Title 23B

WASHINGTON BUSINESS CORPORATION ACT

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Chapter 23B.01 RCW
GENERAL PROVISIONS

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23B.01.010 Short title. This title shall be known and may be cited as the "Washington business corporation act." [1989 c 165 § 1.]

23B.01.020 Reservation of power to amend or repeal. The legislature has power to amend or repeal all or part of this title at any time and all domestic and foreign corporations subject to this title are governed by the amendment or repeal. [1989 c 165 § 2.]

23B.01.200 Filing requirements. (1) A document required or permitted by this title to be filed in the office of the secretary of state must satisfy the requirements of Article 2 of chapter 23.95 RCW, this section, and any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

(2) Unless otherwise indicated in this title, all documents delivered to the secretary of state for filing must be executed:

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

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

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

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

(a) The manner in which the facts will operate upon the terms of the plan or filed document must be included in the plan or filed document.

(b) The facts may include:

(i) 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;

(ii) A determination or action by any person or body, including the corporation, its board of directors, an officer, an employee, or an agent of the corporation, or any other party to a plan or filed document; or

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

(c) As used in this subsection (3):

(i) "Filed document" means a document filed by the secretary of state under any provision of this title, except chapter 23B.15 RCW or RCW 23.95.255 with respect to business corporations.

(ii) "Plan" means a plan of conversion, merger, or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) The name and address of any person required in a filed document;

(ii) The registered agent of any entity required in a filed document;

(iii) The duration of the corporation's existence, if less than perpetual;

(iv) The number of authorized shares and designation of each class or series of shares;

(v) The effective date of a filed document; and

(vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(e) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document and that fact is not ascertainable by reference to a source described in (b)(i) of this subsection or another publicly available or accessible document, then the corporation must either (i) notify the affected shareholders of the fact, or (ii) file with the secretary of state articles of amendment to the filed document stating the fact, in either case promptly after the time when the fact is first ascertainable or thereafter changes.

(f) Unless the articles of incorporation, a bylaw, or a resolution adopted or approved by the board of directors or shareholders provide otherwise, articles of amendment under (e) of this subsection are deemed to be adopted or approved by the adoption or approval of the original filed document to which they relate and may be filed by the corporation without further adoption or approval by the board of directors or the shareholders. [2020 c 194 § 4; 2020 c 57 § 34; 2015 c 176 § 2101; 2002 c 297 § 1; 1991 c 72 § 24; 1989 c 165 § 3.]

Reviser's note: This section was amended by 2020 c 57 § 34 and by 2020 c 194 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.202 Certificate of authority as insurance company—Filing of records. 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 filed with the secretary of state, the records shall be filed with the insurance commissioner rather than the secretary of state. [2002 c 297 § 2; 1998 c 23 § 5.]

23B.01.204 Certificate of authority from department of financial institutions—Filing of records. For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the department of financial institutions as a bank, trust company, or the holding company thereof, under *Title 30 RCW, or as a savings bank or holding company thereof, under Title 32 RCW, or for any other corporation or other entity which is or purports to be a bank, savings bank, savings and loan association, trust company, industrial loan bank, credit union, bank holding company, financial services holding company, or savings and loan holding company, whenever under this chapter corporate records are required to be filed with the secretary of state, the records shall be filed with the department of financial institutions. [2010 c 88 § 1.]

***Reviser's note:** Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

Additional notes found at www.leg.wa.gov

23B.01.220 Fees. Corporations are subject to the applicable fees, charges, and penalties established by the secretary of state under RCW 23.95.260 and 43.07.120. [2015 c 176 § 2102; 2002 c 297 § 3; 1993 c 269 § 2; 1992 c 107 § 7; 1991 c 72 § 26; 1990 c 178 § 1; 1989 c 165 § 5.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Additional notes found at www.leg.wa.gov

23B.01.230 Effective time and date of document. A document filed with the secretary of state is effective as provided in RCW 23.95.210, and may state a delayed effective date and time in accordance with RCW 23.95.210. [2020 c 57 § 35; 2015 c 176 § 2103; 2002 c 297 § 4; 1989 c 165 § 6.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.240 Correcting filed documents. A domestic or foreign corporation may correct a document filed by the secretary of state in accordance with RCW 23.95.220. [2020 c 57 § 36; 2015 c 176 § 2104; 2002 c 297 § 5; 1989 c 165 § 7.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.250 Filing duty of secretary of state. RCW 23.95.225 governs the secretary of state's duty to file documents delivered to the secretary of state for filing, the manner and effect of filing, and procedures that apply when the secretary of state refuses to file a document. [2020 c 57 § 37; 2015 c 176 § 2105; 2002 c 297 § 6; 1989 c 165 § 8.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.280 Certificate of existence or registration. Any person may apply to the secretary of state under RCW 23.95.235 to furnish a certificate of existence for a domestic corporation or a certificate of registration for a foreign corporation. [2015 c 176 § 2106; 1991 c 72 § 27; 1989 c 165 § 11.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.290 Penalty for signing false document. RCW 23.95.240 governs the penalty that applies for executing a false document that is intended to be delivered to the secretary of state for filing. [2020 c 57 § 38; 2015 c 176 § 2107; 1989 c 165 § 12.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.300 Powers. The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this title, including adoption, amendment, or repeal of rules for the efficient administration of this title. [1989 c 165 § 13.]

23B.01.400 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

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

(4) "Controlling interest" means ownership of an entity's outstanding shares or interests in such number as to entitle the holder at the time to elect a majority of the entity's directors or other governors without regard to voting power which may thereafter exist upon a default, failure, or other contingency.

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

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

(7) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with RCW 23B.01.410, by electronic transmission.

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

(9) "Document" means:

(a) Any tangible medium on which information is inscribed, and includes handwritten, typed, printed, or similar instruments or copies of such instruments; and

(b) An electronic record.

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

(11) "Electronic mail" means an electronic transmission directed to a unique electronic mail address, which electronic mail will be deemed to include any files attached thereto and any information hyperlinked to a website if the electronic mail includes the contact information of an officer or agent of the corporation who is available to assist with accessing such files and information.

(12) "Electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox, commonly referred to as the "local part" of the address, and a reference to an internet domain, commonly referred to as the "domain part" of the address, whether or not displayed, to which electronic mail can be sent or delivered.

(13) "Electronic record" means information that is stored in an electronic or other nontangible medium and: (a) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice; or (b) if not retrievable in paper form by the recipient through an automated process used in conventional commercial practice, is otherwise authorized in accordance with RCW 23B.01.410(10).

(14) "Electronic transmission" or "electronically transmitted" means internet transmission, telephonic transmission, electronic mail transmission, transmission of a telegram, cablegram, or datagram, the use of, or participation in, one or more electronic networks or databases including one or more distributed electronic networks or databases, or any other form or process of communication, not directly involving the physical transfer of paper or another tangible medium, which:

(a) Is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, or, if not retrievable in paper form by the recipient through an automated process used in conventional commercial practice, is otherwise authorized in accordance with RCW 23B.01.410(10).

(15) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

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

(17) "Execute," "executes," or "executed" means, with present intent to authenticate or adopt a document:

(a) To sign or adopt a tangible symbol to the document, and includes any manual, facsimile, or conformed signature;

(b) To attach or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature; or

(c) With respect to a document 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.

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

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

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

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

(22) "Governor" has the meaning given that term in RCW 23.95.105.

(23) "Includes" denotes a partial definition.

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

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

(26) "Means" denotes an exhaustive definition.

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

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

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

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

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

(32) "Qualified director" means (a) with respect to a director's conflicting interest transaction as defined in RCW 23B.08.700, any director who does not have either (i) a conflicting interest respecting the transaction, or (ii) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction; (b) with respect to RCW 23B.08.735, a qualified director under (a) of this subsection if the business opportunity were a director's conflicting interest transaction; and (c) with respect to RCW 23B.02.020(2)(g), a director who is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply, or (ii) who has a familial, financial, professional, or employment relationship with another officer to whom the limitation or elimination would apply, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the limitation or elimination.

(33) "Record date" means the date fixed for determining the identity of a corporation's shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

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

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

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

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

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

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

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

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

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

(43) "Subsidiary" means an entity in which the corporation has, directly or indirectly, a controlling interest.

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

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

(46) "Writing" or "written" means any information in the form of a document. [2022 c 42 § 101; 2021 c 84 § 1; 2020 c 57 § 39; 2019 c 141 § 5; 2017 c 28 § 12. Prior: 2015 c 176 § 2148; 2015 c 20 § 1; 2012 c 215 § 17; 2009 c 189 § 1; prior: 2002 c 297 § 9; 2002 c 296 § 1; 2000 c 168 § 1; 1996 c 155 §

4; 1995 c 47 § 1; prior: 1991 c 269 § 35; 1991 c 72 § 28; 1989 c 165 § 14.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.410 Notice. (1) A 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. A notice includes material that this title or the corporation's articles of incorporation or bylaws requires to accompany the notice. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under this title must be in English.

(2) A notice or other communication may be given by any method of delivery, except that electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or other communication may be given by means of a broad nonexclusionary distribution to the public, which may include a newspaper of general circulation in the area where published; radio, television, or other form of public broadcast communication; or other methods of distribution that the corporation has previously identified to its shareholders.

(3) A notice or other communication to a domestic or foreign corporation registered to do business in this state may be delivered to the corporation's registered agent or to the 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 foreign registration statement.

(4) Except to the extent otherwise provided in subsection (5) of this section, a notice or other communication may be given by electronic mail or other electronic transmission, subject to subsection (10) of this section if applicable. If a corporation previously gave notices under this title to a shareholder only by mail or other methods of delivery not involving electronic transmission, the corporation must notify the shareholder that it intends to give notices under this title to the shareholder by electronic transmission before the corporation first commences giving notice under this title to the shareholder by electronic transmission. The inadvertent failure to give this notice will not invalidate any meeting or other corporate action.

(5) A notice may not be given by electronic mail or other electronic transmission:

(a) To a shareholder after the shareholder notifies the corporation in writing of an objection to receiving notice by electronic mail or other electronic transmission; or

(b) To a shareholder or director after the corporation is unable to deliver two consecutive notices by electronic mail or other electronic transmission to the electronic mail address, network, or processing system for the shareholder or director, and the inability becomes known to the secretary or to the transfer agent, or other person responsible for the giving of notice or other communications. The inadvertent failure to discover this inability will not invalidate any meeting or other corporate action.

(6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(a) If by electronic mail, it is directed to the recipient's electronic mail address, including, in the case of a shareholder, to the shareholder's electronic mail address as it appears in the corporation's records;

(b) If by posting on an electronic network, upon the later of:

(i) The posting; and

(ii) The delivery of separate notice to the recipient of such specific posting together with comprehensible instructions regarding how to obtain access to the posting on the electronic network; and

(c) If by any other electronic transmission, it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission and it is in a form capable of being processed by that system.

(7) Receipt of an electronic acknowledgment from an information processing system described in subsection (6)(c) of this section establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(8) An electronic transmission is received under this section even if no person is aware of its receipt.

(9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(a) If in a physical form, the earliest of when it is actually received, or when it is left at:

(i) A shareholder's address as it appears in the corporation's records;

(ii) A director's residence or usual place of business; or

(iii) The corporation's principal office;

(b) If mailed to a shareholder, upon deposit in the United States mail with first-class postage prepaid and correctly addressed to the shareholder's mailing address as it appears in the corporation's records;

(c) If mailed to a recipient other than a shareholder, the earliest of when it is actually received, or:

(i) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) Five days after it is deposited in the United States mail with first-class postage prepaid and correctly addressed to the recipient;

(d) If sent by air courier, when dispatched and correctly addressed to a shareholder's mailing address as it appears in the corporation's records;

(e) If sent by electronic mail or any other electronic transmission, when it is received as provided in subsection (6) of this section; and

(f) If oral, when communicated.

(10) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) The electronic transmission is otherwise retrievable in perceivable form; and

(b) The sender and the recipient have consented in writing to the use of such form of electronic transmission.

(11) Notwithstanding anything to the contrary in this section or any other section of this title, when this title requires that a notice be given to shareholders, a public company may satisfy this requirement, by: (a) Posting the notice, and any material that this title or the corporation's articles of incorporation or bylaws requires to accompany the notice, on an electronic network (either separate from, or in combination with or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law) at or prior to the time that the notice under (b) of this subsection is delivered to the public company's shareholders entitled to receive the notice, and (b) mailing to the public company's shareholders entitled to receive the notice a separate notice of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network. In such a case, the notice and any accompanying material posted on the electronic network is deemed to have been delivered to the public company's shareholders at the time the separate notice required under (b) of this subsection is effective as provided in subsection (9) of this section. A public company that elects pursuant to this subsection to post on an electronic network any notice or any material that this title or the corporation's articles of incorporation or bylaws requires to accompany a notice to shareholders is required, at its expense, to provide a copy of the notice and the material in a tangible medium (alone or in combination or as part of any other materials the public company has posted on the electronic network in compliance with federal law) to any shareholder entitled to such a notice who so requests.

(12) If this title prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of this title, those requirements govern. The articles of incorporation or bylaws may require delivery of notices of meetings of directors by electronic mail or other electronic transmission.

(13) In the event that any provisions of this title are deemed to modify, limit, or supersede the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., the provisions of this title will control to the maximum extent permitted by section 102(a)(2) of that federal act. [2021 c 84 § 2; 2020 c 57 § 40; 2015 c 176 § 2108; 2009 c 189 § 2; 2008 c 59 § 1; 2002 c 297 § 10; 1991 c 72 § 29; 1990 c 178 § 2; 1989 c 165 § 15.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Additional notes found at www.leg.wa.gov

23B.01.420 Notice—Common address—Address defined—Shareholders consent. (1) A corporation has delivered written notice or any other report or statement to all shareholders of record who share a common address if all of the following requirements are met:

(a) The corporation delivers one copy of the notice, report, or statement to the common address;

(b) The corporation addresses the notice, report, or statement to the shareholders who share that address either as a group or to each of the shareholders individually or in any other manner to which each of those shareholders has consented; and

(c) Each of those shareholders consents to delivery of a single copy of such notice, report, or statement to the shareholders' common address.

(2) For purposes of this section, "address" means a street address, a post office box number, a facsimile telephone number, an address, location, or system for electronic transmissions, an electronic mail address, or another similar destination to which documents are delivered.

(3) Any consent described in subsection (1) of this section is revocable by any shareholder who delivers written notice of revocation to the corporation. If the written notice of revocation is delivered, the corporation must begin providing individual notices, reports, or statements to the revoking shareholder within thirty days after delivery of the written notice of revocation.

(4) Any shareholder who fails to object by written notice to the corporation, within 60 days of written notice by the corporation of its intention to deliver single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (1) of this section, will be deemed to have consented to receiving single copies at the common address, on condition that the notice of intention explains that consent may be revoked and the method for revoking consent. [2021 c 84 § 3; 2020 c 57 § 41; 2003 c 35 § 1.]

23B.01.520 Domestic corporations—Filing, initial, and annual license fees. For the privilege of doing business, every domestic corporation, except one for which existing law provides a different fee schedule, shall pay a fee for the filing of its articles of incorporation and its first year's license, and an annual license fee for each year following incorporation on or before the expiration of its corporate license, in an amount established by the secretary of state under RCW 23.95.260. [2015 c 176 § 2109; 1989 c 165 § 18.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.540 Foreign corporations—Filing and annual license fees. A foreign corporation doing an intrastate business or seeking to do an intrastate business in the state of Washington shall pay for the privilege of so doing the same filing and annual license fees prescribed in RCW 23B.01.520 for domestic corporations. [2015 c 176 § 2110; 1989 c 165 § 20.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.570 Penalty for nonpayment of annual corporate license fees and failure to file a substantially complete annual report—Payment of delinquent fees—Rules. In the event any domestic corporation fails to file a full and complete initial report under RCW 23.95.255, or in the event any corporation, foreign or domestic, does business in this state without having paid its annual corporate license fee and without having filed a substantially complete annual report under RCW 23.95.255 when either is due, there shall become

due and owing the state of Washington a penalty as established by rule by the secretary under RCW 23.95.260.

A corporation organized under this title may at any time prior to its dissolution as provided in Article 6 of chapter 23.95 RCW, and a foreign corporation registered to do business in this state may at any time prior to the termination of its registration as provided in RCW 23.95.550, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty established by rule by the secretary under RCW 23.95.260. [2017 c 31 § 4; 2015 c 176 § 2111; 1994 c 287 § 6; 1991 c 72 § 30; 1989 c 165 § 23.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.590 Public service companies entitled to deductions. The annual fee required to be paid to the Washington utilities and transportation commission by any public service corporation shall be deducted from the annual license fee provided in this title and the excess only shall be collected.

It shall be the duty of the commission to furnish to the secretary of state on or before July 1st of each year a list of all public service corporations with the amount of annual license fees paid to the commission for the current year. [1989 c 165 § 25.]

Chapter 23B.02 RCW
INCORPORATION

Sections

23B.02.010 Incorporators.
23B.02.020 Articles of incorporation.
23B.02.030 Effect of filing.
23B.02.032 Certificate of authority as insurance company—Filing of records.
23B.02.040 Liability for preincorporation transactions.
23B.02.050 Organization of corporation.
23B.02.060 Bylaws.
23B.02.070 Emergency bylaws.
23B.02.080 Forum selection.

23B.02.010 Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing. [1989 c 165 § 26.]

23B.02.020 Articles of incorporation. (1) The articles of incorporation must include:

(a) A corporate name for the corporation that satisfies the requirements of Article 3 of chapter 23.95 RCW;

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

(c) The name and address of the corporation's initial registered agent designated in accordance with Article 4 of chapter 23.95 RCW; and

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

(2) The articles of incorporation may include:

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

(b) The par value of any authorized shares or classes of shares;

(c) Provisions not inconsistent with law regarding:

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

(ii) Managing the business and regulating the affairs of the corporation; or

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(d) Any provision that under this title is required or permitted to be set forth in the bylaws;

(e) A provision eliminating or limiting a director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director in accordance with RCW 23B.08.320;

(f) A provision permitting or making obligatory indemnification of a director made a party to a proceeding, or advancement or reimbursement of expenses incurred by a director in a proceeding to the extent permitted by RCW 23B.08.560; and

(g) A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, prior to the pursuit or taking of the opportunity by the director or other person in accordance with RCW 23B.08.735(1)(b).

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

(4) Provisions in the articles of incorporation may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with RCW 23B.01.200(3). [2020 c 194 § 2; 2019 c 141 § 1. Prior: 2015 c 176 § 2112; 2015 c 20 § 2; 2009 c 189 § 3; 2002 c 297 § 11; 1997 c 19 § 1; 1996 c 155 § 5; 1994 c 256 § 27; 1989 c 165 § 27.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Findings—Construction—1994 c 256: See RCW 43.320.007.

23B.02.030 Effect of filing. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to the incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily to dissolve the corporation. [1989 c 165 § 28.]

23B.02.032 Certificate of authority as insurance company—Filing of records. 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 filed with the secretary of state, the records shall be filed with the insurance commissioner rather than the secretary of state. [2002 c 297 § 12; 1998 c 23 § 6.]

23B.02.040 Liability for preincorporation transactions. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this title, are jointly and severally liable for liabilities created while so

acting except for any liability to any person who also knew that there was no incorporation. [1989 c 165 § 29.]

23B.02.050 Organization of corporation. (1) After incorporation:

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

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

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

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

(2) Corporate action required or permitted by this title to be approved by incorporators at an organizational meeting may be approved without a meeting if the approval is evidenced by one or more written consents describing the corporate action so approved and executed by each incorporator.

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

(4) A corporation must deliver an initial report to the secretary of state in accordance with RCW 23.95.255. [2020 c 57 § 42; 2015 c 176 § 2113; 2009 c 189 § 4; 2002 c 297 § 13; 1991 c 72 § 31; 1989 c 165 § 30.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.02.060 Bylaws. (1) The incorporators or board of directors of a corporation must adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation to the extent the provision does not infringe upon or limit the exclusive authority of the board of directors under RCW 23B.08.010(2)(b) or otherwise conflict with this title or any other law, the articles of incorporation, or a shareholders' agreement authorized by RCW 23B.07.320. [2020 c 194 § 3; 2011 c 328 § 1; 2009 c 189 § 5; 1989 c 165 § 31.]

23B.02.070 Emergency bylaws. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the corporation; and

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

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. [1989 c 165 § 32.]

23B.02.080 Forum selection. (1) The articles of incorporation or bylaws may contain provisions that require any or all internal corporate proceedings to be commenced and maintained exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision permitted under subsection (1) of this section:

(a) May not confer jurisdiction on any court, over any person, or of any proceeding; and

(b) May not (i) prohibit commencing or maintaining an internal corporate proceeding in the courts of this state or (ii) require claims asserted in an internal corporate proceeding to be determined by arbitration.

(3) If the court or courts of this state specified in a provision permitted under subsection (1) of this section do not have jurisdiction, but any other court or courts specified in the provision do have jurisdiction, then the internal corporate proceeding may be commenced and maintained:

(a) In any court of this state that has jurisdiction; or

(b) In any other court specified in the provision that has jurisdiction.

(4) If no court specified in a provision permitted under subsection (1) of this section has jurisdiction, then the internal corporate proceeding may be commenced and maintained in any court that has jurisdiction.

(5) For purposes of this section, "internal corporate proceeding" means (a) any proceeding asserting a claim based on a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity, (b) any proceeding commenced or maintained in the right of the corporation, (c) any proceeding asserting a claim arising pursuant to any provision of the act or the corporation's articles of incorporation or bylaws, or (d) any proceeding asserting a claim concerning the internal affairs of the corporation that is not included in (a) through (c) of this subsection. [2017 c 28 § 9.]

Chapter 23B.03 RCW
POWERS AND PURPOSES

Sections

23B.03.010 Purposes.
23B.03.020 General powers.
23B.03.030 Emergency powers.
23B.03.040 Ultra vires.

23B.03.010 Purposes. (1) Every corporation incorporated under this title has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) Corporations organized for the purposes of banking or engaging in business as an insurer shall not be organized under this title. [1989 c 165 § 33.]

23B.03.020 General powers. (1) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name.

(2) Unless its articles of incorporation provide otherwise, every corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power:

(a) To sue and be sued, complain, and defend in its corporate name;

(b) To 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;

(c) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(d) To 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;

(e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) To 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 person;

(g) To make contracts, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) To make guarantees respecting the contracts, securities, or obligations of any person; including, but not limited to, any shareholder, affiliated or unaffiliated individual, domestic or foreign corporation, partnership, association, joint venture or trust, if such guarantee may reasonably be expected to benefit, directly or indirectly, the guarantor corporation. As to the enforceability of the guarantee, the decision of the board of directors that the guarantee may be reasonably expected to benefit, directly or indirectly, the guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation;

(i) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(j) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(k) To conduct its business, locate offices, and exercise the powers granted by this title within or without this state;

(l) To elect, appoint, or hire officers, employees, and other agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(m) To fix the compensation of directors, and lend them money and credit;

(n) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(o) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(p) To transact any lawful business that will aid governmental policy; and

(q) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation. [1989 c 165 § 34.]

23B.03.030 Emergency powers. (1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors of a corporation may:

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

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

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

(b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the business affairs of the corporation:

(a) Binds the corporation; and

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

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. [1989 c 165 § 35.]

23B.03.040 Ultra vires. (1) Except as provided in subsection (2) of this section, corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

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

(c) In a proceeding by the attorney general under RCW 23B.14.300.

(3) In a shareholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, and may award damages for loss suffered by the corporation or another party because of enjoining or setting aside the unauthorized act. [1989 c 165 § 36.]

Chapter 23B.04 RCW
NAME

Sections

23B.04.010 Corporate name.
23B.04.020 Reserved name.
23B.04.030 Registered name.
23B.04.035 Certificate of authority as insurance company—Filing of records.
23B.04.037 Certificate of authority as insurance company—Registration or reservation of name.

23B.04.010 Corporate name. A corporate name must comply with the requirements of Article 3 of chapter 23.95 RCW. [2015 c 176 § 2114; 2012 c 215 § 18; 1998 c 102 § 1; 1994 c 211 § 1304. Prior: 1991 c 269 § 36; 1991 c 72 § 32; 1989 c 165 § 37.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Additional notes found at www.leg.wa.gov

23B.04.020 Reserved name. A person may reserve the exclusive use of a corporate name in accordance with RCW 23.95.310. [2015 c 176 § 2115; 1989 c 165 § 38.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.04.030 Registered name. A foreign corporation may register its corporate name in accordance with RCW 23.95.315. [2015 c 176 § 2116; 1989 c 165 § 39.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.04.035 Certificate of authority as insurance company—Filing of records. 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 filed with the secretary of state, the records shall be filed with the insurance commissioner rather than the secretary of state. [2002 c 297 § 14; 1998 c 23 § 7.]

23B.04.037 Certificate of authority as insurance company—Registration or reservation of name. For those corporations that 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 a corporation may register or reserve a corporate name, the registration or reservation shall be filed with the insurance commissioner rather than the secretary of state. The secretary of state and insurance commissioner shall cooperate with each other in registering or reserving a corporate name so that there is no duplication of the name. [1998 c 23 § 8.]

Chapter 23B.05 RCW
OFFICE AND AGENT

Sections

23B.05.010 Registered agent.
23B.05.020 Change of registered agent.
23B.05.030 Resignation of registered agent.
23B.05.040 Service on corporation.
23B.05.050 Annual meeting of shareholders—Limitations—Terms of directors.

23B.05.010 Registered agent. Each corporation must continuously maintain in this state a registered agent in accordance with Article 4 of chapter 23.95 RCW. [2015 c 176 § 2117; 2002 c 297 § 15; 1989 c 165 § 40.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.05.020 Change of registered agent. (1) A corporation may change its registered agent in accordance with RCW 23.95.430.

(2) A registered agent may change its information on file with the secretary of state in accordance with RCW 23.95.435 or 23.95.440. [2015 c 176 § 2118; 2002 c 297 § 16; 1989 c 165 § 41.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.05.030 Resignation of registered agent. A registered agent may resign as agent by delivering to the secretary of state for filing a statement of resignation in accordance with RCW 23.95.445. [2015 c 176 § 2119; 1989 c 165 § 42.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.05.040 Service on corporation. Service of process, notice, or demand required or permitted by law to be served on the corporation may be made in accordance with RCW 23.95.450. [2015 c 176 § 2120; 1989 c 165 § 43.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.05.050 Annual meeting of shareholders—Limitations—Terms of directors. A corporation registered under the investment company act of 1940 that limits the requirement to hold an annual meeting of shareholders in accordance with RCW 23B.07.010(2) may include in its articles of incorporation or bylaws a provision establishing terms of directors which terms may be longer than one year. [1994 c 256 § 31.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Chapter 23B.06 RCW
SHARES AND DISTRIBUTIONS

Sections

23B.06.010 Authorized shares.
23B.06.020 Terms of class or series.
23B.06.030 Issued and outstanding shares.
23B.06.040 Fractional shares.
23B.06.200 Subscription for shares before incorporation.
23B.06.210 Issuance of shares.
23B.06.220 Liability of shareholders.
23B.06.230 Share dividends.
23B.06.240 Share options.
23B.06.250 Certificates.
23B.06.260 Shares without certificates.
23B.06.270 Restriction on transfer of shares and other securities.
23B.06.280 Expense of issue.
23B.06.300 Shareholders' preemptive rights.
23B.06.310 Corporation's acquisition of its own shares.
23B.06.400 Distributions to shareholders.

23B.06.010 Authorized shares. (1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue.

(a) If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, voting powers, and relative rights of that class must be described in the articles of incorporation.

(b) Preferences, limitations, voting powers, or relative rights of or on any class or series of shares or the holders thereof may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with RCW 23B.01.200(3).

(c) All shares of a class must have preferences, limitations, voting powers, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by (b) of this subsection or RCW 23B.06.020.

(2) The articles of incorporation must authorize (a) one or more classes of shares that together have unlimited voting rights, and (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this title;

(b) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event, (ii) for cash, indebtedness, securities, or other property, (iii) in a designated amount or in an amount determined in accordance with a designated formula;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) Terms of shares may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with RCW 23B.01.200(3).

(5) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section is not exhaustive. [2020 c 194 § 5; 1998 c 104 § 1; 1989 c 165 § 44.]

23B.06.020 Terms of class or series. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, voting powers, and relative rights, within the limits set forth in RCW 23B.06.010(1)(b) and this section of (a) any class of shares before the issuance of any shares of that class, or (b) one or more series within a class, and designate the number of shares within that series, before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, voting powers, and relative rights identical with those of other shares of the same series, except to the extent otherwise permitted by RCW 23B.06.010(1)(b). All shares of a series must have preferences, limitations, voting powers, and relative rights identical with those of shares of other series of the same class, except to the extent otherwise provided in the description of the series.

(4) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder approval, that set forth:

(a) The name of the corporation;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date it was adopted; and

(d) The statement that the amendment was duly adopted by the board of directors.

(5) Unless the articles of incorporation provide otherwise, the board of directors may, after the issuance of shares of a series whose number it is authorized to designate, amend the resolution establishing the series to decrease, but not below the number of shares of such series then outstanding, the number of authorized shares of that series, by filing articles of amendment, which are effective without shareholder approval, in the manner provided in subsection (4) of this section. [2009 c 189 § 6; 1998 c 104 § 2; 1989 c 165 § 45.]

23B.06.030 Issued and outstanding shares. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (3) of this section and to RCW 23B.06.400.

(3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding. [2020 c 194 § 14; 2002 c 297 § 17; 1989 c 165 § 46.]

23B.06.040 Fractional shares. (1) A corporation may:

(a) Issue fractions of a share or pay in money the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders;

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by RCW 23B.06.250(2).

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may approve the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; and

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders. [2009 c 189 § 7; 1989 c 165 § 47.]

23B.06.200 Subscription for shares before incorporation. (1) A written subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation delivers a written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to RCW 23B.06.210. [2020 c 57 § 43; 1989 c 165 § 48.]

23B.06.210 Issuance of shares. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) Any issuance of shares must be approved by the board of directors. Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) A good faith determination by the board of directors that the consideration received or to be received for the shares to be issued is adequate is conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued, fully paid and nonassessable. When the board of directors has made such a determination and the corporation has received the consideration, the shares issued therefor are fully paid and nonassessable.

(4) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect to the shares against their purchase price, until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(5) Where it cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a conclusive presumption that such shares are fully paid and nonassessable if the board of directors makes a good faith determination that there is no substantial evidence that the full consideration for such shares has not been paid. [2009 c 189 § 8; 1989 c 165 § 49.]

23B.06.220 Liability of shareholders. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were approved to be issued under RCW 23B.06.210 or specified in the subscription agreement under RCW 23B.06.200. [2009 c 189 § 9; 1989 c 165 § 50.]

23B.06.230 Share dividends. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect to shares of another class or series unless (a) the articles of incorporation so authorize, (b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (c) there are no outstanding shares of the class or series to be issued.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend. [2022 c 42 § 102; 1989 c 165 § 51.]

23B.06.240 Share options. (1) Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the terms and conditions relating to their exercise, including the time or times, the conditions precedent, and the consideration for which and the holders by whom the rights, options, or warrants may be exercised.

(2) The terms of rights, options, or warrants, including the time or times, the conditions precedent, and the consideration for which and the holders by whom the rights, options, or warrants may be exercised, as well as their duration (a) may preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants or invalidate or void any rights, options, or warrants and (b) may be made dependent upon facts ascertainable outside the documents evidencing them or outside the resolution or resolutions adopted by the board of directors creating such rights, options, or warrants if the manner in which those facts operate on the rights, options, or warrants or the holders thereof is clearly set forth in the documents or the resolutions. For purposes of this section, "facts ascertainable outside the documents evidencing them or outside the resolution or resolutions adopted by the board of directors creating such rights, options, or warrants" includes, but is not limited to, the existence of any condition or the occurrence of any event, including, without limitation, a

determination or action by any person or body, including the corporation, its board of directors, or an officer, employee, or agent of the corporation. [2020 c 194 § 6; 1998 c 104 § 3; 1989 c 165 § 52.]

23B.06.250 Certificates. (1) Shares may, but need not, be represented by certificates. Unless this title or another statute expressly provides otherwise, the rights and obligations of shareholders are identical regardless of whether their shares are represented by certificates.

(2) At a minimum each share certificate must state on its face:

(a) The name of the issuing corporation and that it is organized under the laws of this state;

(b) The name of the person to whom issued; and

(c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information without charge on request in writing.

(4) Each share certificate (a) must be executed by two officers designated in the bylaws or by the board of directors and (b) may bear the corporate seal or its facsimile.

(5) If the person who executed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid. [2020 c 57 § 44; 1989 c 165 § 53.]

23B.06.260 Shares without certificates. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may approve the issuance of some or all of the shares of any or all of its classes or series without certificates. The approval does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall deliver to the shareholder a written statement containing the information required on certificates by RCW 23B.06.250 (2) and (3), and, if applicable, RCW 23B.06.270. [2020 c 57 § 45; 2009 c 189 § 10; 2002 c 297 § 18; 1989 c 165 § 54.]

23B.06.270 Restriction on transfer of shares and other securities. (1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by RCW 23B.06.260(2). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) To preserve exemptions under federal or state securities law; or

(c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(d) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares. [1989 c 165 § 55.]

23B.06.280 Expense of issue. A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares. [1989 c 165 § 56.]

23B.06.300 Shareholders' preemptive rights. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation provide otherwise or as set forth in subsection (2) of this section. A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or words of similar import, means that the provisions set forth in subsection (3) of this section apply except to the extent that the articles of incorporation provide otherwise.

(2) Unless the articles of incorporation provide otherwise, the shareholders of a corporation formed before January 1, 2020, have a preemptive right to acquire the corporation's unissued shares.

(3) If shareholders of a corporation have a preemptive right to acquire the corporation's unissued shares under this section, the following provisions apply:

(a) Unless the articles of incorporation provide otherwise, such preemptive right is granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(b) Unless the articles of incorporation provide otherwise, a shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) Unless the articles of incorporation provide otherwise, there is no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents, employees, or other service providers of the corporation, or its subsidiaries or affiliates;

(ii) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, or its subsidiaries or affiliates;

(iii) Shares issued pursuant to the corporation's initial plan of financing; and

(iv) Shares issued for consideration other than money.

(d) Unless the articles of incorporation provide otherwise:

(i) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class; and

(ii) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(e) Unless the articles of incorporation provide otherwise, shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(f) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares. [2020 c 57 § 46; 2019 c 141 § 2; 2002 c 297 § 19; 1989 c 165 § 57.]

23B.06.310 Corporation's acquisition of its own shares. (1) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) The board of directors may adopt articles of amendment under this section without shareholder approval and deliver them to the secretary of state for filing. The articles must set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares. [2009 c 189 § 11; 1989 c 165 § 58.]

23B.06.400 Distributions to shareholders. (1) A board of directors may approve and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3) of this section.

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors. If the board of directors does not fix a record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, the record date is the date the board of directors authorizes the distribution.

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

(a) The corporation would not be able to pay its liabilities 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.

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

(a) The board of directors may base a determination that a distribution is not prohibited under subsection (3) 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.

(5) The effect of a distribution under subsection (3) 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 (a) and (b)(i) of this subsection, 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 approved if payment occurs within one hundred twenty days after the date of

approval, or the date the payment is made if it occurs more than one hundred twenty days after the date of approval.

(6) 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.

(7) 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.

(8) A transfer of the assets of a dissolved corporation to a trust or other successor entity of the type described in RCW 23B.14.030(4) constitutes a distribution subject to subsection (3) of this section only when and to the extent that the trust or successor entity distributes assets to shareholders. [2022 c 42 § 103; 2009 c 189 § 12; 2006 c 52 § 2; 1990 c 178 § 10; 1989 c 165 § 59.]

Additional notes found at www.leg.wa.gov

Chapter 23B.07 RCW
SHAREHOLDERS

Sections

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23B.07.010 Annual meeting. (1) Except as provided in subsections (2) and (6) of this section, a corporation shall hold a meeting of shareholders annually for the election of directors at a time stated in or fixed in accordance with the bylaws.

(2)(a) If the articles of incorporation or the bylaws of a corporation registered as an investment company under the investment company act of 1940 so provide, the corporation is not required to hold an annual meeting of shareholders in any year in which the election of directors is not required by the investment company act of 1940.

(b) If a corporation is required under (a) of this subsection to hold an annual meeting of shareholders to elect directors, the meeting shall be held no later than one hundred twenty days after the occurrence of the event requiring the meeting.

(3) Subject to subsection (4) of this section:

(a) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws; and

(b) If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(4) Unless the articles of incorporation or bylaws provide otherwise, if the board of directors or another person is authorized in the bylaws to determine the place of annual meetings, the board of directors or such other person may, in the sole discretion of the board of directors or such other person, determine that an annual meeting will not involve a physical assembly of shareholders at a particular geographic location, but instead will be held solely by means of remote communication, in accordance with RCW 23B.07.080.

(5) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(6) Shareholders may elect directors by written consent as permitted by RCW 23B.07.040 in lieu of holding an annual meeting. [2020 c 57 § 47; 2018 c 55 § 1; 2002 c 297 § 20; 1994 c 256 § 28; 1989 c 165 § 60.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

23B.07.020 Special meeting. (1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) Except as set forth in subsections (2) and (3) of this section, if shareholders holding at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting execute, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) The right of shareholders of a public company to call a special meeting may be limited or denied to the extent provided in the articles of incorporation.

(3) If the corporation is other than a public company, the articles of incorporation or bylaws may require the demand specified in subsection (1)(b) of this section be made by a greater percentage, not in excess of twenty-five percent, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting.

(4) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to demand a special meeting is the first date on which an executed shareholder demand is delivered to the corporation. No written demand for a special meeting will be effective unless, within 60 days after the earliest date on which a demand delivered to the corporation as required by this section was executed, written demands executed by shareholders holding at least the percentage of votes specified in subsection (1)(b) of this section or, if applicable, fixed in accordance with subsection (2) or (3) of this section, have been delivered to the corporation.

(5) Subject to subsection (6) of this section:

(a) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws; and

(b) If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(6) Unless the articles of incorporation or bylaws provide otherwise, if the board of directors or another person is authorized in the bylaws to determine the place of special meetings, the board of directors or such other person may, in the sole discretion of the board of directors or such other person, determine that a special meeting will not involve a physical assembly of shareholders at a particular geographic location, but instead will be held solely by means of remote communication, in accordance with RCW 23B.07.080.

(7) Only business within the purpose or purposes described in the meeting notice required by RCW 23B.07.050(3) may be conducted at a special shareholders' meeting. [2022 c 42 § 104; 2020 c 57 § 48; 2018 c 55 § 2; 2002 c 297 § 21; 1989 c 165 § 61.]

23B.07.030 Court-ordered meeting. (1) The superior court of the county in which the corporation's registered office is located may, after notice to the corporation, summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to vote in the election of directors at an annual meeting, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting or approval of corporate action by shareholder consent in lieu of such a meeting; or

(b) On application of a shareholder who executed a demand for a special meeting valid under RCW 23B.07.020, 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, after notice to the corporation, fix the time and place of the meeting, determine the shares and shareholders entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the manner, 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 approval of those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting. [2009 c 189 § 13; 2002 c 297 § 22; 1989 c 165 § 62.]

23B.07.035 Inspectors to act at meetings—Appointment—Duties—Certain corporations. (1) A corporation having any shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall verify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(2) The inspectors shall:

(a) Ascertain the number of shares outstanding and the voting power of each;

(b) Determine the shares represented at a meeting;

(c) Determine the validity of proxy appointments and ballots;

(d) Count the votes and ballots; and

(e) Make a written report of the results.

(3) An inspector may be an officer or employee of the corporation.

(4) If no challenge of a determination by the inspectors is timely made, such determination is conclusive. Challenge of any determination by the inspectors may be made in a court of competent jurisdiction. [2020 c 57 § 49; 2007 c 467 § 6.]

23B.07.040 Corporate action without a meeting or a vote. (1)(a) Corporate action required or permitted by this title to be approved by a shareholder vote at a meeting may be approved without a meeting or a vote if either:

(i) The corporate action is approved by all shareholders entitled to vote on the corporate action; or

(ii) The corporate action is approved by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes that would be necessary to approve such corporate action at a meeting at which all shares entitled to vote on the corporate action were present and voted, and at the time the corporate action is approved the corporation is authorized to approve such corporate action under this subsection (1)(a)(ii) by a general or limited authorization contained in its articles of incorporation, except that if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to RCW 23B.07.280, shareholders may not elect directors by less than unanimous written consent.

(b) Corporate action may be approved by shareholders without a meeting or a vote if the approval is evidenced by one or more written consents:

(i) Executed by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes necessary under (a)(i) or (ii) of this subsection;

(ii) Indicating the date of execution, which date must be on or after the applicable record date determined in accordance with subsection (2) of this section;

(iii) Describing the corporate action being approved; and

(iv) Delivered to the corporation for filing by the corporation with the minutes or corporate records in accordance with subsection (4) of this section. When delivered to each shareholder for execution, the consent must include or be accompanied by the same material that would have been required by this title to be delivered to shareholders in or accompanying a notice of meeting at which the proposed corporate action would have been submitted for shareholder approval. A shareholder may withdraw an executed shareholder consent by delivering a written notice of withdrawal to the corporation prior to the time when shareholder consents sufficient to approve the corporate action have been delivered to the corporation.

(c) A written consent in the form of an electronic transmission will be deemed to have been executed by a shareholder if it indicates that shareholder's present intent to approve the corporate action and contains or is accompanied by information from which the corporation can determine that the electronic transmission was transmitted by the shareholder and the date on which the shareholder transmitted the electronic transmission.

(2) The record date for determining shareholders entitled to approve a corporate action without a meeting may be fixed under RCW 23B.07.030 or 23B.07.070, but if not so fixed shall be the date of execution indicated on the earliest dated shareholder consent executed under subsection (1) of this section, even though such shareholder consent may not have been delivered to the corporation on that date.

(3)(a) Notice that shareholder consents are being sought under subsection (1)(a) of this section must be given, by the corporation or by another person soliciting such consents, on or promptly after the record date, to all shareholders entitled to vote on the record date who have not yet executed the shareholder consent and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date. Notice given under this subsection (3)(a) must include or be accompanied by the same information required to be included in or to accompany the shareholder consent under subsection (1)(b)(iii) and (iv) of this section.

(b) Notice that sufficient written consents have been executed to approve the proposed corporate action under either of subsection (1)(a)(i) or (ii) of this section must be given by the corporation, promptly after delivery to the corporation of written consents sufficient to approve the corporate action in accordance with subsection (4) of this section, to all shareholders entitled to vote on the record date and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date.

(4) Unless the consent executed by shareholders specifies a later time as the time at which the approval of the corporate action is to be effective, shareholder approval obtained under this section is effective when:

(a) Executed shareholder consents sufficient to approve the proposed corporate action have been delivered to the corporation in any manner authorized by RCW 23B.01.410; and

(b) Any period of advance notice required by the corporation's articles of incorporation to be given to any nonconsenting shareholders has been satisfied. No written consent is effective to approve a proposed corporate action unless, within sixty days after the earliest date on which a consent delivered to the corporation as required by this section was executed, written consents executed by a sufficient number of shareholders to approve the corporate action are delivered to the corporation.

(5) Approval of corporate action by written consents under this section has the effect of a meeting vote and may be described as such in any document, except that, if the corporate action requires the filing of a certificate under any other section of this title, the certificate so filed shall state, in lieu of any statement required by that section concerning any vote of shareholders, that shareholder approval has been obtained in accordance with this section and that notice to any nonconsenting shareholders has been given to the extent required by this section.

(6) The notice requirements in subsection (3)(a) and (b) of this section will not delay the effectiveness of approval of corporate action by written consents, and failure to comply with those notice requirements will not invalidate approval of corporate action by written consents; except that this subsection is not intended to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice in accordance with those subsections. [2021 c 84 § 4. Prior: 2020 c 194 § 15; 2020 c 57 § 50; 2009 c 189 § 14; 2002 c 297 § 23; 1997 c 19 § 2; 1991 c 72 § 33; 1989 c 165 § 63.]

23B.07.050 Notice of meeting. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting. Such notice shall be given no fewer than ten nor more than sixty days before the meeting date, except that notice of a shareholders' meeting to act on an amendment to the articles of incorporation, a plan of merger or share exchange, a proposed disposition of property and assets pursuant to RCW 23B.12.020, or the dissolution of the corporation shall be given no fewer than twenty nor more than sixty days before the meeting date. Unless this title or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

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

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

(4) Unless the bylaws require otherwise, if an annual or special shareholders' meeting 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 must be fixed under RCW 23B.07.070, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date. [2017 c 28 § 13; 1989 c 165 § 64.]

23B.07.060 Waiver of notice. (1) A shareholder may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time stated in the notice, or in the case of notice required by RCW 23B.07.040(3), before or after the corporate action to be approved by written consent becomes effective. Except as provided by subsections (2) and (3) of this section, the waiver must be in writing, be executed by the shareholder entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A shareholder's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(3) A shareholder waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented. [2020 c 57 § 51; 2009 c 189 § 15; 2002 c 297 § 24; 1991 c 72 § 34; 1989 c 165 § 65.]

23B.07.070 Record date. (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to approve any other corporate action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix the record date, which date may not precede the date on which the resolution fixing the record date is approved.

(2) If not otherwise fixed under subsection (1) of this section or RCW 23B.07.030, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(3) A record date fixed under this section may not be more than seventy days before the meeting of shareholders or more than ten days prior to the date on which the first shareholder consent is executed under RCW 23B.07.040(1)(b).

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

(5) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date. [2022 c 42 § 105; 2009 c 189 § 16; 1989 c 165 § 66.]

23B.07.080 Shareholder participation by means of communication equipment. (1) Unless the articles of incorporation or bylaws provide otherwise, a corporation may permit any or all shareholders to participate in any meeting of shareholders by means of, or conduct the meeting solely through the use of, remote communication. Subject to the provisions of subsection (2) of this section, participation by remote communication is to be subject to any guidelines and procedures adopted by or pursuant to the authority of the board of directors.

(2) If a corporation elects to permit participation by means of, or conduct a meeting solely through the use of, remote communication:

(a) The notice of the meeting must specify how a shareholder may participate in the meeting by means of remote communication; and

(b) The corporation must implement reasonable measures to (i) verify that each person participating remotely as a shareholder or proxy holder is a shareholder or proxy holder, and (ii) provide each person participating remotely as a shareholder or proxy holder a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings.

(3) Participation in a meeting in accordance with this section constitutes presence in person at that meeting.

