

Department of Community Development has existing authority to create advisory committees, as required, and there is no need to mandate this committee in statute.

For this reason, I have vetoed section 9 of Substitute House Bill No. 2342.

With the exception of section 9, Substitute House Bill No. 2342 is approved."

CHAPTER 178

[Substitute Senate Bill No. 6389]

BUSINESS CORPORATION ACT AMENDMENTS

AN ACT Relating to revising the Washington business corporations act; amending RCW 23B.01.220, 23B.01.410, 23B.01.510, 23B.01.580, 23B.14.200, 23B.14.340, 23B.15.010, 23B.15.020, 23B.15.300, 23B.06.400, 23B.07.270 and 23B.12.010; and providing an effective date.

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

Sec. 1. Section 5, chapter 165, Laws of 1989 and RCW 23B.01.220 are each amended to read as follows:

(1) The secretary of state shall collect in accordance with the provisions of this title:

- (a) Fees for filing documents and issuing certificates;
- (b) Miscellaneous charges;
- (c) License fees as provided in RCW 23B.01.500 through 23B.01.550;
- (d) Penalty fees; and
- (e) Other fees as the secretary of state may establish by rule adopted under chapter 34.05 RCW.

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

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

- (i) Articles of incorporation; and
- (ii) Application for certificate of authority;
- (b) Fifty dollars for an application for reinstatement;
- (c) Twenty-five dollars for:

- (i) Articles of correction;
- (ii) Amendment of articles of incorporation;
- (iii) Restatement of articles of incorporation, with or without amendment;

(iv) Articles of merger or share exchange;

(v) Articles of revocation of dissolution; and

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

~~(vii) Application for reinstatement;~~

~~(c) Ten)) (d) Twenty dollars for((:~~

~~(i)) an application for reservation, registration, or assignment of reserved name;~~

~~((i)) (e) Ten dollars for:~~

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

~~((iii))~~ (ii) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;

~~((iv))~~ (iii) Annual report; and

~~((v))~~ (iv) Any document not listed in this subsection that is required or permitted to be filed under this title;

~~((d))~~ (f) No fee for:

(i) Agent's consent to act as agent;

(ii) Agent's resignation, if appointed without consent;

(iii) Articles of dissolution;

(iv) ~~(Certificate of reinstatement;~~

~~(v))~~ Certificate of judicial dissolution; and

~~((vi))~~ (v) Application for certificate of withdrawal~~((; and~~

~~(vii) Certificate of revocation of authority to transact business)).~~

(3) The secretary of state shall collect a fee of twenty-five dollars per defendant served, upon being served process under this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

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

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, ten dollars for the certificate, plus twenty cents for each page copied;

(b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate, ten dollars; and

(c) For furnishing copies of any document, instrument, or paper relating to a corporation, one dollar for the first page and twenty cents for each page copied thereafter.

(5) For annual license fees for domestic and foreign corporations, see RCW 23B.01.500, 23B.01.510, 23B.01.530, and 23B.01.550. For penalties for nonpayment of annual license fees and failure to complete annual report, see RCW 23B.01.570.

Sec. 2. Section 15, chapter 165, Laws of 1989 and RCW 23B.01.410 are each amended to read as follows:

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

(2) Written notice may be transmitted by: Mail, private carrier or personal delivery; telegraph or teletype; or telephone, wire or wireless

equipment which transmits a facsimile of the notice. If these forms of written notice are impracticable, written notice may be transmitted by an advertisement in a newspaper of general circulation in the area where published. Oral notice may be communicated in person or by telephone, wire or wireless equipment which does not transmit a facsimile of the notice. If these forms of oral notice are impracticable, oral notice may be communicated by radio, television, or other form of public broadcast communication.

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

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

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

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

(b) When received;

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

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

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

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

Sec. 3. Section 17, chapter 165, Laws of 1989 and RCW 23B.01.510 are each amended to read as follows:

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

license fee or to file its annual report its certificate of authority to transact business within this state may be revoked. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligations to pay the annual license fees and to obtain or file the annual reports required by this title.

Sec. 4. Section 24, chapter 165, Laws of 1989 and RCW 23B.01.580 are each amended to read as follows:

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

Sec. 5. Section 160, chapter 165, Laws of 1989 and RCW 23B.14.200 are each amended to read as follows:

The secretary of state may ~~((commence a proceeding under RCW 23B.14.210 to))~~ administratively dissolve a corporation under RCW 23B.14.210 if:

(1) The corporation does not pay ~~((within sixty days after they are due))~~ any license fees or penalties, imposed by this title, when they become due;

(2) The corporation does not deliver its completed annual report to the secretary of state (~~((within sixty days after))~~) when it is due;

(3) The corporation is without a registered agent or registered office in this state (~~((for sixty days or more))~~);

(4) The corporation does not notify the secretary of state (~~((within sixty days))~~) that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) The corporation's period of duration stated in its articles of incorporation expired after July 1, 1990; or

(6) The corporation's period of duration stated in its articles of incorporation expired prior to July 1, 1990, but the corporation has timely paid all license fees imposed by this title, has timely filed annual reports with the secretary of state, has never been without a registered agent or registered office in this state for sixty days or more, and has never failed to notify the secretary of state of changes in a registered agent or registered office within sixty days of such change.

