section 64, chapter 53, Laws of 1965 and RCW 23A.16.050 are each amended to read as follows:

Business corporations—
Amending articles of incorporation.

Triplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this title prescribed:

(1) Endorse on each of such triplicate originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such originals in his office.

(3) Issue a certificate of amendment to which he shall affix one of such originals.

The certificate of amendment, together with the original of the articles of amendment affixed thereto by the secretary of state, and the other remaining original, shall be returned to the corporation or its representative. Such remaining original shall then be filed in the office of the county auditor of the county in which the registered office of the corporation is situated. The original affixed to the certificate of amendment shall be retained by the corporation.

RCW 23A.17-.070 amended.

Sec. 5. Section 66, chapter 53, Laws of 1965 and RCW 23A.16.070 are each amended to read as follows:

Amendment in reorganization proceedings.

(1) A domestic corporation may, at any time, by resolution of its board of directors and without the necessity of approval by its shareholders, restate in a single document the entire text of its articles of incorporation, as previously amended, supplemented or restated, by filing in the office of the secretary of state a document entitled "Restated Articles of Incorporation of (insert name of corporation)" which

shall set forth the articles as amended and supplemented to the date of the restated articles.

(2) The restated articles of incorporation shall not alter or amend the original articles or any amendment thereto in any substantive respect and shall contain all the statements required by this title to be included in the original articles of incorporation, except that in lieu of setting forth the names and addresses of the first board of directors, the restated articles shall set forth the names and addresses of the directors in office at the time of the adoption of the restated articles; and no statement need be made with respect to the names and addresses of the incorporators or shares subscribed by them.

(3) The restated articles of incorporation shall be prepared in triplicate originals, signed by the president or vice-president and by the treasurer, secretary or assistant secretary, of the corporation and shall be verified by their signed affidavits, (a) that they have been authorized to execute such restated articles by resolution of the board of directors adopted on the date stated, (b) that the restated articles correctly set forth the text of the articles of incorporation as amended and supplemented to the date of the restated articles and (c) that the restated articles supersede and take the place of theretofore existing articles of incorporation and amendments thereto.

(4) Triplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, he shall, when all fees have been paid as in this title prescribed:

(a) Endorse on each of such triplicate originals the word "Filed," and the month, day and year of the filing thereof.

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Amendment of articles of incorporation.

(b) File one of such originals in his office.

(c) Issue a certificate of restated articles of incorporation to which he shall affix one of such originals.

Thereupon the restated articles of incorporation shall become effective.

(5) The certificate of restated articles of incorporation, together with the original of restated articles of incorporation affixed thereto by the secretary of state, and the other remaining original, shall be returned to the corporation or its representative. Such remaining original shall then be filed in the office of the county auditor of the county in which the registered office of the corporation is situated. The original affixed to the restated certificate of incorporation shall be retained by the corporation.

(6) The restated articles of incorporation shall supersede and take the place of theretofore existing articles of incorporation and amendments thereto and shall have the same effect and may be used for the same purposes as original articles of incorporation.

RCW 23A.32-.030

Sec. 6. Section 111, chapter 53, Laws of 1965 and RCW 23A.32.030 are each amended to read as follows:

Foreign corporation—
Corporate name.

No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes con-

tained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance.

(3) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this title, or the name of a corporation which has in effect a registration of its name as provided in this title: *Provided*, That a foreign corporation which is precluded from using its corporate name for one of the above reasons may adopt an assumed name under which it may conduct its business in this state.

Sec. 7. Section 135, chapter 53, Laws of 1965 and RCW 23A.40.020 are each amended to read as follows:

RCW 23A.40-.020 amended.

The secretary of state shall charge and collect for:

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and charges.

(1) Filing articles of amendment and issuing a certificate of amendment, ten dollars;

(2) Filing restated articles of incorporation, ten dollars;

(3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifteen dollars;

(4) Filing an application to reserve a corporate name, ten dollars;

(5) Filing a notice of transfer of a reserved corporate name, five dollars;

(6) Filing a statement of change of address of registered office or change of registered agent, or both, one dollar;

(7) Filing a statement of the establishment of a series of shares, ten dollars;

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- (8) Filing a statement of cancellation of shares, ten dollars;
- (9) Filing a statement of reduction of stated capital, ten dollars;
- (10) Filing a statement of intent to dissolve, five dollars;
- (11) Filing a statement of revocation of voluntary dissolution proceedings, five dollars;
- (12) Filing articles of dissolution, five dollars;
- (13) Filing a certificate by a foreign corporation of the appointment of an agent residing in this state, or a certificate of the revocation of the appointment of such registered agent, one dollar;
- (14) Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, five dollars;
- (15) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, five dollars;
- (16) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, ten dollars;
- (17) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, fifteen dollars;
- (18) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, five dollars;
- (19) Filing any other statement or report, five dollars;
- (20) Such other filings as are provided for by this title.

RCW 23A.08-.030 amended.

Sec. 8. Section 6, chapter 53, Laws of 1965 and RCW 23A.08.030 are each amended to read as follows:

A corporation shall have the right to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles of incorporation so permit or with the affirmative vote of the holders of at least majority of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor: *Provided*, That a Regulated Investment Company registered under the Investment Company Act of 1940, or any similar federal statute, shall have the right to purchase its own shares out of unreserved and unrestricted capital surplus whether or not the articles of incorporation so provide and without prior shareholder approval.

Right to acquire and dispose of its own shares.

To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed pro tanto.

Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

- (1) Eliminating fractional shares.
- (2) Collecting or compromising indebtedness to the corporation.
- (3) Paying dissenting shareholders entitled to payment for their shares under the provisions of this title.
- (4) Effecting, subject to the other provisions of this title, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

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No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

RCW 23A.08-
.430 amended.

Sec. 9. Section 46, chapter 53, Laws of 1965 and RCW 23A.08.430 are each amended to read as follows:

Distribution
of assets from
capital sur-
plus.

The board of directors of a corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

(1) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

(2) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation: *Provided*, That a Regulated Investment Company registered under the Investment Company Act of 1940, or any similar federal statute, shall have the right to make distributions out of capital surplus whether or not the articles of incorporation so provide and without prior shareholder approval.

(3) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(4) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event

of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(5) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

Sec. 10. There is added to Title 23A RCW a new New section. section to read as follows:

The repeal of a prior act by chapter 53, Laws of 1965, shall not affect any right accrued, acquired or established, or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof. The repeal of a prior act by chapter 53, Laws of 1965, shall not affect, nor constitute a repeal with respect to, the law applicable to any corporation unless the provisions of chapter 53, Laws of 1965, apply to such corporation. Savings.

Passed the House March 9, 1967.

Passed the Senate March 9, 1967.

Approved by the Governor March 21, 1967.