(4) If the board of directors or another authorized person determines to hold a shareholders' meeting without a physical assembly of shareholders in accordance with RCW 23B.07.010(4) or 23B.07.020(6), all shareholders entitled to vote at such meeting must have the opportunity to participate in the meeting by remote communication in accordance with this section. [2018 c 55 § 3; 1989 c 165 § 67.]

23B.07.200 Shareholders' list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders on the record date who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder. Nothing contained in this section requires the corporation to include on such list the electronic mail address or other electronic contact information of a shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning ten days prior to the meeting and continuing through the meeting either: (a) On a reasonably accessible electronic network, on condition that the information necessary to gain access to the list is provided in or accompanies the notice of the meeting; or (b) at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. If the corporation elects to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to shareholders or their agents or attorneys. A shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation must make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list at any time during the meeting or any adjournment. If the meeting is held solely by means of remote communication in accordance with RCW 23B.07.010(4) or 23B.07.020(6), then the list must be available for inspection by any shareholder, the shareholder's agent, or the shareholder's attorney during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided with the notice of the meeting.

(4) If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect the shareholders' list before or at the meeting, the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection is complete.

(5) A shareholder's right to copy the shareholders' list, and a shareholder's right to otherwise inspect and copy the record of shareholders, is governed by RCW 23B.16.020(3).

(6) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of corporate action approved at the meeting. [2022 c 42 § 106; 2020 c 57 § 52; 2009 c 189 § 17; 1989 c 165 § 68.]

23B.07.210 Voting entitlement of shares. (1) Except as provided in subsections (2) and (3) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation, directly or indirectly, or by a second corporation, domestic or foreign, and the first corporation owns, through an entity of which a majority of the voting power is held directly or indirectly by the corporation or which is otherwise controlled by the corporation.

(3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of, or otherwise belong to, the corporation directly or indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or which is otherwise controlled by the corporation.

(4) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares. [2020 c 194 § 13; 1989 c 165 § 69.]

23B.07.220 Proxies. (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by executing an appointment form, or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(3) An appointment of a proxy is effective when an executed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for the term provided in the appointment form or electronic transmission, and, if no term is provided, is valid for eleven months unless the appointment is irrevocable under subsection (4) of this section.

(4) An appointment of a proxy is revocable by the shareholder unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under RCW 23B.07.310.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the officer or agent of the corporation authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to RCW 23B.07.240 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment. [2020 c 57 § 53; 2002 c 297 § 25; 2000 c 168 § 2; 1989 c 165 § 70.]

23B.07.230 Shares held by nominees. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) The types of nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a beneficial owner;

(c) The manner in which the procedure is selected by the nominee;

(d) The information that must be provided when the procedure is selected;

(e) The period for which selection of the procedure is effective; and

(f) Other aspects of the rights and duties created. [1989 c 165 § 71.]

23B.07.240 Corporation's acceptance or rejection of votes, ballots, consents, waivers, or proxy appointments. (1) If the name executed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

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

(a) The shareholder is an entity and the name executed purports to be that of an officer, partner, or agent of the entity;

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

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

(d) The name executed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to execute for the shareholder has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment; or

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name executed 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 corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the person authorized to count votes, acting in good faith, has reasonable basis for doubt about the validity of its execution.

(4) Neither the corporation nor the person authorized to count votes, including an inspector of election under RCW 23B.07.035, that accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or RCW 23B.07.220(2) is liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, or proxy appointment under this section, or RCW 23B.07.220(2) is valid unless a court of competent jurisdiction determines otherwise. [2020 c 57 § 54; 2002 c 297 § 26; 2000 c 168 § 3; 1989 c 165 § 72.]

23B.07.250 Quorum and voting requirements. (1) Shares entitled to vote as a separate voting group may approve a corporate action at a meeting only if a quorum of those shares exists with respect to that corporate action. Unless the articles of incorporation or this title provide otherwise, a majority of the votes entitled to be cast on the corporate action by the voting group constitutes a quorum of that voting group for approval of that corporate action.

(2) Once a share is represented for any purpose at a meeting other than solely to object to holding the meeting or transacting business at the meeting, it 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 must be set for that adjourned meeting.

(3) If a quorum exists, a corporate action, other than the election of directors, is approved by a voting group if the votes cast within the voting group favoring the corporate action exceed the votes cast within the voting group opposing the corporate action, unless the articles of incorporation or this title require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting either (i) [(a)] a quorum for a voting group greater or lesser than specified in subsection (1) of this section, or (ii) [(b)] a voting requirement for a voting group greater than specified in subsection (3) of this section, is governed by RCW 23B.07.270.

(5) The election of directors is governed by RCW 23B.07.280. [2009 c 189 § 18; 1989 c 165 § 73.]

23B.07.260 Corporate action by single and multiple voting groups. (1) If the articles of incorporation or this title provide for voting on a corporate action by all shares entitled to vote thereon, voting together as a single voting group and do not provide for separate voting by any other voting group or groups with respect to that corporate action, that corporate action is approved when voted upon by that single voting group as provided in RCW 23B.07.250.

(2) If the articles of incorporation or this title provide for voting by two or more voting groups on a corporate action, that corporate action is approved only when voted upon by each of those voting groups as provided in RCW 23B.07.250. [2009 c 189 § 19; 2003 c 35 § 2; 1989 c 165 § 74.]

23B.07.270 Greater or lesser quorum or voting requirements. (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 as are required under the quorum and voting requirements then in effect for approval of 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 as are required under the quorum and voting requirements then in effect for approval of the particular corporate action, or the quorum and voting requirements then in effect for amendments to articles of incorporation, whichever is greater. [2009 c 189 § 20; 1990 c 178 § 11; 1989 c 165 § 75.]

Additional notes found at www.leg.wa.gov

23B.07.280 Voting for directors—Cumulative voting. (1) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide otherwise or as set forth in subsection (2) of this section. A statement included in the articles of incorporation that "[all]

[a designated voting group of] shareholders are entitled to cumulate their votes for directors," or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(2) With respect to a corporation formed before January 1, 2020, unless otherwise provided in the articles of incorporation, shareholders entitled to vote at any election of directors are entitled to cumulate votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(3) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(a) The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(b) A shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation not less than seventy-two hours before the time set for the meeting of the shareholder's intent to cumulate votes during the meeting, and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

(4) Unless otherwise provided in the articles of incorporation or in a bylaw adopted under RCW 23B.10.205, in any election of directors the candidates elected are those receiving the largest numbers of votes cast by the shares entitled to vote in the election, up to the number of directors to be elected by such shares. [2019 c 141 § 3; 2009 c 189 § 21; 1989 c 165 § 76.]

23B.07.300 Voting trusts. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by executing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is executed, the trustee shall prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each voting trust beneficial owner transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

(3) Limits, if any, on the duration of a voting trust are to be as set forth in the voting trust agreement. A voting trust that became effective when this section limited the term of a voting trust to ten years will remain governed by the provisions of this section then in effect relating to the duration of voting trusts, unless the voting trust agreement is amended to provide otherwise by unanimous agreement of the parties to that agreement. [2020 c 57 § 55; 2017 c 28 § 15; 1989 c 165 § 77.]

23B.07.310 Voting agreements. (1) Two or more shareholders may provide for the manner in which they will vote their shares by executing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of RCW 23B.07.300.

(2) A voting agreement created under this section is specifically enforceable. [2020 c 57 § 56; 1989 c 165 § 78.]

23B.07.320 Agreements among shareholders—Acquisition of shares after agreement—Liability. (1) An agreement among the shareholders of a corporation that is not contrary to public policy and that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this title in that it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the approval or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in RCW 23B.06.400;

(c) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(d) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation;

(g) Provides a process by which a deadlock among directors or shareholders may be resolved;

(h) Requires dissolution of the corporation at the request of one or more shareholders or upon the occurrence of a specified event or contingency; or

(i) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them.

(2) An agreement authorized by this section shall be:

(a) Set forth in a written agreement that is executed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by RCW 23B.06.260(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Unless the agreement provides otherwise, any person who acquires outstanding or newly issued shares in the corporation after an agreement authorized by this section has

been effected, whether by purchase, gift, operation of law, or otherwise, is deemed to have assented to the agreement and to be a party to the agreement. A purchaser of shares who is aggrieved because he or she at the time of purchase did not have actual or constructive knowledge of the existence of the agreement may either: (a) Bring an action to rescind the purchase within the earlier of ninety days after discovery of the existence of the agreement or two years after the purchase of the shares; or (b) continue to hold the shares subject to the agreement but with a right of action for any damages resulting from nondisclosure of the existence of the agreement. A purchaser shall be deemed to have constructive knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(8) Limits, if any, on the duration of an agreement governed by this section are to be as set forth in the agreement. An agreement governed by this section that became effective when this section limited the term of such an agreement to ten years unless the agreement provided otherwise will remain governed by the provisions of this section then in effect relating to the duration of agreements among shareholders. [2020 c 57 § 57; 2017 c 28 § 16; 2009 c 189 § 22; 1995 c 47 § 6; 1993 c 290 § 4.]

23B.07.400 Derivative proceedings procedure. (1) A person may not commence a proceeding in the right of a domestic or foreign corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(2) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why a demand was not made. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(3) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

(4) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(5) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on behalf of the beneficial owner. [1989 c 165 § 79.]

Chapter 23B.08 RCW
DIRECTORS AND OFFICERS

Sections

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23B.08.010 Requirement for and duties of board of directors. (1) Each corporation must have a board of directors, except that a corporation may dispense with or limit the authority of its board of directors by describing in its articles of incorporation, or in a shareholders' agreement authorized by RCW 23B.07.320, who will perform some or all of the duties of the board of directors.

(2) Subject to any limitation set forth in this title, the articles of incorporation, or a shareholders' agreement authorized by RCW 23B.07.320:

(a) All corporate powers shall be exercised by or under the authority of the corporation's board of directors; and

(b) The business and affairs of the corporation shall be managed under the direction of its board of directors, which shall have exclusive authority as to substantive decisions concerning management of the corporation's business. [2011 c 328 § 2; 1989 c 165 § 80.]

23B.08.020 Qualifications of directors. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe. [1989 c 165 § 81.]

23B.08.030 Number and election of directors. (1) A board of directors must consist of one or more individuals.

(2) Unless the articles of incorporation under RCW 23B.08.010 or an agreement among the shareholders under RCW 23B.07.320 dispense with a board of directors, the articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed.

(3) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless (a) their terms are staggered under RCW 23B.08.060, or (b) their terms are otherwise governed by RCW 23B.05.050. Directors also may be elected by execution of a shareholder consent under RCW 23B.07.040. [2020 c 194 § 7; 2009 c 189 § 23; 2007 c 467 § 1; 2002 c 297 § 27; 1994 c 256 § 29; 1989 c 165 § 82.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

23B.08.040 Election of directors by certain classes or series of shares. If the articles of incorporation authorize dividing the shares into classes or series, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class, or classes, or series of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors. [1989 c 165 § 83.]

23B.08.050 Terms of directors—Generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless (a) their terms are staggered under RCW 23B.08.060 then at the applicable second or third annual shareholders' meeting following their election; or (b) their terms are otherwise governed by RCW 23B.05.050, except to the extent (i) the terms are otherwise provided in a bylaw adopted pursuant to RCW 23B.10.205, or (ii) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

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

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(5) Except to the extent otherwise provided in the articles of incorporation or pursuant to RCW 23B.10.205, if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualified or there is a decrease in the number of directors. [2007 c 467 § 2; 1994 c 256 § 30; 1989 c 165 § 84.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

23B.08.060 Staggered terms for directors. (1) The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

(2) If cumulative voting is authorized, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual shareholders' meeting. [1989 c 165 § 85.]

23B.08.070 Resignation of directors. (1) A director may resign at any time by delivering a written notice of resignation to the board of directors, its chairperson, the president, or the secretary of the corporation.

(2) A resignation is effective as provided in RCW 23B.01.410(9) unless the notice provides for a delayed effectiveness, including effectiveness determined upon a future event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable. [2020 c 57 § 58; 2007 c 467 § 3; 2002 c 297 § 28; 1989 c 165 § 86.]

23B.08.080 Removal of directors by shareholders. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by holders of one or more authorized classes or series of shares, only the holders of those classes or series of shares may participate in the vote to remove the director.

(3) If cumulative voting is authorized, and if less than the entire board is to be removed, no director may be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the direc-

tor exceeds the number of votes cast not to remove the director.

(4) A director may be removed by the shareholders only at a special meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director. [1995 c 47 § 7; 1989 c 165 § 87.]

23B.08.090 Removal of directors by judicial proceeding. (1) The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent of the outstanding shares of any class if the court finds that (a) the director engaged in fraudulent or dishonest conduct with respect to the corporation, and (b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant. [1989 c 165 § 88.]

23B.08.100 Vacancy on board of directors. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy, if it is filled by the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under RCW 23B.08.070(2) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs. [2007 c 467 § 4; 1989 c 165 § 89.]

23B.08.110 Compensation of directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors. [1989 c 165 § 90.]

23B.08.120 Gender-diverse board of directors—Board diversity discussion and analysis—Remedy for failure to comply. (1) Beginning no later than January 1, 2022, each public company must have a gender-diverse board of directors or that public company must comply with the requirements in subsection (2) of this section. For purposes of this section, a public company is deemed to have a gender-diverse board of directors if, for at least two hundred seventy days of the fiscal year preceding the applicable annual meeting of shareholders, individuals who self-identify as women comprised at least twenty-five percent of the directors serving on the board of directors.

(2) If a public company does not have a gender-diverse board of directors as specified in subsection (1) of this section for at least two hundred seventy days of the fiscal year preceding the applicable annual meeting of shareholders, the public company must deliver to its shareholders a board diversity discussion and analysis, which meets the requirements of subsection (3) of this section. This information must be delivered to all shareholders entitled to vote at that annual meeting of shareholders no fewer than ten nor more than sixty days before the date of that meeting.

(3) If a public company is required under subsection (2) of this section to deliver to its shareholders a board diversity discussion and analysis, the discussion and analysis must include information regarding the public company's approach to developing and maintaining diversity on its board of directors. At a minimum, this discussion and analysis should include the following information:

(a) A discussion regarding how the board of directors, or an appropriate committee thereof, considered the representation of any diverse groups in identifying and nominating candidates for election as directors in connection with the last annual meeting of shareholders, and if the board of directors, or an appropriate committee thereof, did not consider the representation of any diverse groups, the discussion should explain the reasons it did not;

(b) A discussion regarding any policy adopted by the board of directors, or an appropriate committee thereof, relating to identifying and nominating members of any diverse groups for election as directors, and if the board of directors, or an appropriate committee thereof, has not adopted such a policy, the discussion should explain the reasons it has not; and

(c) A discussion of the public company's use of mechanisms of refreshment of the board of directors, such as term limits and mandatory retirement age policies for its directors, and if the public company does not use any such mechanisms, the discussion should explain the reasons it does not.

(4) The requirements of subsection (2) of this section are satisfied if a public company:

(a) Posts the information required by subsection (3) of this section on the public company's principal internet website address or another electronic network (either separate from, or in combination or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law); or

(b) Includes the information required by subsection (3) of this section in a proxy statement filed in accordance with 17 C.F.R. Sec. 240.14a-1 through 17 C.F.R. Sec. 240.14a-101, or in an information statement filed in accordance with 17 C.F.R. Sec. 240.14c-1 through 17 C.F.R. Sec. 240.14c-101.

(5) This section does not apply to any public company:

(a) That does not have outstanding shares of any class or series listed on a United States national securities exchange;

(b) That is an "emerging growth company" or a "smaller reporting company" as defined in 17 C.F.R. Sec. 240.12b-2;

(c) Of which voting shares entitled to cast votes comprising more than fifty percent of the voting power of the public company are held by a person or group of persons;

(d) Of which its articles of incorporation authorize the election of all or a specified number of directors by one or more separate voting groups in accordance with RCW 23B.08.040; or

(e) That is not required by this chapter or the rules of any United States national securities exchange to hold an annual meeting of shareholders.

(6) The failure of a public company to comply with this section does not affect the validity of any corporate action. Nothing in this section alters the general standards for any director of a public company.

(7) The exclusive remedy for any failure of a public company to comply with this section is that any shareholder of that public company entitled to vote in the election of directors at an annual meeting, after notice to the public company, may apply to the superior court of the county in which the public company's registered office is located for an order to deliver to shareholders the information required by subsection (3) of this section if the public company fails to furnish that information in accordance with this section, in which case the court, after notice to the public company, may summarily order the public company to furnish to shareholders that information.

(8) For the purposes of this section:

(a) "Diverse groups" means women, racial minorities, and historically underrepresented groups.

(b) "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a public company.

(c) "Voting shares" means shares of all classes of a public company entitled to vote generally in the election of directors. [2020 c 194 § 1.]

Short title—2020 c 194 § 1: "Section 1 of this act may be known and cited as the women on corporate boards act." [2020 c 194 § 16.]

23B.08.200 Regular or special meetings of the board. (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, any or all directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating can hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. [1989 c 165 § 91.]

23B.08.210 Corporate action without meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, corporate action required or permitted by this title to be approved at a board of directors' meeting may be approved without a meeting if the corporate action is approved by all members of the board. The approval of the corporate action must be evidenced by one or more written consents describing the corporate action being approved, executed by each director either before or after the corporate action becomes effective, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A written consent in the form of an electronic transmission will be deemed to have been executed by a director if it indicates the director's present intent to approve the corporate action and contains or is accompanied by information from which the corporation can determine that the electronic transmission was transmitted by the director and the date on which the director transmitted the electronic transmission.

(3) Corporate action is approved under this section when the last director executes the consent.

(4) A consent under this section has the effect of a meeting vote and may be described as such in any document. [2021 c 84 § 5; 2020 c 57 § 59; 2009 c 189 § 24; 2002 c 297 § 29; 1989 c 165 § 92.]

23B.08.220 Notice of meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws. [1989 c 165 § 93.]

23B.08.230 Waiver of notice. (1) A director may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided by subsection (2) of this section, the waiver must be in writing, executed by the director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the 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 the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any corporate action approved at the meeting. [2020 c 57 § 60; 2009 c 189 § 25; 2002 c 297 § 30; 1989 c 165 § 94.]

23B.08.240 Quorum and voting. (1) Unless the articles of incorporation or bylaws require a greater or lesser number, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Notwithstanding subsection (1) of this section, a quorum of a board of directors may in no event be less than one-third of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors when corporate action is approved is deemed to have assented to the corporate action unless: (a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting; (b) the director's dissent or abstention as to the corporate action is entered in the minutes of the meeting; or (c) the director delivers written notice of the director's dissent or abstention as to the corporate action to the presiding officer of the meeting before adjournment or to the corporation

within a reasonable time after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the corporate action. [2020 c 57 § 61; 2009 c 189 § 26; 2002 c 297 § 31; 1991 c 72 § 35; 1989 c 165 § 95.]

23B.08.245 Corporate action—Vote of shareholders. A corporation may agree to submit a corporate action to a vote of its shareholders whether or not the board of directors determines at any time subsequent to approving such a corporate action that it no longer recommends the corporate action. [2011 c 328 § 4.]

23B.08.250 Committees. (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees of directors. Each committee must have two or more members, who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it must be approved by the greater of (a) a majority of all the directors in office when the creation of the committee is approved or (b) the number of directors required by the articles of incorporation or bylaws to approve the creation of the committee under RCW 23B.08.240.

(3) RCW 23B.08.200 through 23B.08.240, which govern meetings, approval of corporate action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under RCW 23B.08.010.

(5) A committee may not, however:

(a) Approve a distribution except according to a general formula or method prescribed by the board of directors;

(b) Approve or propose to shareholders corporate action that this title requires be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to RCW 23B.10.020;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of merger not requiring shareholder approval; or

(g) Approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(6) The creation of, delegation of authority to, or approval of corporate action by a committee does not alone constitute compliance by a director with the standards of conduct described in RCW 23B.08.300. [2009 c 189 § 27; 1989 c 165 § 96.]

23B.08.300 General standards for directors. (1) A director shall discharge the duties of a director, including duties as member of a committee:

(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 corporation.

(2) In discharging the duties of a director, a director is entitled to 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 corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section. [1989 c 165 § 97.]

23B.08.310 Liability for unlawful distributions. (1) A director who votes for or assents to a distribution made in violation of RCW 23B.06.400 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds the amount that could have been distributed without violating RCW 23B.06.400 or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with RCW 23B.08.300. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of RCW 23B.06.400 or the articles of incorporation.

(3) A shareholder who accepts a distribution made in violation of RCW 23B.06.400 or the articles of incorporation is personally liable to the corporation for the amount of any distribution received by the shareholder to the extent it exceeds the amount that could have been distributed to the shareholder without violating RCW 23B.06.400 or the articles of incorporation, if it is established that the shareholder accepted the distribution knowing that it was made in violation of RCW 23B.06.400 or the articles of incorporation.

(4) A shareholder held liable under subsection (3) of this section for an unlawful distribution is entitled to contribution from every other shareholder who could be held liable under subsection (3) of this section for the unlawful distribution.

(5) A proceeding under this section is barred unless it is commenced prior to the earlier of (a) the expiration of two years after the date on which the effect of the distribution was

measured under *RCW 23B.06.400(4), or (b) the expiration of the survival period specified in RCW 23B.14.340. [2006 c 52 § 3; 1989 c 165 § 98.]

***Reviser's note:** RCW 23B.06.400 was amended by 2022 c 42 § 103, changing subsection (4) to subsection (5).

23B.08.320 Limitation on liability of directors. The articles of incorporation may contain provisions not inconsistent with law that eliminate or limit the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director, provided that such provisions shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, for conduct violating RCW 23B.08.310, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. [1989 c 165 § 99.]

23B.08.400 Officers. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation. [1989 c 165 § 100.]

23B.08.410 Duties of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by an officer authorized by the board of directors to prescribe the duties of other officers. [1989 c 165 § 101.]

23B.08.420 Standards of conduct for officers. (1) An officer with discretionary authority shall discharge the officer's 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) In discharging the officer's duties, the officer is entitled to 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 corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section. [1989 c 165 § 102.]

23B.08.430 Resignation and removal of officers. (1) An officer may resign at any time by delivering a written notice to the board of directors, its chairperson, or to the appointing officer or the secretary of the corporation. A resignation is effective as provided in RCW 23B.01.410(9) unless the notice provides for a delayed effectiveness, including effectiveness determined upon a future event or events. If effectiveness of a resignation is stated to be delayed and the board of directors or the appointing officer accepts the delay, the board of directors or the appointing officer may fill the pending vacancy before the delayed effectiveness but the new officer may not take office until the vacancy occurs.

(2) The board of directors may remove any officer at any time with or without cause. An officer or assistant officer may be removed by:

(a) An appointing officer at any time with or without cause, unless the bylaws or the board of directors provide otherwise; or

(b) Any other officer if authorized by the bylaws or the board of directors.

(3) In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed. [2020 c 57 § 62; 1989 c 165 § 103.]

23B.08.440 Contract rights of officers. (1) The appointment 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 corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer. [1989 c 165 § 104.]

23B.08.500 Indemnification definitions. For purposes of RCW 23B.08.510 through 23B.08.600:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon the effective date of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (a) When used with respect to a director, the office of director in a corporation; and (b) when used with respect to an individual other than a director, as contemplated in RCW 23B.08.570, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

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

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal. [2009 c 189 § 28; 1989 c 165 § 105.]

23B.08.510 Authority to indemnify. (1) Except as provided in subsection (4) of this section, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(a) The individual acted in good faith; and

(b) The individual reasonably believed:

(i) In the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in its best interests; and

(ii) In all other cases, that the individual's conduct was at least not opposed to its best interests; and

(c) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii) of this section.

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding. [1989 c 165 § 106.]

23B.08.520 Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. [1989 c 165 § 107.]

23B.08.530 Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director delivers to the corporation an executed written affirmation of the director's good faith belief that the director has met the standard of conduct described in RCW 23B.08.510; and

(b) The director delivers to the corporation an executed written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct.

(2) The undertaking required by subsection (1)(b) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Authorization of payments under this section may be made by provision in the articles of incorporation or bylaws, by resolution adopted by the shareholders or board of directors, or by contract. [2020 c 57 § 63; 1989 c 165 § 108.]

23B.08.540 Court-ordered indemnification. Unless a corporation's articles of incorporation provide otherwise, a director of a corporation who is a party to a proceeding may apply for indemnification or advance of expenses to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification or advance of expenses if it determines:

(1) The director is entitled to mandatory indemnification under RCW 23B.08.520, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification;

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in RCW 23B.08.510 or was adjudged liable as described in RCW 23B.08.510(4), but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred unless the articles of incorporation or a bylaw, contract, or resolution approved or ratified by the shareholders pursuant to RCW 23B.08.560 provides otherwise; or

(3) In the case of an advance of expenses, the director is entitled pursuant to the articles of incorporation, bylaws, or any applicable resolution or contract, to payment or reimbursement of the director's reasonable expenses incurred as a party to the proceeding in advance of final disposition of the proceeding. [1989 c 165 § 109.]

23B.08.550 Determination and authorization of indemnification. (1) A corporation may not indemnify a director under RCW 23B.08.510 unless approved in the spe-

cific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in RCW 23B.08.510.

(2) The determination shall be made:

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

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

(c) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in (a) or (b) of this subsection; or

(ii) If a quorum of the board of directors cannot be obtained under (a) of this subsection and a committee cannot be designated under (b) of this subsection, selected by majority vote of the full board of directors, in which selection directors who are parties may participate; or

(d) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Approval of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, approval of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (2)(c) of this section to select counsel. [2009 c 189 § 29; 1989 c 165 § 110.]

23B.08.560 Shareholder authorized indemnification and advancement of expenses. (1) If authorized by the articles of incorporation, a bylaw adopted or ratified by the shareholders, or a resolution adopted or ratified, before or after the event, by the shareholders, a corporation shall have power to indemnify or agree to indemnify a director made a party to a proceeding, or obligate itself to advance or reimburse expenses incurred in a proceeding, without regard to the limitations in RCW 23B.08.510 through 23B.08.550, provided that no such indemnity shall indemnify any director from or on account of:

(a) Acts or omissions of the director finally adjudged to be intentional misconduct or a knowing violation of law;

(b) Conduct of the director finally adjudged to be in violation of RCW 23B.08.310; or

(c) Any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property, or services to which the director was not legally entitled.

(2) Unless the articles of incorporation, or a bylaw or resolution adopted or ratified by the shareholders, provide otherwise, any determination as to any indemnity or advance of expenses under subsection (1) of this section shall be made in accordance with RCW 23B.08.550. [1989 c 165 § 111.]

23B.08.570 Indemnification of officers, employees, and agents. Unless a corporation's articles of incorporation provide otherwise:

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

(2) The corporation may indemnify and advance expenses under RCW 23B.08.510 through 23B.08.560 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract. [1989 c 165 § 112.]

23B.08.580 Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under RCW 23B.08.510 or 23B.08.520. [1989 c 165 § 113.]

23B.08.590 Validity of indemnification or advance for expenses. (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with RCW 23B.08.500 through 23B.08.580. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation.

(2) RCW 23B.08.500 through 23B.08.580 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding. [1989 c 165 § 114.]

23B.08.600 Report to shareholders. If a corporation indemnifies or advances expenses to a director under RCW 23B.08.510, 23B.08.520, 23B.08.530, 23B.08.540, or 23B.08.560 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in the form of a notice to the shareholders delivered with or before the notice of the next shareholders' meeting. [2002 c 297 § 32; 1989 c 165 § 115.]

23B.08.603 Indemnification or advance for expenses—Later amendment or repeal of subject provision. The right of a director, officer, employee, or agent to indemnification or to advancement of expenses arising under

a provision in the articles of incorporation or a bylaw shall not be eliminated or impaired by an amendment to or repeal of that provision after the occurrence of the act or omission that is the subject of the proceeding for which indemnification or advancement of expenses under that provision is sought, unless the provision in effect at the time of such an act or omission explicitly authorizes the elimination or impairment of the right after such an action or omission has occurred. [2011 c 328 § 9.]

23B.08.700 Definitions. For purposes of RCW 23B.08.710 through 23B.08.735:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction: (i) An entity, other than the corporation, of which the director is a director, general partner, agent, or employee; (ii) a person that controls one or more of the entities specified in (b)(i) of this subsection or an entity that is controlled by, or is under common control with, one or more of the entities specified in (b)(i) of this subsection; or (iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting which a director of the corporation has a conflicting interest.

(3) "Related person" of an individual means (a)(i) the spouse, or a parent or sibling thereof, of the individual, or a child, grandchild, sibling, parent, or spouse of any thereof, of the individual, or a natural person having the same home as the individual, or a trust or estate of which a person specified in this subsection (3)(a) is a substantial beneficiary; or (ii) a trust, estate, incompetent, conservatee, or minor of which the individual is a fiduciary and (b) with respect to RCW 23B.08.735, in addition to the persons under (a) of this subsection, (i) an entity controlled by the individual or any person specified in (a)(i) or (ii) of this subsection; (ii) an entity, other than the corporation, of which the individual is a director, general partner, agent[,] or employee; (iii) a person that controls one or more of the entities specified in (b)(ii) of this subsection or an entity that is controlled by, or is under common control with, one or more of the entities specified in (b)(ii) of this subsection; or (iv) a natural person who is a general partner, principal, or employer of the individual.

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of (a) the existence and nature of the director's conflicting interest, and (b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction becomes effective or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage. [2015 c 20 § 3; 2009 c 189 § 30; 1989 c 165 § 116.]

23B.08.710 Judicial action. (1) A transaction effected or proposed to be effected by a corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because the director, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction, if:

(a) Directors' action respecting the transaction was at any time taken in compliance with RCW 23B.08.720;

(b) Shareholders' action respecting the transaction was at any time taken in compliance with RCW 23B.08.730; or

(c) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation. [1989 c 165 § 117.]

23B.08.720 Directors' action. (1) Directors' action respecting a transaction is effective for purposes of RCW 23B.08.710(2)(a) if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2) of this section, provided that action by a committee is so effective only if:

(a) All its members are qualified directors; and

(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director specified in RCW 23B.08.700(3)(a) (i) and (ii) is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in RCW 23B.08.700(4)(b), then disclosure is sufficient for purposes of subsection (1) of this section if the director (a) discloses to the directors voting on the transaction the existence and nature of the director's conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and (b) plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director. [2015 c 20 § 4; 1989 c 165 § 118.]

23B.08.730 Shareholders' action. (1) Shareholders' action respecting a transaction is effective for purposes of RCW 23B.08.710(2)(b) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after (a) notice to shareholders describing the director's conflicting interest transaction, (b) provision of the information referred to in subsection (4) of this section, and (c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) For purposes of this section, "qualified shares" means any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary, or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (4) and (5) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.

(4) For purposes of compliance with subsection (1) of this section, a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number, and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned, or the voting of which is controlled, by the director, or by a related person of the director, or both.

(5) If a shareholders' vote does not comply with subsection (1) of this section solely because of a failure of a director to comply with subsection (4) of this section, and if the director establishes that the director's failure did not determine and was not intended by the director to influence the outcome of the vote, the court may, with or without further proceedings respecting RCW 23B.08.710(2)(c), take such action respecting the transaction and the director, and give such effect, if any, to the shareholders' vote, as it considers appropriate in the circumstances. [1989 c 165 § 119.]

23B.08.735 Pursuit of business opportunities—Duty to corporation. (1) If a director or officer or related person of either pursues or takes advantage, directly or indirectly, of a business opportunity, that action may not be enjoined or set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if:

(a) Before the director, officer, or related person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation, and:

(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures stated in RCW 23B.08.720, as if the decision being made concerned a director's conflicting interest transaction; or

(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures stated in RCW 23B.08.730, as if the decision being made concerned a director's conflicting interest transaction;

except that, in the case of both (a)(i) and (ii) of this subsection, rather than making "required disclosure" as defined in RCW 23B.08.700(4), in each case the director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director or officer; or

(b) The duty to offer the corporation the right to have or participate in the particular business opportunity or the class or category in to which that particular business opportunity falls has been limited or eliminated pursuant to a provision of the articles of incorporation. However, if such provision applies to an officer or related person of that officer, the board of directors, by action of qualified directors taken in compliance with the same procedures under RCW 23B.08.720 and taken subsequent to the inclusion of such provision in the articles of incorporation, (i) must approve the application of such provision to an officer or a related person of that officer, and (ii) may condition the application of such provision to such officer or related person of that officer on any basis.

(2) In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (ii) of this section before taking advantage of the opportunity does not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances. [2020 c 194 § 8; 2015 c 20 § 5.]

23B.08.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 63.]

Chapter 23B.09 RCW
CORPORATE ENTITIES—CONVERSIONS

Sections

23B.09.005 Definitions.
23B.09.010 Entity conversion.
23B.09.020 Plan of entity conversion.
23B.09.030 Approval of a plan of entity conversion.
23B.09.040 Articles of entity conversion.
23B.09.050 Effect of entity conversion.
23B.09.060 Abandonment of entity conversion.

23B.09.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Converting entity" means the domestic corporation that adopts a plan of entity conversion or the other entity converting to a domestic corporation.

(2) "Domestic other entity" means an other entity organized under the laws of this state.

(3) "Foreign other entity" means an other entity organized under a law other than the laws of this state.

(4) "Interest holder" means a person who holds of record:

(a) A right to receive distributions from an other entity either in the ordinary course of business or upon liquidation, other than as an assignee; or

(b) A right to vote on issues involving an other entity's internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(5) "Interests" means the interests in an other entity held by its interest holders.

(6) "Organic document" means a public organic document or a private organic document.

(7) "Organic law" means the statute governing the internal affairs of a domestic corporation or other entity.

(8) "Other entity" means any association or entity other than a domestic corporation, a domestic or foreign nonprofit corporation, a domestic or foreign mutual corporation or miscellaneous corporation, or a governmental or quasi-governmental organization. The term includes, but is not limited to, foreign corporations, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts, and profit unincorporated associations.

(9) "Owner liability" means personal liability for a debt, obligation, or liability of an entity that is imposed on a person:

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

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

(10) "Private organic document" means any document, other than the public organic document, if any, that determines the internal governance of an other entity.

(11) "Public organic document" means the document, if any, that is filed of public record to create an other entity, including amendments and restatements thereof.

(12) "Surviving entity" means the domestic corporation or other entity that is in existence immediately after consummation of an entity conversion pursuant to this chapter. [2014 c 83 § 8.]

23B.09.010 Entity conversion. (1) A domestic corporation may become an other entity pursuant to a plan of entity conversion if the entity conversion is permitted by the organic law of the other entity by:

(a) Complying with RCW 23B.09.030; and

(b) Filing articles of entity conversion with the secretary of state.

(2) An other entity may become a domestic corporation if the entity conversion is permitted by the organic law of the other entity by:

(a) Complying with the procedures for the approval of an entity conversion provided in the organic law of the other entity; and

(b) Filing articles of entity conversion with the secretary of state. [2014 c 83 § 9.]

23B.09.020 Plan of entity conversion. (1) A plan of entity conversion must include:

(a) The name of the domestic corporation before conversion;

(b) The name and form of the surviving entity after conversion;

(c) The terms and conditions of the conversion, including the manner and basis for converting interests in the domestic corporation into any combination of the interests, shares, obligations, or other securities of the surviving entity or any other entity or into cash or other property in whole or part; and

(d) The organic documents of the surviving entity as they will be in effect immediately after consummation of the conversion.

(2) The terms of a plan of [entity] conversion may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3). [2020 c 194 § 9; 2020 c 57 § 64; 2014 c 83 § 10.]

Reviser's note: This section was amended by 2020 c 57 § 64 and by 2020 c 194 § 9, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

23B.09.030 Approval of a plan of entity conversion. In the case of an entity conversion of a domestic corporation to an other entity:

(1) The plan of entity conversion must be adopted by the board of directors of the converting entity and the shareholders entitled to vote must approve the plan.

(2) After adopting a plan of entity conversion, the board of directors of the converting entity must submit the plan of entity conversion for approval by its shareholders.

(3) The board of directors must recommend the plan of entity conversion to the shareholders, unless (a) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or (b) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders.

(4) The board of directors may condition its submission of the plan of entity conversion on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate voting group on the plan of entity conversion.

(5) In the case of an entity conversion of a domestic corporation to a foreign corporation, in addition to any other voting conditions imposed by the board of directors acting pursuant to subsection (4) of this section, approval of the plan of entity conversion requires the affirmative vote of shareholders that would be required to approve a plan of merger under RCW 23B.11.030, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on a plan of merger. Separate voting by additional voting groups is required on a plan of entity conversion if such voting group or groups would be entitled to vote on a plan of merger under the circumstances described in RCW 23B.11.035. The articles of incorporation may require a greater or lesser vote to approve a plan of entity conversion than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of entity conversion and of each other voting group entitled to vote separately on the plan.

(6) In the case of an entity conversion of a domestic corporation to an other entity that is not a foreign corporation, approval of the plan of entity conversion requires the approval of all shareholders of the domestic corporation, whether or not entitled to vote under this title or the articles of incorporation.

(7) If as a result of the conversion one or more shareholders of the domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, in addition to the approval requirements under subsections (5) and (6) of this section, approval of the plan of entity conversion must also require each such shareholder to execute a separate written consent to become subject to such owner liability.

(8) If the approval of the shareholders is to be given at a meeting, the domestic corporation must notify each shareholder, whether or not entitled to vote, of the proposed meeting of shareholders at which the plan of entity conversion is to be submitted for approval in accordance with RCW 23B.07.050. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of entity conversion and must contain or be accompanied by a copy or summary of the plan of entity conversion. The notice must include or be accompanied by a copy of the organic documents of the surviving entity as they will be in effect immediately after the conversion.

(9) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders of the domestic corporation are parties, adopted, or entered into before June 12, 2014, applies to a merger of the domestic corporation, other than a provision that limits or eliminates voting or dissenters' rights, and the document does not refer to an entity conversion of the domestic corporation, the provision is deemed to apply to an entity conversion of the domestic corporation until the provision is subsequently amended. [2020 c 57 § 65; 2014 c 83 § 11.]

23B.09.040 Articles of entity conversion. (1) After a plan of entity conversion by a domestic corporation converting into an other entity has been adopted and approved as required by this chapter, articles of entity conversion must be executed on behalf of the domestic corporation by any officer or other duly authorized representative and must be delivered to the secretary of state for filing.

(2) After the conversion of an other entity into a domestic corporation has been adopted and approved as required by the organic law of the converting entity, articles of entity conversion must be executed on behalf of the converting entity by any officer or other duly authorized representative and must be delivered to the secretary of state for filing.

(3) The articles of entity conversion must set forth:

(a) A statement that the converting entity has been converted into the surviving entity;

(b) The name and form of the converting entity before conversion;

(c) The name and form of the surviving entity after conversion, which must be a name that satisfies the requirements of Article 3 of chapter 23.95 RCW if the surviving entity after conversion is a domestic corporation;

(d) Articles of incorporation that comply with RCW 23B.02.020 if the surviving entity after conversion is a domestic corporation;

(e) The date the conversion is effective under the organic law of the surviving entity;

(f) If the converting entity is a domestic corporation, a statement that the conversion was duly approved by the shareholders of the domestic corporation pursuant to RCW 23B.09.030;

(g) If the converting entity is an other entity, a statement that the conversion was duly approved as required by the organic law of the converting entity; and

(h) If the surviving entity is a foreign other entity not authorized to transact business in this state: (i) A statement that the surviving entity consents to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation; and (ii) the street and mailing address of the

entity's principal office that may be used for service of process under RCW 23.95.450.

(4) The articles of entity conversion take effect at the effective time provided in RCW 23.95.210. Articles of entity conversion under subsection (1) or (2) of this section may be combined with any required conversion filing under the organic law of the other entity if the combined filing satisfies the requirements of both this section and the organic law of the other entity. [2020 c 57 § 66; 2015 c 176 § 2121; 2014 c 83 § 12.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.09.050 Effect of entity conversion. (1) An entity that has been converted pursuant to this chapter is, for all purposes of the laws of the state of Washington, deemed to be the same entity that existed before the conversion and, unless otherwise agreed or as required under applicable non-Washington law, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion is not deemed to constitute a dissolution of the converting entity.

(2) When any conversion becomes effective under this chapter:

(a) The title to all real estate and other property, both tangible and intangible, owned by the converting entity remains vested in the surviving entity without reversion or impairment;

(b) All rights of creditors and all liens upon any property of the converting entity must be preserved unimpaired, and all debts, liabilities, and other obligations of the converting entity continue as obligations of the surviving entity, remain attached to the surviving entity, and may be enforced against it to the same extent as if the debts, liabilities, and other obligations had originally been incurred or contracted by it in its capacity as the surviving entity;

(c) An action or proceeding pending by or against the converting entity may be continued by or against the surviving entity as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the surviving entity; and

(e) Except as otherwise provided in the plan of entity conversion, the terms and conditions of the plan of entity conversion take effect.

(3) When a conversion of a domestic corporation to a foreign other entity becomes effective, the surviving entity is deemed:

(a) To consent to the jurisdiction of the courts of this state to enforce any obligation owed by the converting entity, if before the conversion the converting entity was subject to suit in this state on the obligation;

(b) To consent to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation in connection with the conversion; and

(c) To agree that it will promptly pay to the dissenting shareholders of the domestic corporation the amount, if any, to which they are entitled under chapter 23B.13 RCW. [2015 c 176 § 2122; 2014 c 83 § 13.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.09.060 Abandonment of entity conversion. (1) Unless otherwise provided in a plan of entity conversion of a domestic corporation, after the plan of entity conversion has been adopted and approved as required by this chapter, and at any time before the articles of entity conversion have become effective, the planned conversion may be abandoned by the board of directors without action by the shareholders.

(2) If any entity conversion is abandoned after articles of entity conversion have been filed with the secretary of state but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, executed by an officer or other duly authorized representative, must be delivered to the secretary of state for filing prior to the effective date of the entity conversion and in accordance with RCW 23.95.215. Upon filing, the statement takes effect and the entity conversion is deemed abandoned and may not become effective. [2020 c 57 § 67; 2015 c 176 § 2123; 2014 c 83 § 14.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Chapter 23B.10 RCW
AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

Sections

23B.10.010 Authority to amend articles of incorporation.
23B.10.012 Certificate of authority as insurance company—Filing of records.
23B.10.020 Amendment of articles of incorporation by board of directors.
23B.10.030 Amendment of articles of incorporation by board of directors and shareholders.
23B.10.040 Voting on amendments to articles of incorporation by voting groups.
23B.10.050 Amendment of articles of incorporation before issuance of shares.
23B.10.060 Articles of amendment.
23B.10.070 Restated articles of incorporation.
23B.10.080 Amendment of articles of incorporation pursuant to reorganization.
23B.10.090 Effect of amendment of articles of incorporation.
23B.10.200 Amendment of bylaws by board of directors or shareholders.
23B.10.205 Amendment of bylaws—Election of directors.
23B.10.210 Bylaw increasing quorum or voting requirements for directors.

23B.10.010 Authority to amend articles of incorporation. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation. [1989 c 165 § 120.]

23B.10.012 Certificate of authority as insurance company—Filing of records. 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 filed with the secretary of state, the records shall be filed with the insurance commissioner rather than the secretary of state. [2002 c 297 § 33; 1998 c 23 § 9.]

23B.10.020 Amendment of articles of incorporation by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder approval:

(1) If the corporation has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;

(2) To delete the names and addresses of the initial directors;

(3) To delete 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;

(4) If the corporation has only one class of shares outstanding, solely to:

(a) Effect a forward split of, or change the number of authorized shares of that class in proportion to a forward split of, or stock dividend in, the corporation's outstanding shares; or

(b) Effect a reverse split of the corporation's outstanding shares and the number of authorized shares of that class in the same proportions;

(5) To change the corporate name; or

(6) To make any other change expressly permitted by this title to be made without shareholder approval. [2009 c 189 § 31; 2003 c 35 § 3; 1989 c 165 § 121.]

23B.10.030 Amendment of articles of incorporation by board of directors and shareholders. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors must recommend the amendment to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed amendment.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the amendment to be adopted must be approved by two-thirds, or, in the case of a public company, a majority, of the voting group comprising all the votes entitled to be cast on the proposed amendment, and of each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the proposed amendment. The articles of incorporation may require a greater vote than that provided for in this subsection. The articles of incorporation of a corporation other than a public company may require a lesser vote than that provided for in this subsection, or may require a lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed amendment and of each other voting group entitled to vote separately on the proposed amendment. Separate voting by additional voting groups is required on a proposed amendment under the circumstances described in RCW 23B.10.040. [2011 c 328 § 5; 2003 c 35 § 4; 1989 c 165 § 122.]

23B.10.040 Voting on amendments to articles of incorporation by voting groups. (1) Except as otherwise required by subsection (3) of this section or otherwise permitted by subsection (4) of this section, the holders of the outstanding shares of a class or series are entitled to vote as a separate voting group on a proposed amendment if shareholder voting is otherwise required by this title and if the amendment would:

(a) Increase the aggregate number of authorized shares of the class or series;

(b) Effect an exchange or reclassification of all or part of the issued and outstanding shares of the class or series into shares of another class or series, thereby adversely affecting the holders of the shares so exchanged or reclassified;

(c) Change the rights, preferences, or limitations of all or part of the issued and outstanding shares of the class or series, thereby adversely affecting the holders of shares of the class or series;

(d) Change all or part of the issued and outstanding shares of the class or series into a different number of shares of the same class or series, thereby adversely affecting the holders of shares of the class or series;

(e) Create a new class or series of shares having rights or preferences with respect to distributions or to dissolution that are, or upon designation by the board of directors in accordance with RCW 23B.06.020 may be, prior, superior, or substantially equal to the shares of the class or series;

(f) Increase the rights or preferences with respect to distributions or to dissolution, or the number of authorized shares of any class or series that, after giving effect to the amendment, has rights or preferences with respect to distributions or to dissolution that are, or upon designation by the board of directors in accordance with RCW 23B.06.020 may be, prior, superior, or substantially equal to the shares of the class or series;

(g) Limit or deny an existing preemptive right of all or part of the shares of the class or series;

(h) Cancel or otherwise adversely affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class or series; or

(i) Effect a redemption or cancellation of all or part of the shares of the class or series in exchange for cash or any other form of consideration other than shares of the corporation.

(2) If a proposed amendment would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed amendment. A voting group entitled to vote separately under this section may never comprise a group of holders smaller than the holders of a single class or series authorized and designated as a class or series in the articles of incorporation, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed amendment on a separate vote by one or more smaller voting groups.

(3) If a proposed amendment, that would otherwise entitle two or more classes or series of shares to vote as separate voting groups under this section, would affect those two or more classes or series in the same or a substantially similar way, then instead of voting as separate voting groups the shares of all similarly affected classes or series shall vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed amendment on a separate vote by one or more classes or series.

(4) A class or series of shares is entitled to the voting group rights granted by this section although the articles of incorporation generally describe the shares of the class or series as nonvoting shares. The articles of incorporation may, however, limit or deny the voting group rights granted by subsection (1)(a), (e), or (f) of this section as to any class or series of issued or unissued shares, by means of a provision that makes explicit reference to the limitation or denial of voting group rights that would otherwise apply under subsection (1)(a), (e), or (f) of this section. [2003 c 35 § 5; 1989 c 165 § 123.]

23B.10.050 Amendment of articles of incorporation before issuance of shares. If a corporation has not yet issued shares, its board of directors, or incorporators if initial directors were not named in the articles of incorporation and have not been elected, may adopt one or more amendments to the corporation's articles of incorporation. [1989 c 165 § 124.]

23B.10.060 Articles of amendment. A corporation amending its articles of incorporation must deliver to the secretary of state for filing articles of amendment stating:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If an amendment was adopted by the incorporators or board of directors without shareholder approval, a statement to that effect and that shareholder approval was not required;

(6) If shareholder approval was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 23B.10.030 and 23B.10.040; and

(7) If an amendment is being filed pursuant to RCW 23B.01.200(3)(e), a statement to that effect. [2020 c 194 § 10; 2009 c 189 § 32; 1989 c 165 § 125.]

23B.10.070 Restated articles of incorporation. (1) Any officer of the corporation may restate its articles of incorporation at any time.

(2) A restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment not requiring shareholder approval, it must be adopted by the board of directors. If the restatement includes an amendment requiring shareholder approval, it must be adopted in accordance with RCW 23B.10.030.

(3) If the board of directors submits a restatement for shareholder approval, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) If the restatement does not include an amendment to the articles of incorporation, a statement to that effect;

(b) If the restatement contains an amendment to the articles of incorporation not requiring shareholder approval, a statement that the board of directors adopted the restatement and the date of such adoption;

(c) If the restatement contains an amendment to the articles of incorporation requiring shareholder approval, the information required by RCW 23B.10.060; and

(d) Both the articles of restatement and the certificate must be executed.

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section. [2009 c 189 § 33; 1991 c 72 § 36; 1989 c 165 § 126.]

23B.10.080 Amendment of articles of incorporation pursuant to reorganization. (1) A corporation's articles of incorporation may be amended without approval by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by RCW 23B.02.020.

(2) The individual or individuals 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 under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) 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. [2009 c 189 § 34; 1989 c 165 § 127.]

23B.10.090 Effect of amendment of articles of incorporation. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name. [1989 c 165 § 128.]

23B.10.200 Amendment of bylaws by board of directors or shareholders. (1) A corporation's board of directors, subject to the limitations set forth in *RCW 23B.02.060(4), may amend or repeal the corporation's bylaws, or adopt new bylaws, except to the extent that:

(a) This power is reserved exclusively to the shareholders pursuant to the articles of incorporation or a shareholders' agreement authorized by RCW 23B.07.320, or pursuant to RCW 23B.10.205, 23B.10.210, or any other provision of this title; or

(b) The shareholders, in amending, repealing, or adopting a particular bylaw under subsection (2) of this section, provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders, subject to the limitations set forth in *RCW 23B.02.060(4), may amend or repeal the corporation's bylaws, or adopt new bylaws, even though the bylaws may also be amended or repealed, or new bylaws may also be adopted, by its board of directors. [2011 c 328 § 3; 2009 c 189 § 35; 2007 c 467 § 7; 1989 c 165 § 129.]

***Reviser's note:** RCW 23B.02.060 was amended by 2020 c 194 § 3, changing subsection (4) to subsection (2).

23B.10.205 Amendment of bylaws—Election of directors. (1) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section or alter the vote specified in RCW 23B.07.280(4), or cumulative voting is authorized, a public company may elect in its bylaws to be governed in the election of directors as follows:

(a) Each vote entitled to be cast may be voted for, voted against, or withheld for one or more candidates up to that number of candidates that is equal to the number of directors to be elected but without cumulating the votes, or a shareholder may indicate an abstention for one or more candidates;

(b) To be elected, a candidate must have received the number, percentage, or level of votes specified in the bylaws; provided that holders of shares entitled to vote in the election and constituting a quorum are present at the meeting. Except in a contested election as provided in (e) of this subsection, a candidate who does not receive the number, percentage, or level of votes specified in the bylaws but who was a director at the time of the election shall continue to serve as a director for a term that shall terminate on the date that is the earlier of (i) the date specified in the bylaw, but not longer than ninety days from the date on which the voting results are determined pursuant to RCW 23B.07.035(2), or (ii) the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which RCW 23B.08.100 applies;

(c) A bylaw adopted pursuant to this section may provide that votes cast against and/or withheld as to a candidate are to be taken into account in determining whether the number, percentage, or level of votes required for election has been received. Unless the bylaw specifies otherwise, only votes cast are to be taken into account and a ballot marked "withheld" in respect to a share is deemed to be a vote cast. Unless the bylaws specify otherwise, shares otherwise present at the meeting but for which there is an abstention or as to which no authority or direction to vote in the election is given or specified, are not deemed to be votes cast in the election;

(d) The board of directors may select any qualified individual to fill the office held by a director who did not receive the specified vote for election referenced in (b) of this subsection; and

(e) Unless the bylaw specifies otherwise, a bylaw adopted pursuant to this subsection (1) shall not apply to an election of directors by a voting group if (i) at the expiration of the time fixed under a provision requiring advance notification of director candidates, or (ii) absent such a provision, at a time fixed by the board of directors which is not more than fourteen days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this subsection (1)(e) if the board of directors determines before the notice of meeting is given that such individual's candidacy does not create a bona fide election contest.

(2) A bylaw containing an election to be governed by this section may be repealed or amended:

(a) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(b) If adopted by the board of directors, by the board of directors or the shareholders. [2019 c 141 § 4; 2009 c 189 § 36; 2007 c 467 § 5.]

23B.10.210 Bylaw increasing quorum or voting requirements for directors. (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders; or

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) If the corporation is a public company, approval by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the quorum requirement and be approved by the vote required for approval under the quorum and voting requirement then in effect.

(4) If the corporation is not a public company, approval by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be approved by the same vote required for approval under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater. [2009 c 189 § 37; 1989 c 165 § 130.]

Chapter 23B.11 RCW
MERGER AND SHARE EXCHANGE

Sections

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23B.11.010 Merger. (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve a plan of merger.

(2) The plan of merger must include:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part, or of canceling some or all of such shares.

(3) The plan of merger may include:

(a) Amendments to the articles of incorporation of the surviving corporation, or a restatement that includes one or more amendments to the surviving corporation's articles of incorporation; and

(b) Other provisions relating to the merger.

(4) The terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3). [2022 c 42 § 107; 2020 c 194 § 11; 1989 c 165 § 131.]

23B.11.020 Share exchange. (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve the exchange.

(2) The plan of exchange must include:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(b) The terms and conditions of the exchange; and

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may include other provisions relating to the exchange.

(4) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

(5) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise. [2020 c 194 § 12; 1989 c 165 § 132.]

23B.11.030 Approval of plan of merger or share exchange. (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(b) The shareholders entitled to vote must approve the plan, except as provided in subsection (7) of this section.

(3) The board of directors may condition its submission of the proposed plan of merger or share exchange on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy of the plan or a summary of the material terms and conditions of the proposed merger or share exchange and the consideration to be received by shareholders.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of merger must be approved by two-thirds of the voting

group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan, unless shareholder approval is not required under subsection (7) of this section. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of merger and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of merger under the circumstances described in RCW 23B.11.035.

(6) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of share exchange must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of share exchange and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of share exchange under the circumstances described in RCW 23B.11.035.

(7) Approval by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) Unless the articles of incorporation provide otherwise, approval by the shareholders of a public company is not required for a plan of merger if:

(a) The plan of merger expressly: (i) Permits or requires the merger to be effected under this subsection; and (ii) provides that, if the merger is to be effected under this subsection, the merger will be effected as soon as practicable following the satisfaction of the requirements of (f) of this subsection;

(b) Another party to the merger or a parent of another party to the merger makes an offer to purchase, on the terms stated in the plan of merger, any and all of the outstanding shares of the corporation that, absent this subsection, would be entitled to vote on the plan of merger, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(c) The offer discloses that the plan of merger states that the merger will be effected as soon as practicable following the satisfaction of the requirements of (f) of this subsection and that the shares of the corporation that are not tendered in response to the offer will be treated as provided in (h) of this subsection;

(d) The offer remains open for at least 10 days;

(e) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) The: (i) Shares purchased by the offeror in accordance with the offer; (ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing; and (iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or other interests in that offeror, parent, or subsidiary, are collectively entitled to cast at least the minimum number of votes on the merger that, absent this subsection, would be required by this chapter for the approval of the merger by the shareholders entitled to vote on the merger at a meeting at which all shares entitled to vote on the approval were present and voted;

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into the corporation; and

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and which is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in (f)(ii) or (iii) of this subsection need not be converted into or exchanged for the consideration described in this subsection (9)(h).

(10) As used in subsection (9) of this section:

(a) "Offer" means the offer referred to in subsection (9)(b) of this section.

(b) "Offeror" means the person making the offer.

(c) "Parent" of an entity means a person that owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares of or other interests in that entity.

(d) Shares tendered in response to the offer will be deemed to have been "purchased" in accordance with the offer at the earlier time as of which:

(i) The offeror has irrevocably accepted those shares for payment; and

(ii) Either: (A) In the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares; or (B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

(e) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares or other interests.

(11) After a merger or share exchange is approved, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder approval, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors. [2022 c 42 § 108; 2011 c 328 § 6; 2009 c 189 § 38; 2003 c 35 § 6; 1989 c 165 § 133.]

23B.11.035 Plan of merger or share exchange—Separate voting group. (1) Except as otherwise required by subsection (3) of this section or otherwise permitted by subsection (4) of this section, the holders of the outstanding shares of a class or series are entitled to vote as a separate voting group on a proposed plan of merger or plan of share exchange if shareholder voting is otherwise required by this title and if, as a result of the proposed plan, holders of part or all of the class or series would hold or receive:

(a) Shares of any class or series of the surviving or acquiring corporation, or of any parent corporation of the surviving corporation, and either (i) that class or series has a greater number of authorized shares than the class or series held by the holders prior to the merger or share exchange, or (ii) the proposed plan effects a change in the number of shares held by the holders, or in the rights, preferences, or limitations of the shares they hold, or in the class or series of shares they hold, and such change adversely affects the holders;

(b) Shares of any class or series of the surviving or acquiring corporation, or of any parent corporation of the surviving corporation, and the holders who hold or receive shares of that class or series are adversely affected under the proposed plan, as compared to their circumstances prior to the proposed merger or share exchange, by the creation, existence, number of authorized shares, or rights or preferences with respect to distributions or to dissolution, of another class or series of shares of the surviving, acquiring, or parent corporation having rights or preferences with respect to distributions or to dissolution that are, or upon designation by the surviving, acquiring, or parent corporation's board of directors may be, prior, superior, or substantially equal to the shares of the class or series held or to be received by the holders in the proposed merger or share exchange; or

(c) Cash or any other form of consideration other than shares of the surviving or acquiring corporation or of any parent corporation of the surviving corporation, received upon redemption or cancellation of all or part of their shares pursuant to the proposed plan of merger or share exchange.

(2) If a proposed plan of merger or share exchange would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed plan. A voting group entitled to vote separately under this section may never comprise a group of holders smaller than the holders of a single class or series authorized and designated as a class or series in the articles of incorporation, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed plan on a separate vote by one or more smaller voting groups.

(3) If a proposed plan of merger or share exchange, that would otherwise entitle two or more classes or series of shares to vote as separate voting groups under this section, would affect those two or more classes or series in the same or a substantially similar way, then instead of voting as separate voting groups, the shares of all similarly affected classes or series shall vote together as a single voting group on the proposed plan of merger or share exchange, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series. Holders of shares of two or more classes or series of shares who will, under a proposed plan, receive the same type of consideration in the form of shares of the surviving or acquiring corporation or of any parent corporation of the surviving corporation, cash or other form of consideration, or the same combination thereof, but in differing amounts resulting solely from application of provisions in the corporation's articles of incorporation governing distribution of consideration received in a merger or share exchange, are affected in the same or a substantially similar way and are not, by reason of receiving the same types or differing amounts of consideration, entitled to vote as separate voting groups on the proposed plan, unless the articles of incorporation expressly require otherwise or the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series.

(4) A class or series of shares is entitled to the voting group rights granted by this section although the articles of incorporation generally describe the shares of the class or series as nonvoting shares. The articles of incorporation may, however, limit or deny the voting group rights granted by this section as to any class or series of issued or unissued shares, by means of a provision that makes explicit reference to the limitation or denial of voting group rights that would otherwise apply under this section. [2003 c 35 § 7.]

23B.11.040 Merger of or into subsidiary. (1) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may (a)

merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary, or (b) merge itself into the subsidiary without approval of the shareholders of the subsidiary. A merger of a parent corporation into its subsidiary otherwise will be governed by the provisions of chapter 23B.11 RCW applicable to mergers generally.

(2) The board of directors of the parent shall approve a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the subsidiary or parent corporation, as applicable, into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or part.

(3) Within ten days after the corporate action becomes effective, the surviving corporation shall deliver a notice to each other shareholder of the subsidiary, which notice must include a copy of the plan of merger.

(4) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in RCW 23B.10.020. [2017 c 28 § 17; 2009 c 189 § 39; 2002 c 297 § 34; 1989 c 165 § 134.]

23B.11.050 Articles of merger or share exchange. (1) After a plan of merger is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving entity shall deliver to the secretary of state for filing articles of merger stating:

(a) The name and jurisdiction of organization of each party to the merger;

(b) The name and jurisdiction of organization of the surviving entity;

(c) If the surviving entity of the merger is a domestic corporation and its articles of incorporation are amended or amended and restated, the amendments to the surviving entity's articles of incorporation or the amended and restated articles of incorporation of the surviving entity;

(d) If shareholder approval of any domestic corporation party to the merger was not required, a statement to that effect;

(e) If approval of the shareholders of one or more domestic corporations party to the merger was required, a statement that the merger was duly approved by the shareholders of such domestic corporation pursuant to RCW 23B.11.030; and

(f) If approval of the shareholders of one or more other entities party to the merger was required, a statement that the merger was duly approved by the interest holders of such other entity in accordance with the organic law of such other entity.

(2) After a plan of share exchange has been approved by the shareholders of the corporation whose shares will be acquired in the share exchange, the acquiring corporation shall deliver to the secretary of state for filing articles of share exchange, executed by the acquiring corporation and the corporation whose shares will be acquired in the share exchange, stating:

(a) The name of the corporation whose shares will be acquired in the share exchange;

(b) The name of the acquiring corporation; and

(c) A statement that the plan of share exchange was duly approved by the shareholders of the corporation whose shares will be acquired in the share exchange pursuant to RCW 23B.11.030.

(3) The definitions in RCW 23B.09.005 apply to this section unless the context clearly requires otherwise. [2022 c 42 § 109; 1989 c 165 § 135.]

23B.11.060 Effect of merger or share exchange. (1) When a merger takes effect:

(a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation has all liabilities of each corporation party to the merger;

(d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the articles of merger; and

(f) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the articles of merger or to their rights under chapter 23B.13 RCW.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under chapter 23B.13 RCW. [2022 c 42 § 110; 1989 c 165 § 136.]

23B.11.070 Merger or share exchange with foreign corporation. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) The foreign corporation complies with RCW 23B.11.050 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of RCW 23B.11.010 through 23B.11.040 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with RCW 23B.11.050.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(a) To consent to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the

rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under chapter 23B.13 RCW.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise. [2015 c 176 § 2124; 1989 c 165 § 137.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.11.080 Merger. (1) One or more domestic corporations may merge with one or more limited liability companies, partnerships, or limited partnerships if:

(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030;

(b) The partners of each limited partnership approve the plan of merger as required by RCW 25.10.781;

(c) The partners of each partnership approve the plan of merger as required by RCW 25.05.375; and

(d) The members of each limited liability company approve, if approval is necessary, the plan of merger as required by RCW 25.15.421.

(2) The plan of merger must set forth:

(a) The name of each limited liability company, partnership, corporation, and limited partnership planning to merge and the name of the surviving limited liability company, partnership, corporation, or limited partnership into which each other limited liability company, partnership, corporation, or limited partnership plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation, the member interests of each limited liability company, and the partnership interests in each partnership and each limited partnership into shares, limited liability company member interests, partnership interests, obligations, or other securities of the surviving limited liability company, partnership, corporation, or limited partnership, or into cash or other property, including shares, obligations, or securities of any other limited liability company, partnership, or corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership; and

(c) Other provisions relating to the merger. [2015 c 188 § 110; 2009 c 188 § 1401; 1998 c 103 § 1310; 1991 c 269 § 38.]

Effective date—2015 c 188: See RCW 25.15.903.

Additional notes found at www.leg.wa.gov

23B.11.090 Articles of merger. After a plan of merger for one or more corporations and one or more limited partnerships, one or more partnerships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), is approved by the partners for each limited partnership as required by RCW 25.10.781, is approved by the partners of each partnership as required by RCW 25.05.380, or is approved by the members of each limited liability company as required by RCW 25.15.421, the surviving entity must:

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The name and jurisdiction of organization of each party to the merger;

(b) The name of the surviving corporation;

(c) If the surviving corporation's articles of incorporation are amended or amended and restated, the amendments to the surviving corporation's articles of incorporation or the amended and restated articles of incorporation of the surviving corporation;

(d) A statement that the merger was duly approved by the shareholders of each corporation that is a party to the merger pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(e) A statement that the merger was duly approved as required by the organic law of each other party that is a party to the merger.

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.786.

(3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.

(4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.426.

(5) The definitions in RCW 23B.09.005 apply to this section unless the context clearly requires otherwise. [2022 c 42 § 111; 2015 c 188 § 111; 2009 c 188 § 1402; 1998 c 103 § 1311; 1991 c 269 § 39.]

Effective date—2015 c 188: See RCW 25.15.903.

Additional notes found at www.leg.wa.gov

23B.11.100 Merger—Corporation is surviving entity. (1) When a merger of one or more corporations or one or more other entities takes effect, and a corporation is the surviving entity:

(a) Every other corporation and every other entity party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation, and every other entity, ceases;

(b) The title to all real estate and other property owned by each entity party to the merger is vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation has all the liabilities of each entity party to the merger;

(d) A proceeding pending against any entity party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the entity whose existence ceased;

(e) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the articles of merger;

(f) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in

the plan of merger or to their rights under chapter 23B.13 RCW; and

(g) The former interest holders of every other entity party to the merger are entitled only to the rights provided in the plan of merger or to their rights under the organic law of that other entity.

(2) The definitions in RCW 23B.09.005 apply to this section unless the context clearly requires otherwise. [2022 c 42 § 112; 1998 c 103 § 1312; 1991 c 269 § 40.]

23B.11.110 Merger with foreign and domestic entities—Effect. (1) One or more foreign limited partnerships, foreign corporations, foreign partnerships, and foreign limited liability companies may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW 25.10.786;

(d) Each domestic corporation complies with RCW 23B.11.080;

(e) Each domestic limited partnership complies with RCW 25.10.781;

(f) Each domestic limited liability company complies with RCW 25.15.421; and

(g) Each domestic partnership complies with RCW 25.05.375.

(2) Upon the merger taking effect, a surviving foreign corporation, foreign limited partnership, foreign limited liability corporation, or foreign partnership is deemed:

(a) To consent to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10, 25.15, or 25.05 RCW, in the case of dissenting partners. [2015 c 188 § 112; 2015 c 176 § 2125; 2009 c 188 § 1403; 1998 c 103 § 1313; 1991 c 269 § 41.]

Reviser's note: This section was amended by 2015 c 176 § 2125 and by 2015 c 188 § 112, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2015 c 188: See RCW 25.15.903.

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Additional notes found at www.leg.wa.gov

Chapter 23B.12 RCW
SALE OF ASSETS

Sections

23B.12.010 Sale of property and assets in usual and regular course of business or for benefit of creditors.
23B.12.020 Sale of property and assets other than in the usual and regular course of business.

23B.12.010 Sale of property and assets in usual and regular course of business or for benefit of creditors. (1) Unless the articles of incorporation provide otherwise, approval by a corporation's shareholders is not required:

(a) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's property and assets in the usual and regular course of its business; or

(b) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's property and assets, regardless of whether or not these actions are in the usual and regular course of its business.

(2) Unless the articles of incorporation provide otherwise, approval by a corporation's shareholders is not required to dedicate the corporation's property and assets to the repayment of its creditors through an assignment for the benefit of creditors in accordance with chapter 7.08 RCW that is approved by the board of directors, or by the appointment of a general receiver in a proceeding under chapter 7.60 RCW that is approved by the board of directors. The assumption of control over the corporation's property and assets by an assignee for the benefit of creditors or by a general receiver relieves the directors of any further duties with respect to the liquidation of the corporation's property and assets or the application of any property and assets or proceeds toward satisfaction of the claims of creditors. [2019 c 141 § 6; 2017 c 28 § 10; 2006 c 52 § 4; 1990 c 178 § 12; 1989 c 165 § 138.]

Additional notes found at www.leg.wa.gov

23B.12.020 Sale of property and assets other than in the usual and regular course of business. (1) Except as provided in subsection (11) of this section, a sale, lease, exchange, or other disposition of a corporation's property and assets, other than in the usual and regular course of its business, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity.

(2) A continuing business activity will be conclusively presumed to represent a significant continuing business activity if, for the corporation and its subsidiaries on a consolidated basis, it represented at least:

(a) Twenty-five percent of total assets at the end of the most recently completed fiscal year; and

(b) Either: (i) Twenty-five percent of income from continuing operations before taxes, or (ii) twenty-five percent of revenues from continuing operations, in each case for the most recently completed fiscal year.

(3) No presumption that a disposition will leave the corporation without a significant continuing business activity will arise from the fact that the corporation's continuing busi-

ness activity does not equal or exceed any of the percentages set forth in subsection (2) of this section.

(4) The determination of whether or not a continuing business activity constitutes a significant continuing business under subsection (2) of this section may be based either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or, in the case of subsection (2)(a) of this section, on a fair valuation or other method that is reasonable in the circumstances.

(5) For a disposition to be approved by a corporation's shareholders:

(a) The board of directors must approve the disposition and submit the proposed disposition for approval by the shareholders;

(b) The board of directors must recommend the proposed disposition to the shareholders unless (i) the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(c) The shareholders entitled to vote on the proposed disposition must approve the proposed disposition as provided in subsection (8) of this section.

(6) The board of directors may condition its submission of the proposed disposition on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed disposition.

(7) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed disposition and contain or be accompanied by a description of the proposed disposition, including a summary of the material terms and conditions thereof and the consideration to be received by the corporation.

(8) In addition to any other voting conditions imposed by the board of directors under subsection (6) of this section, the proposed disposition must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the proposed disposition, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed disposition, unless shareholder approval is not required under subsection (11) of this section. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed disposition and of each other voting group entitled to vote separately on the proposed disposition.

(9) After a proposed disposition has been approved by the shareholders as required by this section, and at any time before the proposed disposition has been consummated, the board of directors may abandon the proposed disposition without further action by the shareholders, subject to any contractual rights of other parties relating thereto.

(10) A disposition that constitutes a distribution is governed by RCW 23B.06.400 and not by this section.

(11) Unless the articles of incorporation otherwise require, approval by the shareholders of a parent corporation is not required for the transfer of any or all of the parent corporation's property and assets to one or more subsidiaries all of the shares or interests of which are owned, directly or indirectly, by the parent corporation.

(12) The assets of a subsidiary are to be treated as the assets of its parent corporation for purposes of this section. [2019 c 141 § 7; 2017 c 28 § 11; 2011 c 328 § 7; 2009 c 189 § 40; 2003 c 35 § 8; 1989 c 165 § 139.]

Chapter 23B.13 RCW
DISSENTERS' RIGHTS

Sections

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23B.13.200 Notice of dissenters' rights.
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23B.13.260 Failure to take corporate action.
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23B.13.280 Procedure if shareholder dissatisfied with payment or offer.
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23B.13.010 Definitions. As used in this chapter:

(1) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under RCW 23B.13.020 and who exercises that right when and in the manner required by RCW 23B.13.200 through 23B.13.280.

(3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

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

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(7) "Shareholder" means the record shareholder or the beneficial shareholder. [1989 c 165 § 140.]

23B.13.020 Right to dissent. (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, or would have been required but for the provisions of RCW 23B.11.030(9), and the shareholder was, or but for the provisions of RCW 23B.11.030(9) would have been, entitled to vote on the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;

(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;

(c) A sale, lease, exchange, or other disposition, which has become effective, of all, or substantially all, of the property and assets of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on the sale, lease, exchange, or other disposition, including a disposition in dissolution, but not including a disposition pursuant to court order or a disposition for cash pursuant to a plan by which all or substantially all of the net proceeds of the disposition will be distributed to the shareholders within one year after the date of the disposition;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation;

(e) Any action described in RCW 23B.25.120;

(f) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or

(g) A plan of entity conversion in the case of a conversion of a domestic corporation to a foreign corporation, which has become effective, to which the domestic corporation is a party as the converting entity, if: (i) The shareholder was entitled to vote on the plan; and (ii) the shareholder does not receive shares in the surviving entity that have terms as favorable to the shareholder in all material respects and that represent at least the same percentage interest of the total voting rights of the outstanding shares of the surviving entity as the shares held by the shareholder before the conversion.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.831 through 25.10.886, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation. [2022 c 42 § 113; 2017 c 28 § 14; 2014 c 83 § 15; 2013 c 97 § 1. Prior: 2009 c 189 § 41; 2009 c 188 § 1404; 2003 c 35 § 9; 1991 c 269 § 37; 1989 c 165 § 141.]

Additional notes found at www.leg.wa.gov

23B.13.030 Dissent by nominees and beneficial owners. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in the shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one person and delivers to the corporation a notice of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the dissenter dissents and the dissenter's other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on the beneficial shareholder's behalf only if:

(a) The beneficial shareholder delivers to the corporation the record shareholder's executed written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) The beneficial shareholder does so with respect to all shares of which such shareholder is the beneficial shareholder or over which such shareholder has power to direct the vote. [2020 c 57 § 68; 2002 c 297 § 35; 1989 c 165 § 142.]

23B.13.200 Notice of dissenters' rights. (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval by a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 would be submitted for approval by a vote at a shareholders' meeting but for the provisions of RCW 23B.11.030(9), the offer made pursuant to RCW 23B.11.030(9) must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(3) If corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, the shareholder consent described in RCW 23B.07.040(1)(b) and the notice described in RCW 23B.07.040(3)(a) must include a statement that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter. [2022 c 42 § 114; 2009 c 189 § 42; 2002 c 297 § 36; 1989 c 165 § 143.]

23B.13.210 Notice of intent to demand payment. (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted to a vote at a shareholders'

meeting, a shareholder who wishes to assert dissenters' rights must (a) deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected, and (b) not vote such shares in favor of the proposed corporate action.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 does not require shareholder approval pursuant to RCW 23B.11.030(9), a shareholder who wishes to assert dissenters' rights with respect to any class or series of shares:

(a) Shall deliver to the corporation before the shares are purchased pursuant to the offer under RCW 23B.11.030(9) written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected; and

(b) Shall not tender, or cause to be tendered, any shares of such class or series in response to such offer.

(3) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, a shareholder who wishes to assert dissenters' rights must not execute the consent or otherwise vote such shares in favor of the proposed corporate action.

(4) A shareholder who does not satisfy the requirements of subsection (1), (2), or (3) of this section is not entitled to payment for the shareholder's shares under this chapter. [2022 c 42 § 115; 2020 c 57 § 69; 2009 c 189 § 43; 2002 c 297 § 37; 1989 c 165 § 144.]

23B.13.220 Dissenters' rights—Notice. (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection (6) of this section.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.11.030(9), the corporation shall within 10 days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(2) a notice in compliance with subsection (6) of this section.

(3) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(3) shall comply with subsection (6) of this section.

(4) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders of the subsidiary other than the parent a notice in compliance with subsection (6) of this section.

(5) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW 23B.10.020(4)(b), is not required to be approved by the shareholders of the corporation, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance with subsection (6) of this section.

(6) Any notice under subsection (1), (2), (3), (4), or (5) of this section must:

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1), (2), (3), (4), or (5) of this section is delivered; and

(e) Be accompanied by a copy of this chapter. [2022 c 42 § 116; 2013 c 97 § 2; 2009 c 189 § 44; 2002 c 297 § 38; 1989 c 165 § 145.]

23B.13.230 Duty to demand payment. (1) A shareholder sent a notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to RCW 23B.13.220(6)(c), and deposit the shareholder's certificates, all in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (1) of this section retains all other rights of a shareholder until the proposed corporate action is effected.

(3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the notice, is not entitled to payment for the shareholder's shares under this chapter. [2022 c 42 § 117; 2013 c 97 § 3; 2002 c 297 § 39; 1989 c 165 § 146.]

23B.13.240 Share restrictions. (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for payment under RCW 23B.13.230 is received until the proposed corporate action is effected or the restriction is released under RCW 23B.13.260.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until the effective date of the proposed corporate action. [2009 c 189 § 45; 1989 c 165 § 147.]

23B.13.250 Payment. (1) Except as provided in RCW 23B.13.270, within thirty days of the later of the effective date of the proposed corporate action, or the date the payment demand is received, the corporation shall pay each dissenter who complied with RCW 23B.13.230 the amount the corporation estimates to be the fair value of the shareholder's shares, plus accrued interest.

(2) The payment must be accompanied by:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) An explanation of how the corporation estimated the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's right to demand payment under RCW 23B.13.280; and

(e) A copy of this chapter. [1989 c 165 § 148.]

23B.13.260 Failure to take corporate action. (1) If the corporation does not effect the proposed corporate action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release any transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation wishes to effect the proposed corporate action, it must deliver a new dissenters' notice under RCW 23B.13.220 and repeat the payment demand procedure. [2020 c 57 § 70; 2009 c 189 § 46; 1989 c 165 § 149.]

23B.13.270 After-acquired shares. (1) A corporation may elect to withhold payment required by RCW 23B.13.250 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section, after the effective date of the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall deliver with its offer an explanation of how it estimated the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RCW 23B.13.280. [2020 c 57 § 71; 2009 c 189 § 47; 1989 c 165 § 150.]

23B.13.280 Procedure if shareholder dissatisfied with payment or offer. (1) A dissenter may deliver a notice to the corporation informing the corporation of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate, less any payment under RCW 23B.13.250, or reject the corporation's offer under RCW 23B.13.270 and demand payment of the dissenter's estimate of the fair value of the dissenter's shares and interest due, if:

(a) The dissenter believes that the amount paid under RCW 23B.13.250 or offered under RCW 23B.13.270 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under RCW 23B.13.250 within sixty days after the date set for demanding payment; or

(c) The corporation does not effect the proposed corporate action and does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand under subsection (1) of this section within thirty days after the corporation made or offered payment for the dissenter's shares. [2009 c 189 § 48; 2002 c 297 § 40; 1989 c 165 § 151.]

23B.13.300 Court action. (1) If a demand for payment under RCW 23B.13.280 remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled, parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The corporation may join as a party to the proceeding any shareholder who claims to be a dissenter but who has not, in the opinion of the corporation, complied with the provisions of this chapter. If the court determines that such shareholder has not complied with the provisions of this chapter, the shareholder shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment (a) for the amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation, or (b) for the fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under RCW 23B.13.270. [1989 c 165 § 152.]

23B.13.310 Court costs and counsel fees. (1) The court in a proceeding commenced under RCW 23B.13.300 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equita-

ble, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under RCW 23B.13.280.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of RCW 23B.13.200 through 23B.13.280; or

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by chapter 23B.13 RCW.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited. [1989 c 165 § 153.]

Chapter 23B.14 RCW
DISSOLUTION

Sections

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23B.14.010 Dissolution by initial directors, incorporators, or board of directors. (1) A majority of the initial directors, or, if initial directors were not named in the articles of incorporation and have not been elected, a majority of the incorporators, of a corporation that has not issued shares may approve dissolution of the corporation.

(2) Unless prohibited by the articles of incorporation, a majority of the board of directors may approve dissolution of the corporation without approval by the shareholders, upon a finding by the board of directors that:

(a) The corporation is not able to pay its liabilities as they become due in the usual course of business, or the corporation's assets are less than the sum of its total liabilities; and

(b) Ten or more days have elapsed since the corporation gave notice to all shareholders, whether or not they would otherwise be entitled to vote under RCW 23B.14.020, of the intent of the board of directors to approve dissolution under this subsection. [2009 c 189 § 49; 2006 c 52 § 5; 1989 c 165 § 154.]

23B.14.020 Dissolution by board of directors and shareholders. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be approved:

(a) The board of directors must recommend dissolution to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed dissolution.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed dissolution either (a) by giving notice of a shareholders' meeting in accordance with RCW 23B.07.050 and stating that the purpose or one of the purposes of the meeting is to consider dissolving the corporation, or (b) in accordance with the requirements of RCW 23B.07.040 for approving the proposed dissolution without a meeting.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the proposed dissolution must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the proposed dissolution, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed dissolution. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed dissolution and of each other voting group entitled to vote separately on the proposed dissolution. [2011 c 328 § 8; 2009 c 189 § 50; 2006 c 52 § 6; 2003 c 35 § 10; 1989 c 165 § 155.]

23B.14.030 Articles of dissolution—Publication of notice. (1) At any time after dissolution is authorized under RCW 23B.14.010 or 23B.14.020, the corporation may dissolve by delivering to the secretary of state for filing:

(a) A copy of a revenue clearance certificate issued pursuant to RCW 82.32.260; and

(b) Articles of dissolution setting forth:

(i) The name of the corporation;

(ii) The date dissolution was approved; and

(iii) A statement that dissolution was duly approved by the initial directors, the incorporators, or the board of directors in accordance with RCW 23B.14.010, or was duly proposed by the board of directors and approved by the shareholders in accordance with RCW 23B.14.020.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

(3) A dissolved corporation shall, within thirty days after the effective date of its articles of dissolution, publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice. The notice must be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located. The notice must also describe the information that must be included in a claim, provide a mailing address where a claim may be sent, and state that claims against the dissolved corporation may be barred in accordance with the provisions of this chapter if not timely asserted. A dissolved corporation's failure to publish notice in accordance with this subsection does not affect the validity or the effective date of its dissolution.

(4) For purposes of this chapter, "dissolved corporation" means a corporation whose dissolution has been approved in accordance with RCW 23B.14.010 or 23B.14.020 and whose articles of dissolution have become effective, and includes any trust or other successor entity to which the remaining assets of such a corporation are transferred subject to its liabilities for purposes of liquidation in accordance with RCW 23B.14.050. [2009 c 189 § 51; 2006 c 52 § 7; 1989 c 165 § 156.]

23B.14.040 Revocation of dissolution. (1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(2) Revocation of dissolution must be approved in the same manner as the dissolution was approved unless that approval permitted revocation upon approval by the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder approval.

(3) After the revocation of dissolution is approved, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) The name of the corporation and a statement that such name satisfies the requirements of Article 3 of chapter 23.95 RCW; if the name is not available, the corporation must deliver to the secretary of state for filing articles of amendment changing its name with the articles of revocation of dissolution;

(b) The effective date of the dissolution that was revoked;

(c) The date that the revocation of dissolution was approved;

(d) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;

(e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) If shareholder approval was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the shareholders in accordance with subsection (2) of this section and RCW 23B.14.020.

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred. [2015 c 176 § 2126; 2009 c 189 § 52; 1989 c 165 § 157.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.14.050 Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will be applied toward satisfaction or making reasonable provision for satisfaction of its liabilities or will otherwise not be distributed in kind to its shareholders, but in any case subject to applicable liens and security interests as well as any applicable contractual restrictions on the disposition of its properties;

(c) Satisfying or making reasonable provision for satisfying its liabilities, in accordance with their priorities as established by law, and on a pro rata basis within each class of liabilities;

(d) Subject to the limitations imposed by RCW 23B.06.400, distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Except as otherwise provided in this chapter, dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in chapter 23B.08 RCW;

(d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation.

(3) A dissolved corporation's board of directors may make a determination that reasonable provision for the satisfaction of any liability, whether arising in tort or by contract, statute, or otherwise, and whether matured or unmatured, contingent, or conditional, has been made by means of a purchase of insurance coverage, provision of security therefor, contractual assumption thereof by a solvent person, or any

other means, that the board of directors determines is reasonably calculated to provide for satisfaction of the reasonably estimated amount of such liability. Upon making such a determination, the board of directors shall, for purposes of determining whether a subsequent distribution to shareholders is prohibited under *RCW 23B.06.400(2), be entitled to treat such liability as fully satisfied by the assets used or committed in order to make such provision. In making determinations under *RCW 23B.06.400(2), the board of directors of a dissolved corporation may also disregard, and make no provision for the satisfaction of, any liabilities that are barred in accordance with RCW 23B.14.060(2), or that may exceed any provision for their satisfaction ordered by a superior court pursuant to RCW 23B.14.065, or that the board of directors does not consider, based on the facts known to it, reasonably likely to arise prior to expiration of the survival period specified in RCW 23B.14.340.

(4) The board of directors of a dissolved corporation may at any time petition to have the dissolution continued under court supervision in accordance with RCW 23B.14.300, or, upon a finding that the corporation is not able to pay its liabilities as they become due in the usual course of business or that its assets are less than the sum of its total liabilities, may dedicate the corporation's assets to the repayment of its creditors by making an assignment for the benefit of creditors in accordance with chapter 7.08 RCW or obtaining the appointment of a general receiver in accordance with chapter 7.60 RCW. The assumption of control over the corporation's assets by a court, an assignee for the benefit of creditors, or a general receiver relieves the directors of any further duties with respect to the liquidation of the corporation's assets or the application of any assets or proceeds toward satisfaction of its liabilities.

(5) Corporate actions to be approved by a corporation that has been dissolved under RCW 23B.14.030 or **23B.14.210, which are within the scope of activities permitted in this chapter, may be approved by the corporation's board of directors and, if required, by its shareholders, membership in both groups determined as of the effective date of the dissolution. If vacancies in the board of directors occur after the effective date of dissolution, the shareholders, or the remaining directors, even if less than a quorum of the board, may fill the vacancies. A special meeting of the shareholders for purposes of approving any corporate action required or permitted to be approved by shareholders, or for purposes of electing directors, may be called by any person who was an officer, director, or shareholder of the corporation at the effective date of the dissolution. [2009 c 189 § 53; 2006 c 52 § 8; 1989 c 165 § 158.]

Reviser's note: *(1) RCW 23B.06.400 was amended by 2022 c 42 § 103, changing subsection (2) to subsection (3).

**(2) RCW 23B.14.210 was repealed by 2015 c 176 § 2149, effective January 1, 2016.

23B.14.060 Known claims against a dissolved corporation. (1) A dissolved corporation that has published notice of its dissolution in accordance with RCW 23B.14.030(3) may dispose of any or all of the known claims against it by giving written notice of its dissolution to the holders of the known claims at any time after the effective date of dissolution. The written notice of dissolution must:

(a) Provide, for each known claim of the holder to whom the notice is addressed that is sought to be disposed of under this section, either (i) a general description of the known facts specified in subsection (3)(b)(i) or (ii) of this section relating to a matured and legally assertable claim or liability, or (ii) an identification of the executory contract with respect to which unmatured, conditional, or contingent claims or liabilities are sought to be disposed of under this section;

(b) Provide a mailing address where a notice of claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice of dissolution, by which a written notice of claim must be delivered to the dissolved corporation;

(d) State that the known claim will be barred if a written notice of claim describing the known claim with reasonable particularity is not delivered to the dissolved corporation by the deadline; and

(e) State that the known claim or any executory contract on which the known claim is based may be rejected by the dissolved corporation, in which case the holder of the known claim will have a limited period of ninety days from the effective date of the rejection notice in which to commence a proceeding to enforce the known claim.

(2) A known claim against the dissolved corporation is barred:

(a) If the holder of the known claim who was given written notice of dissolution under subsection (1) of this section does not deliver the written notice of claim to the dissolved corporation by the deadline; or

(b) If a holder of a known claim that was rejected by the dissolved corporation does not commence a proceeding to enforce the known claim within ninety days from the effective date of the rejection notice.

(3) For purposes of this section, "known claim" means any claim or liability:

(a) That either: (i) Has matured sufficiently, before or after the effective date of the dissolution, to be legally capable of assertion against the dissolved corporation, whether or not the amount of the claim or liability is known or determinable; or (ii) is unmatured, conditional, or otherwise contingent but may subsequently arise under any executory contract to which the dissolved corporation is a party, other than under an implied or statutory warranty as to any product manufactured, sold, distributed, or handled by the dissolved corporation; and

(b) As to which the dissolved corporation has knowledge of the identity and the mailing address of the holder of the claim or liability and, in the case of a matured and legally assertable claim or liability, actual knowledge of existing facts that either (i) could be asserted to give rise to, or (ii) indicate an intention by the holder to assert, such a matured claim or liability. [2006 c 52 § 9; 1989 c 165 § 159.]

23B.14.065 Form and adequacy of satisfaction of claims—Application to and determination by court. (1) A dissolved corporation that has published notice of its dissolution in accordance with RCW 23B.14.030(3) may file an application, with the superior court of the county where its principal office or, if none in this state, its registered office is located, for a determination of:

(a) The amount and form of reasonable provision to be made for the satisfaction of any one or more claims or liabilities, known or unknown, arising in tort or by contract, statute or otherwise, matured or unmatured, contingent or conditional, that have arisen or are reasonably likely to arise prior to expiration of the survival period specified in RCW 23B.14.340; or

(b) Whether the provision made or proposed to be made by the board of directors for the satisfaction of any one or more claims or liabilities is reasonable.

Any determination under this subsection is conclusive for purposes of determining the legality of any subsequent distributions under RCW 23B.06.400 and 23B.14.050(3).

(2) Within ten days after filing the application, the dissolved corporation shall give written notice of the judicial proceeding to each person to whom written notice has been given pursuant to RCW 23B.14.060 and each other person whose claim or potential claim, identity, and mailing address are known to the dissolved corporation. However, written notice of the judicial proceeding need not be given to any person whose claim or potential claim is not sought to be determined under the application filed by the dissolved corporation.

(3) The superior court may appoint a guardian ad litem to represent all persons whose claims or potential claims are sought to be determined in the judicial proceeding but whose identities or mailing addresses are not known to the dissolved corporation. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(4) Provision by the dissolved corporation for satisfaction of claims or potential claims in the amount and form ordered by the superior court shall satisfy the dissolved corporation's obligations with respect to those claims or potential claims, and any further or greater claims based on the same facts, dealings, or contract shall be barred. [2006 c 52 § 10.]

23B.14.070 Holder of an unpaid claim—Proceeding against dissolved corporation to collect amount of claim. (1) The holder of an unpaid claim against a dissolved corporation that is not barred under RCW 23B.14.060(2) or 23B.14.065(4) or by expiration of the survival period specified in RCW 23B.14.340 may, within the statute of limitations applicable to the claim, commence a proceeding against the dissolved corporation to collect the amount of the claim from any remaining undistributed assets of the corporation. If the undistributed assets of the corporation are not or may not be sufficient to satisfy the amount of the unpaid claim, and there have been distributions to shareholders as to which the limitations period specified in RCW 23B.08.310(5) has not expired at the time the proceeding is commenced, the holder of the unpaid claim may include as a part of the relief claimed against the dissolved corporation a petition to compel the dissolved corporation to collect any amounts owing to it by directors or shareholders under RCW 23B.08.310 and to apply the collections toward payment of the claim. The filing of such a petition to compel the corporation to collect unlawfully distributed amounts from directors or shareholders tolls the limitations periods specified in RCW 23B.08.310(5) and 23B.14.340 with respect to the unpaid claim, as to directors and shareholders who may be liable under RCW 23B.08.310. If the dissolved corporation fails, within a reasonable period of time after the filing of such a petition to compel it to collect amounts owing under RCW 23B.08.310, to join those directors and shareholders who may be liable for the amounts, the holder of the unpaid claim may join those directors and shareholders as additional defendants in the proceeding. The holder of the unpaid claim may also join all directors and shareholders who may be liable under RCW 23B.08.310 as additional defendants in the proceeding, at any time upon establishing to the satisfaction of the court that any of such shareholders, with intent to delay or defraud or place property beyond the reach of the corporation's creditors, has removed or is about to remove from this state, or has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of the property distributed by the corporation as to which the shareholder may be liable under RCW 23B.08.310(3). Except as permitted by this section, the holder of the unpaid claim may not, by means of any proceeding or otherwise, seek to enforce the claim directly against any of the dissolved corporation's officers or directors in those capacities, or against any of its shareholders on account of their receipt of distributions after the effective date of dissolution.

(2) Claims against a dissolved corporation that are barred under RCW 23B.14.060(2) or 23B.14.065(4) or by expiration of the survival period specified in RCW 23B.14.340 may not be enforced against the dissolved corporation, any of its officers or directors in those capacities, or any of its shareholders on account of their receipt of distributions after the effective date of dissolution. [2006 c 52 § 11.]

23B.14.200 Administrative dissolution—Grounds. The secretary of state may administratively dissolve a corporation under the circumstances and procedures provided in Article 6 of chapter 23.95 RCW. [2015 c 176 § 2127; 1994 c 287 § 7; 1991 c 72 § 37; 1990 c 178 § 5; 1989 c 165 § 160.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Additional notes found at www.leg.wa.gov

23B.14.220 Reinstatement following administrative dissolution—Application. (1) A corporation administratively dissolved under RCW 23.95.610 may apply to the secretary of state for reinstatement in accordance with RCW 23.95.615. [2015 c 176 § 2128; 2006 c 52 § 13; 1995 c 47 § 2; 1989 c 165 § 162.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.14.300 Judicial dissolution—Grounds. The superior courts may dissolve a corporation:

(1) In a proceeding by the attorney general if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The shareholders 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 expired, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(d) The corporate assets are being misapplied or wasted; or

(e) The corporation has ceased all business activity and has failed, within a reasonable time, to dissolve, to liquidate its assets, or to distribute its remaining assets among its shareholders;

(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 was returned unsatisfied, and the corporation is not able to pay its liabilities as they become due in the usual course of business or its assets are less than the sum of its total liabilities; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is not able to pay its liabilities as they become due in the usual course of business or its assets are less than the sum of its total liabilities.

The superior courts may also assume control over a dissolved corporation's assets and the process for winding up and liquidating its business and affairs, in a proceeding instituted by the dissolved corporation to have its voluntary dissolution continued under court supervision. [2006 c 52 § 14; 1995 c 47 § 3; 1993 c 290 § 3; 1989 c 165 § 163.]

23B.14.310 Judicial dissolution or supervision of voluntary dissolution—Procedure. (1) Venue for any proceeding to dissolve a corporation or to supervise a voluntary dissolution brought by any party named in RCW 23B.14.300 lies in the county where a corporation's registered office is or was last located.

(2) It is not necessary to make shareholders or directors parties to a proceeding to dissolve a corporation or to supervise a voluntary dissolution unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation or to supervise a voluntary dissolution may issue injunctions, appoint a general or custodial receiver with all powers and duties the court directs, and take other action required to preserve the corporate assets wherever located. A court in a proceeding brought to dissolve a corporation may also carry on the business of the corporation until a full hearing can be held. [2006 c 52 § 15; 1989 c 165 § 164.]

23B.14.320 General or custodial receivership. A court in a judicial proceeding brought under RCW 23B.14.300 may appoint one or more general receivers to wind up and liquidate the business and affairs of the corporation, or, if the corporation is not yet dissolved, may appoint one or more custodial receivers to manage its business and affairs. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a general or custodial receiver. The hearing, and any resulting receivership, shall be conducted in accordance with chapter 7.60 RCW. [2006 c 52 § 16; 2004 c 165 § 40; 1989 c 165 § 165.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

23B.14.330 Decree of dissolution—Other orders, decrees, and injunctions—Revenue clearance certificate. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in RCW 23B.14.300 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, or, with or without ordering dissolution, may make such other orders and decrees and issue such injunctions in the case as justice and equity require.

(2) The court shall not enter or sign any decree of dissolution until it receives a copy of a revenue clearance certificate for the corporation issued pursuant to RCW 82.32.260.

(3) If the court enters a decree of dissolution, the petitioner or moving party shall deliver a certified copy of the decree and a copy of the revenue clearance certificate to the secretary of state, who shall file them. The court shall then direct the winding up and liquidation of the corporation's business and affairs in accordance with RCW 23B.14.050. [1995 c 47 § 4; 1989 c 165 § 166.]

23B.14.340 Survival of remedy after dissolution. The dissolution of a corporation either (1) by the filing with the secretary of state of its articles of dissolution, (2) by administrative dissolution by the secretary of state, (3) by a decree of court, or (4) by expiration of its period of duration shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution or arising thereafter, unless action or other proceeding thereon is not commenced within two years after the effective date of any dissolution that was effective prior to June 7, 2006, or within three years after the effective date of any dissolution that is effective on or after June 7, 2006. Any such action or proceeding against the corporation may be defended by the corporation in its corporate name. [2006 c 52 § 17; 1995 c 47 § 5; 1990 c 178 § 6; 1989 c 165 § 167.]

Additional notes found at www.leg.wa.gov

23B.14.390 Secretary of state—List of corporations dissolved. On the first day of each month, the secretary of state shall prepare a list of corporations dissolved during the preceding month pursuant to RCW 23B.14.030, 23B.14.330, and 23.95.610. [2015 c 176 § 2129; 1995 c 47 § 8.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.14.392 Certificate of authority as insurance company—Filing of records. 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 filed with the secretary of state, the records shall be filed with the insurance commissioner rather than the secretary of state. [2002 c 297 § 41; 1998 c 23 § 10.]

23B.14.394 Certificate of authority from department of financial institutions—Filing of records. For any corporation or other entity that has, is applying for, or intends to apply for a certificate of authority from the department of financial institutions as a bank, trust company, or the holding company thereof, under *Title 30 RCW, or as a savings bank or holding company thereof, under Title 32 RCW, or for any other corporation or other entity which is or purports to be a bank, savings bank, savings and loan association, trust company, industrial loan bank, credit union, bank holding company, financial holding company, or savings and loan holding company, whenever under this chapter corporate records are required to be filed with the secretary of state, the records shall be filed with the department of financial institutions. [2010 c 88 § 2.]

***Reviser's note:** Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

Additional notes found at www.leg.wa.gov

23B.14.400 Deposit with state treasurer. Following its dissolution, the assets of a corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them may be reduced to cash and deposited with the state treasurer for safekeeping. If assets are transferred to the state treasurer, and if the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay such person or such person's representative that amount. [2006 c 52 § 18; 1989 c 165 § 168.]

Chapter 23B.15 RCW
FOREIGN CORPORATIONS

Sections

23B.15.010 Authority to transact business required.
23B.15.020 Consequences of transacting business without registering.
23B.15.030 Foreign registration statement.
23B.15.032 Certificate of authority as insurance company—Filing of records.
23B.15.040 Amended foreign registration statement.
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23B.15.100 Service on foreign corporation.
23B.15.200 Withdrawal of foreign corporation.
23B.15.300 Termination—Grounds.

23B.15.010 Authority to transact business required. (1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation may not transact business in this state until it registers with the secretary of state in accordance with Article 5 of chapter 23.95 RCW.

(2) A nonexhaustive list of activities that do not constitute transacting business in this state is provided in RCW 23.95.520. [2015 c 176 § 2130; 1993 c 181 § 11; 1990 c 178 § 7; 1989 c 165 § 169.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Additional notes found at www.leg.wa.gov

23B.15.020 Consequences of transacting business without registering. Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation transacting business in this state without registering with the secretary of state is subject to RCW 23.95.505. [2015 c 176 § 2131; 1990 c 178 § 8; 1989 c 165 § 170.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Additional notes found at www.leg.wa.gov

23B.15.030 Foreign registration statement. A foreign corporation may register to transact business in this state by delivering a foreign registration statement to the secretary of state for filing in accordance with RCW 23.95.510. [2015 c 176 § 2132; 1989 c 165 § 171.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.15.032 Certificate of authority as insurance company—Filing of records. 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 filed with the secretary of state, the records shall be filed with the insurance commissioner rather than the secretary of state. [2002 c 297 § 42; 1998 c 23 § 11.]

23B.15.040 Amended foreign registration statement. A foreign corporation registered to transact business in this state must amend its foreign registration statement under the circumstances specified in RCW 23.95.515. [2015 c 176 § 2133; 1991 c 72 § 38; 1989 c 165 § 172.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.15.050 Effect of registration—Right of state to terminate—Governing law. (1) A registered foreign corporation may transact business in this state subject, however, to the right of the state to terminate the registration as provided in Article 5 of chapter 23.95 RCW.

(2) A foreign corporation registered to transact business in this state is subject to RCW 23.95.500 relating to the effect of registration and the governing law for registered foreign corporations. [2015 c 176 § 2134; 1989 c 165 § 173.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.15.060 Corporate name of foreign corporation. The corporate name of a foreign corporation registered in this state must comply with the provisions of RCW 23.95.525 and Article 3 of chapter 23.95 RCW. [2015 c 176 § 2135; 1998 c 102 § 2; 1989 c 165 § 174.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.15.070 Registered agent of foreign corporation. Each foreign corporation registered to transact business in this state must continuously maintain in this state a registered agent in accordance with Article 4 of chapter 23.95 RCW. [2015 c 176 § 2136; 2002 c 297 § 43; 1989 c 165 § 175.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.15.080 Change of registered agent of foreign corporation. (1) A foreign corporation registered to transact business in this state may change its registered agent by delivering to the secretary of state for filing a statement of change in accordance with RCW 23.95.430.

(2) A registered agent of a foreign corporation may change its information on file with the secretary of state in accordance with RCW 23.95.435 or 23.95.440. [2015 c 176 § 2137; 2002 c 297 § 44; 1989 c 165 § 176.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.15.090 Resignation of registered agent of foreign corporation. The registered agent of a foreign corporation may resign as agent by executing and delivering to the secretary of state for filing a statement of resignation in accordance with RCW 23.95.445. [2020 c 57 § 72; 2015 c 176 § 2138; 1989 c 165 § 177.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.15.100 Service on foreign corporation. Service of any process, notice, or demand required or permitted by law to be served upon the foreign corporation may be made in accordance with RCW 23.95.450. [2015 c 176 § 2139; 1989 c 165 § 178.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.15.200 Withdrawal of foreign corporation. A foreign corporation registered to transact business in this state may not withdraw from this state until it delivers a statement of withdrawal to the secretary of state for filing in accordance with RCW 23.95.530. [2015 c 176 § 2140; 1989 c 165 § 179.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.15.300 Termination—Grounds. The secretary of state may terminate the registration of a registered foreign corporation under the circumstances and procedures specified in RCW 23.95.550. [2015 c 176 § 2141; 1991 c 72 § 39; 1990 c 178 § 9; 1989 c 165 § 180.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Additional notes found at www.leg.wa.gov

Chapter 23B.16 RCW
RECORDS AND REPORTS

Sections

23B.16.010 Corporate records.
23B.16.020 Inspection of records by shareholders.
23B.16.030 Scope of inspection right.
23B.16.040 Court-ordered inspection.
23B.16.200 Financial statements for shareholders.
23B.16.220 Initial and annual reports for secretary of state.

23B.16.010 Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all corporate actions approved by the shareholders or board of directors by executed consent without a meeting, and a record of all corporate actions approved by a committee of the board of directors exercising the authority of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its current shareholders, in a form that permits preparation of a list of the names and mailing addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each. Nothing contained in this section requires the corporation to include on such list the electronic mail address or other electronic contact information of a shareholder.

(4) A corporation shall maintain its records specified in this section in a form capable of conversion into paper form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) The minutes of all shareholders' meetings, and records of all corporate actions approved by shareholders without a meeting, for the past three years;

(d) The financial statements described in RCW 23B.16.200(1), for the past three years;

(e) All written communications to shareholders generally within the past three years;

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

(g) Its initial report or most recent annual report delivered to the secretary of state under RCW 23.95.255. [2020 c 57 § 73; 2015 c 176 § 2142; 2009 c 189 § 54; 2002 c 297 § 45; 1991 c 72 § 40; 1989 c 165 § 182.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.16.020 Inspection of records by shareholders. (1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in RCW 23B.16.010(5) if the shareholder gives the corporation an executed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to 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 shareholder meets the requirements of subsection (3) of this section and gives the corporation an executed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, or of any meeting of a committee of the board of directors while exercising the authority of the board of directors, minutes of any meeting of the shareholders, and records of corporate actions approved by the shareholders or board of directors or a committee thereof without a meeting, to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) The record of shareholders.

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

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

(b) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) The records are directly connected with the shareholder's purpose.

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

(5) This section does not affect:

(a) The right of a shareholder to inspect records under RCW 23B.07.200 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independently of this title, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf. [2020 c 57 § 74; 2009 c 189 § 55; 2002 c 297 § 46; 1989 c 165 § 183.]

23B.16.030 Scope of inspection right. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder.

(2) The corporation may, if reasonable, satisfy the right to copy records under *RCW 23B.16.020 by furnishing copies by photocopy or other means chosen by the corporation, including furnishing copies through an electronic transmission.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the documents.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under RCW 23B.16.020(2)(c) by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand. [2020 c 57 § 75. Prior: 1989 c 165 § 184.]

***Reviser's note:** The reference to "section 184 of this act" has been translated to "RCW 23B.16.020." A literal translation would be "RCW 23B.16.030" which is the section above and appears to be erroneous.

23B.16.040 Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with RCW 23B.16.020(1) to inspect and copy any records required by that subsection to be available for inspection, the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with RCW 23B.16.020 (2) and (3) may apply to the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel 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 shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder. [1989 c 165 § 185.]

23B.16.200 Financial statements for shareholders. (1) Not later than four months after the close of each fiscal year, and in any event prior to the annual meeting of shareholders, each corporation shall prepare (a) a balance sheet showing in reasonable detail the financial condition of the corporation as of the close of its fiscal year, and (b) an income statement showing the results of its operation during its fiscal year. Such statements may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate. If financial statements are prepared by the corporation for any purpose on the basis of generally accepted accounting principles, the annual statements must also be prepared, and disclose that they are prepared, on that basis. If financial statements are prepared only on a basis other than generally accepted accounting principles, they must be prepared, and disclose that they are prepared, on the same basis as other reports and statements prepared by the corporation for the use of others.

(2) Upon the written request of a shareholder, the corporation shall promptly deliver to the requesting shareholder a copy of the most recent balance sheet and income statement. If prepared for other purposes, the corporation shall also deliver to a requesting shareholder upon the written request of that shareholder a statement of sources and applications of funds, and a statement of changes in shareholders' equity, for the most recent fiscal year.

(3) If the annual financial statements are reported upon by a public accountant, the accountant's report must accom-

pany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating the person's reasonable belief 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 basis used for statements prepared for the preceding year.

(4) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf. [2020 c 57 § 76; 2002 c 297 § 47; 1989 c 165 § 186.]

23B.16.220 Initial and annual reports for secretary of state. Each domestic corporation, and each foreign corporation registered to transact business in this state, shall deliver to the secretary of state for filing initial and annual reports in accordance with RCW 23.95.255. [2015 c 176 § 2143; 2001 c 307 § 1; 1993 c 290 § 5; 1991 c 72 § 41; 1989 c 165 § 187.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Additional notes found at www.leg.wa.gov

Chapter 23B.17 RCW
MISCELLANEOUS PROVISIONS

Sections

23B.17.010 Application to existing corporations.
23B.17.015 Alternative quorum and voting requirements.
23B.17.030 Limitation on liability of directors—Indemnification.

23B.17.010 Application to existing corporations. (1) Unless otherwise provided, this title applies to all domestic corporations in existence on July 1, 1990, that were incorporated under any general statute of this state providing for incorporation of corporations for profit.

(2) Unless otherwise provided, a foreign corporation authorized to transact business in this state on July 1, 1990, is subject to this title but is not required to obtain a new certificate of authority to transact business under this title. [1989 c 165 § 188.]

23B.17.015 Alternative quorum and voting requirements. (1) A corporation that meets the following requirements is subject to the alternative quorum and voting requirements set forth in subsection (2) of this section:

(a) As of the record date of the annual or special meeting of shareholders:

(i) The corporation is a public company;

(ii) Shares of its common stock are admitted to trading on a regulated market listed on the list of the regulated markets notified to the European commission by the member states under Article 16 of the investment services directive (93/22/EEC), as such list is amended from time to time; and

(iii) At least twenty percent of the shares of the corporation's common stock are held of record by the depository trust company and are deposited securities, as defined in the rules, bylaws, and organization certificate of the depository trust company, credited to the account or accounts of one or more stock depositories located in a member state of the European Union;

(b) At the time that such shares were initially listed on the regulated market, shares of the corporation's common stock were listed on the New York stock exchange or the nasdaq stock market;

(c) At the time that such shares were initially listed on the regulated market, such listing was a condition to the acquisition of one hundred percent of the equity interests of a foreign corporation or similar entity where:

(i) The securities of the foreign corporation or similar entity were admitted to trading on the regulated market immediately prior to the acquisition;

(ii) The consideration for the acquisition was newly issued shares of common stock of the corporation; and

(iii) The shares issued in connection with the acquisition equaled before the issuance more than forty percent of the outstanding common stock of the corporation; and

(d) At the corporation's most recent annual or special meeting of shareholders less than sixty-five percent of the shares within the voting group comprising all the votes entitled to be cast were present in person or by proxy.

(2) At any annual or special meeting actually held, other than by written consent under RCW 23B.07.040, by a corporation meeting the requirements of subsection (1) of this section:

(a) The required quorum of the voting group consisting of all votes entitled to be cast, and of each other voting group that includes common shares of the corporation which is entitled to vote separately with respect to a proposed corporate action, shall be the lesser of:

(i) A majority of the shares of such voting group other than shares credited to the account of stock depositories located in a member state of the European Union as described in subsection (1)(a)(iii) of this section, provided the number of votes comprising such majority equals or exceeds one-sixth of the total votes entitled to be cast by the voting group; or

(ii) One-third of the total votes entitled to be cast by the voting group.

(b) The vote required for approval by any voting group entitled to vote with respect to any amendment of the corporation's articles of incorporation or bylaws, or any plan of merger or share exchange to which the corporation is a party, or any sale, lease, exchange, or other disposition of all or substantially all of the corporation's property otherwise than in the usual and regular course of business, or dissolution, shall be a majority of the votes actually cast by such voting group with respect to the proposed corporate action, provided that the votes approving the proposed corporate action equal or exceed fifteen percent of the votes within the voting group.

(3) The alternative quorum and voting requirements specified in subsection (2) of this section shall, with respect to any corporation meeting the requirements of subsection (1) of this section, control over and supersede any greater quorum or voting requirements that may be specified in the corporation's articles of incorporation or bylaws or in RCW 23B.02.020, 23B.07.250, 23B.07.270, 23B.10.030, 23B.11.030, 23B.12.020, or 23B.14.020. [2011 c 42 § 1.]

Additional notes found at www.leg.wa.gov

23B.17.030 Limitation on liability of directors—Indemnification. The provisions of RCW 23B.08.320 and 23B.08.500 through 23B.08.600 shall apply to any corporation, other than a municipal corporation, incorporated under the laws of the state of Washington. [1989 c 165 § 190.]

Chapter 23B.18 RCW
NONADMITTED ORGANIZATIONS

Sections

23B.18.010 Ownership and enforcement of notes secured by real estate mortgages.
23B.18.020 Mortgage foreclosure.
23B.18.030 Transacting business.
23B.18.040 Service of process.
23B.18.060 Venue.

23B.18.010 Ownership and enforcement of notes secured by real estate mortgages. Any corporation, bank, trust company, mutual savings bank, savings and loan association, national banking association, or other corporation or association organized and existing under the laws of the United States or under the laws of any state or territory of the United States other than the state of Washington, including, without restriction of the generality of the foregoing description, employee pension fund organizations, charitable foundations, trust funds, or other funds, foundations or trusts engaged in the investment of moneys, and trustees of such organizations, foundations, funds or trusts, and which are not admitted to conduct business in the state of Washington under the provisions of this title, and which are not otherwise specifically authorized to transact business in this state, herein collectively referred to as "nonadmitted organizations," may purchase, acquire, hold, sell, assign, transfer, and enforce notes secured by real estate mortgages covering real property situated in this state and the security interests thereby provided, and may make commitments to purchase or acquire such notes so secured. [1989 c 165 § 191.]

23B.18.020 Mortgage foreclosure. Such nonadmitted organizations shall have the right to foreclose such mortgages under the laws of this state or to receive voluntary conveyance in lieu of foreclosure, and in the course of such foreclosure or of such receipt of conveyance in lieu of foreclosure, to acquire the mortgaged property, and to hold and own such property and to dispose thereof. Such nonadmitted organizations however, shall not be allowed to hold, own, and operate said property for a period exceeding five years. In the event said nonadmitted organizations do hold, own, and operate said property for a period in excess of five years, it shall be forthwith required to appoint an agent as required by RCW 23B.15.070 and Article 4 of chapter 23.95 RCW for foreign corporations doing business in this state. [2015 c 176 § 2144; 1989 c 165 § 192.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.18.030 Transacting business. The activities authorized by RCW 23B.18.010 and 23B.18.020 by such nonadmitted organizations shall not constitute "transacting business" within the meaning of chapter 23B.15 RCW or Article 5 of chapter 23.95 RCW. [2015 c 176 § 2145; 1989 c 165 § 193.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.18.040 Service of process. In any action in law or equity commenced by the obligor or obligors, it, his, her, or their assignee or assignees against the said nonadmitted organizations on the said notes secured by said real estate mortgages purchased by said nonadmitted organizations, service of all legal process may be made in accordance with RCW 23.95.450. [2015 c 176 § 2146; 1989 c 165 § 194.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.18.060 Venue. Suit upon causes of action arising against the said nonadmitted organizations shall be brought in the county where the property is situated which is the subject of the mortgage purchased by the said nonadmitted organizations. If the property covered by the said mortgage is situated in more than one county, venue may be had in any of said counties where the property lies. [1989 c 165 § 196.]

Chapter 23B.19 RCW
SIGNIFICANT BUSINESS TRANSACTIONS

Sections

23B.19.010 Legislative findings—Intent.
23B.19.020 Definitions.
23B.19.030 Transaction excluded from chapter—Inadvertent acquisition.
23B.19.040 Approval of significant business transaction required—Violation.
23B.19.050 Provisions of chapter additional to other requirements.
23B.19.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

23B.19.010 Legislative findings—Intent. The legislature finds that:

(1) Corporations that offer employment and health, retirement, and other benefits to citizens of the state of Washington are vital to the economy of this state and the well-being of all of its citizens;

(2) The welfare of the employees of these corporations is of paramount interest and concern to this state;

(3) Many businesses in this state rely on these corporations to purchase goods and services;

(4) Hostile or unfriendly attempts to gain control of or influence otherwise publicly held corporations can cause corporate management to dissipate a corporation's assets in an effort to resist the takeover by selling or distributing cash or assets, redeeming stock, or taking other steps to increase the short-term gain to shareholders and to dissipate energies required for strategic planning, market development, capital investment decisions, assessment of technologies, and evaluation of competitive challenges that can damage the long-term interests of shareholders and the economic health of the state by reducing or eliminating the ability to finance investments in research and development, new products, facilities and equipment, and by undermining the planning process for those purposes;

(5) Hostile or unfriendly attempts to gain control or influence otherwise publicly held corporations are often highly leveraged pursuant to financing arrangements which

assume that an acquirer will promptly obtain access to an acquired corporation's cash or assets and use them, or the proceeds of their sale, to repay acquisition indebtedness;

(6) Hostile or unfriendly attempts to gain control of or influence otherwise publicly held corporations can harm the economy of the state by weakening corporate performance, and causing unemployment, plant closings, reduced charitable donations, declining population base, reduced income to fee-supported local government services, reduced tax base, and reduced income to other businesses; and

(7) The state has a substantial and legitimate interest in regulating domestic corporations and those foreign corporations that have their most significant business contacts with this state and in regulating hostile or unfriendly attempts to gain control of or influence otherwise publicly held domestic corporations and those foreign corporations that employ a large number of citizens of the state, pay significant taxes, and have a substantial economic base in the state.

The legislature intends this chapter to balance the substantial and legitimate interests of the state in domestic corporations and those foreign corporations that employ a large number of citizens of the state and that have a substantial economic base in the state with: The interests of citizens of other states who own shares of such corporations; the interests of the state of incorporation of such foreign corporations in regulating the internal affairs of corporations incorporated in that state; and the interests of promoting interstate commerce. To this effect, the legislature intends to regulate certain transactions between publicly held corporations and acquiring persons that will tend to harm the long-term health of domestic corporations and of foreign corporations that have their principal executive office and a majority of their assets in this state and that employ a large number of citizens of this state. [1989 c 165 § 197.]

23B.19.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquiring person" means a person or group of persons, other than the target corporation or a subsidiary of the target corporation, who is the beneficial owner of voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation; provided, however, that the term "acquiring person" does not include any person who (a) beneficially owned voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation on March 23, 1988; (b) acquired its voting shares of the target corporation solely by gift, inheritance, or in a transaction in which no consideration is exchanged; (c) equals or exceeds the ten percent threshold as a result of action taken solely by the target corporation, such as redemption of shares, unless that person, by its own action, acquires additional voting shares of the target corporation; (d) beneficially owned voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation prior to the time the target corporation had a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or (e) beneficially owned voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation prior to the time the target corporation amended its articles of incorporation to provide that the corporation shall be subject to the provisions of this chapter. An agent, bank, broker, nominee, or trustee for another person, if the other person is not an acquiring person, who acts in good faith and not for the purpose of circumventing this chapter, is not an acquiring person. For the purpose of determining whether a person is an acquiring person, the number of voting shares of the target corporation that are outstanding shall include voting shares beneficially owned by the person through application of subsection (4) of this section, but shall not include any other unissued voting shares of the target corporation which may be issuable pursuant to any agreement, arrangement, or understanding; or upon exercise of conversion rights, warrants, or options; or otherwise.

(2) "Affiliate" means a person who directly or indirectly controls, or is controlled by, or is under common control with, a person.

(3) "Announcement date," when used in reference to any significant business transaction, means the date of the first public announcement of the final, definitive proposal for such a significant business transaction.

(4) "Associate" means (a) a domestic or foreign corporation or organization of which a person is an officer, director, member, or partner or in which a person performs a similar function; (b) a direct or indirect beneficial owner of ten percent or more of any class of equity securities of a person; (c) a trust or estate in which a person has a beneficial interest or as to which a person serves as trustee or in a similar fiduciary capacity; and (d) the spouse or a parent or sibling of a person or a child, grandchild, sibling, parent, or spouse of any thereof, of a person or an individual having the same home as a person.

(5)(a)(i) "Beneficial owner" when used with respect to any shares means a person who individually or with or through any of its affiliates or associates:

(A) Has or shares:

(I) The power to vote, or to direct the voting of, the shares, directly or indirectly;

(II) The power to dispose, or to direct the disposition of, the shares, directly or indirectly;

(III) The right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; or

(IV) The right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing; or

(B) Has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

(ii)(A) A person is not the beneficial owner of shares under (a)(i)(A)(III) of this subsection with respect to shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange.

(B) A person is not the beneficial owner of any shares under (a)(i)(A)(IV) of this subsection if the agreement, arrangement, or understanding to vote the shares arises solely

from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report.

(C) A person is not the beneficial owner of any shares under (a)(i)(B) of this subsection if the agreement, arrangement, or understanding for the purpose of voting the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report.

(b) The terms "beneficial ownership," "beneficially own," and "beneficially owned" have meanings correlative to the meaning of "beneficial owner."

(6) "Common shares" means any shares other than preferred shares.

(7) "Consummation date," with respect to any significant business transaction, means the date of consummation of such a significant business transaction, or, in the case of a significant business transaction as to which a shareholder vote is taken, the later of the business day prior to the vote or twenty days prior to the date of consummation of such a significant business transaction.

(8) "Control," "controlling," "controlled by," and "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of voting shares entitled to cast votes comprising ten percent or more of the voting power of a domestic or foreign corporation shall create a rebuttable presumption that such person has control of such corporation. However, a person does not have control of a domestic or foreign corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(9) "Domestic corporation" means an issuer of voting shares which is organized under chapter 23B.02 RCW or any predecessor provision.

(10) "Exchange act" means the federal securities exchange act of 1934, as amended.

(11) "Market value," in the case of property other than cash or shares, means the fair market value of the property on the date in question as determined by the board of directors of the target corporation in good faith.

(12) "Person" means an individual, domestic or foreign corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

(13) "Preferred shares" means any class or series of shares of a target corporation which under the bylaws or articles of incorporation of such a corporation is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of shares, or is entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.

(14) "Share acquisition time" means the time at which a person first becomes an acquiring person of a target corporation.

(15) "Shares" means any:

(a) Shares or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for shares; and

(b) Security convertible, with or without consideration, into shares, or any warrant, call, or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to, or purchase shares.

(16) "Significant business transaction" means:

(a) A merger, share exchange, or consolidation of a target corporation or a subsidiary of a target corporation with (i) an acquiring person, or (ii) any other domestic or foreign corporation which is, or after the merger, share exchange, or consolidation would be, an affiliate or associate of the acquiring person;

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition or encumbrance, whether in one transaction or a series of transactions, to or with an acquiring person or an affiliate or associate of an acquiring person of assets of a target corporation or a subsidiary of a target corporation (i) having an aggregate market value equal to five percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the target corporation, (ii) having an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the target corporation, or (iii) representing five percent or more of the earning power or net income, determined on a consolidated basis, of the target corporation;

(c) The termination, while the corporation has an acquiring person and as a result of the acquiring person's acquisition of ten percent or more of the shares of the corporation, of five percent or more of the employees of the target corporation or its subsidiaries employed in this state, whether at one time or over the five-year period following the share acquisition time. For the purposes of (c) of this subsection, a termination other than an employee's death or disability or bona fide voluntary retirement, transfer, resignation, termination for cause under applicable common law principles, or leave of absence shall be presumed to be a termination resulting from the acquiring person's acquisition of shares, which presumption is rebuttable. A bona fide voluntary transfer of employees between the target corporation and its subsidiaries or between its subsidiaries is not a termination for the purposes of (c) of this subsection;

(d) The issuance, transfer, or redemption by a target corporation or a subsidiary of a target corporation, whether in one transaction or a series of transactions, of shares or of options, warrants, or rights to acquire shares of a target corporation or a subsidiary of a target corporation to or beneficially owned by an acquiring person or an affiliate or associate of an acquiring person except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend, distribution, or redemption paid or made pro rata to, all share-

holders or holders of options, warrants, or rights to acquire shares of the target corporation, and except for involuntary redemptions permitted by the target corporation's charter or by the law of this state or the state of incorporation;

(e) The liquidation or dissolution of a target corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person;

(f) A reclassification of securities, including, without limitation, any shares split, shares dividend, or other distribution of shares in respect of stock, or any reverse shares split, or recapitalization of a target corporation, or a merger or consolidation of a target corporation with a subsidiary of the target corporation, or any other transaction, whether or not with or into or otherwise involving an acquiring person, proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of a target corporation or a subsidiary of the target corporation that is directly or indirectly owned by an acquiring person or an affiliate or associate of an acquiring person, except as a result of immaterial changes due to fractional share adjustments; or

(g) A receipt by an acquiring person or an affiliate or associate of an acquiring person of the benefit, directly or indirectly, except proportionately as a shareholder of a target corporation, of loans, advances, guarantees, pledges, or other financial assistance or tax credits or other tax advantages provided by or through a target corporation.

(17) "Subsidiary" means a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation.

(18) "Tangible assets" means tangible real and personal property of all kinds. It shall also include leasehold interests in tangible real and personal property.

(19) "Target corporation" means:

(a) Every domestic corporation, if:

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or

(ii) The corporation's articles of incorporation have been amended to provide that such a corporation shall be subject to the provisions of this chapter, if the corporation did not have a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act on the effective date of that amendment; and

(b) Every foreign corporation required to register to transact business in this state pursuant to chapter 23B.15 RCW and Article 5 of chapter 23.95 RCW, if:

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act;

(ii) The corporation's principal executive office is located in the state;

(iii) The corporation has: (A) More than ten percent of its shareholders of record resident in the state; or (B) more than ten percent of its shares owned of record by state residents; or (C) one thousand or more shareholders of record resident in the state;

(iv) A majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and

(v) A majority of the corporation's tangible assets, together with those of its subsidiaries, measured by market value, are located in the state or the corporation, together with its subsidiaries, has more than fifty million dollars' worth of tangible assets located in the state.

For purposes of this subsection, the record date for determining the percentages and numbers of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made. A shareholder record date shall be determined pursuant to the comparable provision to RCW 23B.07.070 of the law of the state in which a foreign corporation is incorporated. If a shareholder record date has not been fixed by the board of directors within the preceding four months, the determination shall be made as of the end of the corporation's most recent fiscal quarter.

The residence of each shareholder is presumed to be the address appearing in the records of the corporation. Shares held of record by brokers or nominees shall be disregarded for purposes of calculating the percentages and numbers specified in this subsection. Shares of a corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a corporation and held in a plan that is qualified under section 401(a) of the federal internal revenue code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code shall be deemed, for the purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

A domestic or foreign corporation shall be deemed to be a target corporation if the domestic or foreign corporation's failure to satisfy the requirements of this subsection is caused by the action of, or is the result of a proposal by, an acquiring person or affiliate or associate of an acquiring person.

(20) "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a corporation.

(21) "Voting shares" means shares of all classes of a corporation entitled to vote generally in the election of directors. [2017 c 28 § 18; 2016 c 216 § 1; 2015 c 176 § 2147; 1996 c 155 § 1; 1989 c 165 § 198.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.19.030 Transaction excluded from chapter—Inadvertent acquisition. This chapter does not apply to a significant business transaction of a target corporation with an acquiring person of the target corporation which became an acquiring person inadvertently, if the acquiring person (1) as soon as practicable, divests itself of a sufficient amount of the voting shares of the target corporation so that it no longer is the beneficial owner, directly or indirectly, of voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation, and (2) would not at any time within the five-year period preceding the announce-

ment date of the significant business transaction have been an acquiring person but for the inadvertent acquisition. [2016 c 216 § 2; 1996 c 155 § 2; 1989 c 165 § 199.]

23B.19.040 Approval of significant business transaction required—Violation. (1)(a) Notwithstanding anything to the contrary contained in this title, a target corporation shall not for a period of five years following the acquiring person's share acquisition time engage in a significant business transaction unless:

(i) It is exempted by RCW 23B.19.030;

(ii) The significant business transaction or the purchase of shares made by the acquiring person is approved prior to the acquiring person's share acquisition time by a majority of the members of the board of directors of the target corporation; or

(iii) At or subsequent to the acquiring person's share acquisition time, such significant business transaction is approved by a majority of the members of the board of directors of the target corporation and approved at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least two-thirds of the votes entitled to be cast by the outstanding voting shares of the target corporation, except shares beneficially owned by or under the voting control of the acquiring person.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition time, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by the exchange act shall be deemed to have disapproved such share purchase.

(2) Except for a significant business transaction approved under subsection (1) of this section or exempted by RCW 23B.19.030, in addition to any other requirement, a target corporation shall not engage at any time in any significant business transaction described in RCW 23B.19.020(16) (a) or (e) with any acquiring person of such a corporation other than a significant business transaction that either meets all of the conditions of (a), (b), and (c) of this subsection or meets the conditions of (d) of this subsection:

(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such a target corporation in a significant business transaction is at least equal to the higher of the following:

(i) The highest per share price paid by such an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of voting shares entitled to cast votes comprising five percent or more of the voting power of a target corporation, for any shares of common shares of the same class or series acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the earliest date, up to the amount of the interest; and

(ii) The market value per share of common shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the date, up to the amount of the interest.

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the target corporation is at least equal to the highest of the following, whether or not the acquiring person has previously acquired any shares of such a class or series of shares:

(i) The highest per share price paid by an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of voting shares entitled to cast votes comprising five percent or more of the voting power of a resident domestic corporation, for any shares of the same class or series of shares acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the earliest date, up to the amount of the interest;

(ii) The highest preferential amount per share to which the holders of shares of the same class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation, plus the aggregate amount of any dividends declared or due as to which the holders are entitled prior to payment of dividends on some other class or series of shares, unless the aggregate amount of the dividends is included in the preferential amount; and

(iii) The market value per share of the same class or series of shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market

value of any dividends paid other than in cash, per share of the same class or series of shares since the date, up to the amount of the interest.

(c) The consideration to be received by holders of a particular class or series of outstanding shares, including common shares, of the target corporation in a significant business transaction is in cash or in the same form as the acquiring person has used to acquire the largest number of shares of the same class or series of shares previously acquired by the person, and the consideration shall be distributed promptly.

(d) The significant business transaction is approved at an annual meeting of shareholders, or special meeting of shareholders called for such a purpose, no earlier than five years after the acquiring person's share acquisition time, by a majority of the votes entitled to be counted within each voting group entitled to vote separately on the transaction. The votes of all outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except that the votes of shares as to which an acquiring person has beneficial ownership or voting control may not be counted to determine whether shareholders have approved a transaction for purposes of this subsection. The votes of shares as to which an acquiring person has beneficial ownership or voting control shall, however, be counted in determining whether a transaction is approved under other sections of this title and for purposes of determining a quorum.

(3) Subsection (2) of this section does not apply to a target corporation that on June 6, 1996, had a provision in its articles of incorporation, adopted under *RCW 23B.17.020(3)(d), expressly electing not to be covered under *RCW 23B.17.020, which is repealed by section 6, chapter 155, Laws of 1996.

(4) A significant business transaction that is made in violation of subsection (1) or (2) of this section and that is not exempt under RCW 23B.19.030 is void. [2016 c 216 § 3; 2009 c 189 § 56; 2007 c 45 § 1; 1997 c 19 § 3; 1996 c 155 § 3; 1989 c 165 § 200.]

***Reviser's note:** RCW 23B.17.020 was repealed by 1996 c 155 § 6.

23B.19.050 Provisions of chapter additional to other requirements. The requirements imposed by this chapter are to be in addition to, and not in lieu of, requirements imposed on a transaction by any provision in the articles of incorporation or the bylaws of the target corporation, or otherwise. [1989 c 165 § 201.]

23B.19.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 64.]

Chapter 23B.25 RCW
SOCIAL PURPOSE CORPORATIONS

Sections

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23B.25.005 Becoming or ceasing to be a social purpose corporation. (1) Any corporation may elect to be governed as a social purpose corporation by one of the following means:

(a) One or more persons may act as incorporator or incorporators of a social purpose corporation by delivering articles of incorporation that conform to the requirements of this chapter to the secretary of state for filing; or

(b) Any corporation which is not a social purpose corporation may elect to become a social purpose corporation by complying with RCW 23B.25.130.

(2) Any social purpose corporation may elect to cease to be governed as a social purpose corporation by complying with RCW 23B.25.140. [2012 c 215 § 1.]

23B.25.010 Powers, rights, and obligations—Definition—Application of RCW 23B.03.010. (1) Except as otherwise expressly stated in this chapter, the provisions of this title and all powers, rights, and obligations thereunder shall apply to social purpose corporations organized under this chapter, and references in this title to the term "corporation" shall be read to include social purpose corporations organized under this chapter.

(2) Subject to any limitations contained in the articles of incorporation, a social purpose corporation may engage in any lawful business under RCW 23B.03.010. [2012 c 215 § 2.]

23B.25.020 General social purposes. Every corporation governed by this chapter must be organized to carry out its business purpose under RCW 23B.03.010 in a manner intended to promote positive short-term or long-term effects of, or minimize adverse short-term or long-term effects of, the corporation's activities upon any or all of (1) the corpora-

tion's employees, suppliers, or customers; (2) the local, state, national, or world community; or (3) the environment. [2012 c 215 § 3.]

23B.25.030 Specific social purposes. In addition to the general social purpose set forth in RCW 23B.25.020, every corporation governed by this chapter may have one or more specific social purposes for which the corporation is organized. [2012 c 215 § 4.]

23B.25.040 Articles of incorporation—Required and optional provisions—Notice—Availability of copies. (1) In addition to the matters required to be set forth in the articles of incorporation pursuant to *RCW 23B.02.020 (1) and (2), the articles of incorporation of a social purpose corporation must set forth:

(a) A corporate name for the social purpose corporation that contains the words "social purpose corporation" or "SPC" as an abbreviation of those words;

(b) A statement that the corporation is organized as a social purpose corporation governed by this chapter;

(c) A statement setting forth the general social purpose or purposes for which the corporation is organized pursuant to RCW 23B.25.020;

(d) If the corporation has designated one or more specific social purpose or purposes pursuant to RCW 23B.25.030, a statement setting forth such specific social purpose or purposes; and

(e) A provision that states the following: "The mission of this social purpose corporation is not necessarily compatible with and may be contrary to maximizing profits and earnings for shareholders, or maximizing shareholder value in any sale, merger, acquisition, or other similar actions of the corporation."

(2) In addition to the matters that must be set forth in the articles of incorporation in accordance with subsection (1) of this section and the provisions that may be set forth in the articles of incorporation pursuant to *RCW 23B.02.020 (5) and (6), the articles of incorporation of a social purpose corporation may contain the following provisions:

(a) A provision requiring the corporation's directors or officers to consider the impacts of any corporate action or proposed corporate action upon one or more of the social purposes of the corporation;

(b) A provision requiring the corporation to furnish to the shareholders an assessment of the overall performance of the corporation with respect to its social purpose or purposes, prepared in accordance with a third-party standard;

(c) A provision requiring, for any or all corporate actions, the vote of a larger proportion or of all of the shares of any class or series, or the vote or quorum for taking action of a larger proportion or of all of the directors, than is otherwise required by this title or this chapter;

(d) A provision requiring the approval of the shareholders for any corporate action, even though not otherwise required by this title; and

(e) A provision limiting the duration of the corporation's existence to a specified date.

(3) Prior to the issuance of shares, the corporation shall furnish a prospective shareholder with a copy of the articles of incorporation.

(4) Prior to the transfer of shares, the transferor shareholder must deliver written notice of the transfer to the corporation. Within a reasonable time after receiving notice, the corporation shall provide the prospective transferee with a copy of the articles of incorporation. [2020 c 57 § 77; 2012 c 215 § 5.]

***Reviser's note:** RCW 23B.02.020 was amended by 2020 c 194 § 2, deleting subsection (2) and changing subsections (5) and (6) to subsections (2) and (3), respectively.

23B.25.050 Duties of director—Standards—Liabilities. (1) A director of a social purpose corporation shall discharge the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation in accordance with RCW 23B.08.300.

(2) Unless the articles of incorporation provide otherwise, in discharging his or her duties as a director, the director of a social purpose corporation may consider and give weight to one or more of the social purposes of the corporation as the director deems relevant.

(3) Any action taken as a director of a social purpose corporation, or any failure to take any action, that the director reasonably believes is intended to promote one or more of the social purposes of the corporation shall be deemed to be in the best interests of the corporation.

(4) A director of a social purpose corporation is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

(5) Nothing in this chapter creates any liability or grants any right in or for any person or any cause of action by or for any person, and a director shall not be responsible to any party other than the corporation and its shareholders.

(6) Nothing in this chapter alters the general standards for any director of a corporation that is not a social purpose corporation. [2012 c 215 § 6.]

23B.25.060 Duties of officer—Standards—Liabilities. (1) An officer of a social purpose corporation with discretionary authority shall discharge the officer's duties under that authority in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the officer reasonably believes to be in the best interests of the corporation in accordance with RCW 23B.08.420.

(2) Unless the articles of incorporation provide otherwise, in discharging his or her duties as an officer, the officer of a social purpose corporation may consider and give weight to one or more of the social purposes of the corporation as the officer deems relevant.

(3) Any action taken as an officer of a social purpose corporation, or any failure to take any action, that the officer reasonably believes is intended to promote one or more of the social purposes of the corporation shall be deemed to be in the best interests of the corporation.

(4) An officer of a social purpose corporation is not liable for any action taken as an officer, or any failure to take

any action, if the officer performed the duties of the officer's office in compliance with this section.

(5) Nothing in this chapter creates any liability or grants any right in or for any person or any cause of action by or for any person, and an officer shall not be responsible to any party other than the corporation and its shareholders.

(6) Nothing in this chapter alters the general standards for any officer of a corporation that is not a social purpose corporation. [2012 c 215 § 7.]

23B.25.070 Shares—Represented by certificate—Not represented by certificate. (1) Shares issued by a social purpose corporation may but need not be represented by certificates.

(2) If shares are represented by certificates, in addition to the information required on certificates by RCW 23B.06.250 (2) and (3), each share certificate must state on its face the following language in a conspicuous manner:

> "This entity is a social purpose corporation organized under Title 23B RCW of the Washington business corporation act. The articles of incorporation of this corporation state one or more social purposes of this corporation. The corporation will furnish the shareholder this information without charge on request in writing."

(3) If shares are not represented by certificates, within a reasonable time after the issue or transfer of such shares, the corporation shall deliver to the shareholder a written statement of the information required on certificates pursuant to RCW 23B.06.260(2) and the language required on certificates by subsection (2) of this section. [2020 c 57 § 78; 2012 c 215 § 8.]

23B.25.080 Instituting or maintaining proceedings—Shareholders only. (1) No proceeding may be instituted or maintained in the right of any social purpose corporation under this title by any party other than a shareholder of the social purpose corporation.

(2) A person may not commence a proceeding in the right of a social purpose corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(3) Any proceeding instituted or maintained in the right of a social purpose corporation must comply with the procedure set forth in RCW 23B.07.400. [2012 c 215 § 9.]

23B.25.090 Amendment to articles of incorporation—Change to social purposes—Voting requirements. If a proposed amendment to a social purpose corporation's articles of incorporation would materially change one or more of the social purposes of the corporation, in addition to approval in accordance with RCW 23B.10.030, the amendment to be adopted must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the proposed amendment, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed amendment. The articles of incorporation may require a greater vote than that provided for in this section. [2012 c 215 § 10.]

23B.25.100 Plan of merger or share exchange—Status as social purpose corporation—Voting requirements. (1) In addition to approval in accordance with RCW 23B.11.030, a plan of merger or share exchange pursuant to which a social purpose corporation would not be the surviving corporation must be approved by two-thirds of the voting group comprising all the votes of the corporation entitled to be cast on the plan, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed plan. The articles of incorporation may require a greater vote than that provided for in this subsection.

(2) The additional approval described in subsection (1) of this section is not required if the surviving corporation of the plan of merger or share exchange is a social purpose corporation governed by this chapter and includes a specific social purpose or purposes that do not materially differ from the disappearing corporation's specific social purpose or purposes, if any. [2012 c 215 § 11.]

23B.25.110 Selling, leasing, exchanging, or disposing of property—Voting requirements. (1) In addition to approval in accordance with RCW 23B.12.020, a proposed transaction in which the social purpose corporation is to sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the transaction, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed transaction. The articles of incorporation may require a greater vote than that provided for in this section.

(2) The additional approval described in subsection (1) of this section is not required if the acquirer of such property is a social purpose corporation governed by this chapter and includes a specific social purpose or purposes that do not materially differ from the disposing corporation's specific social purpose or purposes, if any. [2012 c 215 § 12.]

23B.25.120 Shareholder dissent—Payment of fair value, when. In addition to the corporate actions set forth in RCW 23B.13.020(1), a shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(1) An election by a corporation to become a social purpose corporation, which has become effective, to which the corporation is a party if shareholder approval was required for the election by RCW 23B.25.130 or the articles of incorporation;

(2) An election to cease to be a social purpose corporation, which has become effective, to which the corporation is a party if shareholder approval was required for the election

by RCW 23B.25.140 or the articles of incorporation, and the shareholder was entitled to vote on the election; and

(3) An amendment of the social purpose corporation's articles of incorporation that would materially change one or more of the social purposes of the corporation. [2012 c 215 § 13.]

23B.25.130 Corporation converting to a social purpose corporation—Conditions—Election. (1) Any corporation that is not a social purpose corporation may elect to become a social purpose corporation if, pursuant to the proposed election, each of the following conditions are met:

(a) Each share of the same class or series of the electing corporation shall, unless all shareholders of the class or series consent, be treated equally with respect to any cash, rights, securities, or other property to be received by, or any obligations or restrictions to be imposed on, the holder of that share;

(b) The board of directors of the electing corporation must recommend the election to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the proposed election; and

(c) In addition to any other voting conditions imposed by the board of directors under subsection (2) of this section, the election must be approved by an affirmative vote of at least two-thirds of the voting group comprising all