Sec. 6. Section 167, chapter 165, Laws of 1989 and RCW 23B.14.340 are each amended to read as follows:

The dissolution of a corporation either: (1) By the issuance of a certificate of dissolution by the secretary of state, (2) by a decree of court, or (3) by expiration of its period of duration shall not take away or impair any remedy available (~~((to or))~~) against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. (~~((The directors of any such corporation shall hold title to the property of the corporation as trustees for the benefit of its creditors and shareholders.))~~) Any such action or proceeding (~~((by or))~~) against the corporation may be (~~((prosecuted or))~~) defended by the corporation in its corporate name. (~~((The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim.))~~)

Sec. 7. Section 169, chapter 165, Laws of 1989 and RCW 23B.15.010 are each amended to read as follows:

(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;

(g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce; or

(l) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state.

(3) The list of activities in subsection (2) of this ((act-[section])) section is not exhaustive.

Sec. 8. Section 170, chapter 165, Laws of 1989 and RCW 23B.15.020 are each amended to read as follows:

(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation which transacts business in this state without a certificate of authority is liable to this state, for the years or parts thereof

during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this title upon such corporation had it applied for and received a certificate of authority to transact business in this state as required by this title and thereafter filed all reports required by this title, plus all penalties imposed by this title for failure to pay such fees.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Sec. 9. Section 180, chapter 165, Laws of 1989 and RCW 23B.15.300 are each amended to read as follows:

The secretary of state may (~~commence a proceeding under RCW 23B.15.310 to~~) revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its completed annual report to the secretary of state (~~within sixty days after~~) when it is due;

(2) The foreign corporation does not pay (~~within sixty days after they are due~~) any license fees or penalties, imposed by this title, when they become due;

(3) The foreign corporation is without a registered agent or registered office in this state (~~for sixty days or more~~);

(4) The foreign corporation does not inform the secretary of state under RCW 23B.15.080 or 23B.15.090 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued (~~within sixty days of the change, resignation, or discontinuance~~);

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Sec. 10. Section 59, chapter 165, Laws of 1989 and RCW 23B.06.400 are each amended to read as follows:

(1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (2) of this section.

(2) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the

amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(3) For purposes of determinations under subsection (2) of this section:

(a) The board of directors may base a determination that a distribution is not prohibited under subsection (2) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and

(b) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section.

(4) The effect of a distribution under subsection ~~((3)(b))~~ (2) of this section is measured:

(a) In the case of a distribution of indebtedness, the terms of which provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made; or

(b) In the case of any other distribution:

(i) If the distribution is by purchase, redemption, or other acquisition of the corporation's shares, the effect of the distribution is measured as of the earlier of the date any money or other property is transferred or debt incurred by the corporation, or the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(ii) If the distribution is of indebtedness other than that described in subsection (4) (a) and (b)(i) of this section, the effect of the distribution is measured as of the date the indebtedness is distributed; and

(iii) In all other cases, the effect of the distribution is measured as of the date the distribution is authorized if payment occurs within one hundred twenty days after the date of authorization, or the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(5) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise by agreement.

(6) In circumstances to which this section and related sections of this title are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions.

Sec. 11. Section 75, chapter 165, Laws of 1989 and RCW 23B.07.270 are each amended to read as follows:

(1) The articles of incorporation may provide for a greater or lesser quorum, but not less than one-third of the votes entitled to be cast, for shareholders, or voting groups of shareholders, than is provided for by this title.

(2) The articles of incorporation may provide for a greater voting requirement for shareholders, or voting groups of shareholders, than is provided for by this title.

(3) Under RCW 23B.10.030, 23B.11.030, 23B.12.020, and 23B.14.020, the articles of incorporation may provide for a lesser vote than is otherwise prescribed in those sections or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the plan or transaction is not less than a majority of all the votes entitled to be cast on the plan or transaction by that voting group.

(4) Except as provided in subsection (5) of this section, an amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a particular corporate action 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 for the corporate action.

(5) An amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a merger, share exchange, sale of substantially all assets, or dissolution must be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect for the particular corporate action, or the quorum and voting requirements then in effect for amendments to articles of incorporation, whichever is greater.

Sec. 12. Section 138, chapter 165, Laws of 1989 and RCW 23B.12.010 are each amended to read as follows:

(1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; or

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section is not required.

NEW SECTION. Sec. 13. This act shall take effect July 1, 1990.

Passed the Senate February 7, 1990.

Passed the House March 2, 1990.

Approved by the Governor March 26, 1990.

Filed in Office of Secretary of State March 26, 1990.

CHAPTER 179

[Substitute Senate Bill No. 6390]

MARITAL DEDUCTION GIFTS—NONCITIZEN SURVIVING SPOUSE

AN ACT Relating to qualified domestic trusts regarding estate tax marital deductions for gifts to surviving spouses; amending RCW 11.96.070, 11.108.025, and 11.108.050; and declaring an emergency.

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

Sec. 1. Section 8, chapter 31, Laws of 1985 as amended by section 6, chapter 29, Laws of 1988 and RCW 11.96.070 are each amended to read as follows:

A trustor, grantor, personal representative, trustee, or other fiduciary, creditor, devisee, legatee, heir, or trust beneficiary interested in the administration of a trust, or the attorney general in the case of a charitable trust under RCW 11.110.120, or of the estate of a decedent, incompetent, or disabled person, may have a judicial proceeding for the declaration of rights or legal relations in respect to the trust or estate:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

(2) To direct the personal representatives or trustees to do or abstain from doing any particular act in their fiduciary capacity;

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings;

(4) To confer upon the personal representatives or trustees any necessary or desirable powers not otherwise granted in the instrument or given by law that the court determines are not inconsistent with the provisions or purposes of the will or trust;

(5) To amend or conform the will or the trust instrument in the manner required to qualify the gift thereunder for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest; or

(6) To amend or conform the will or the trust instrument in the manner required to qualify any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital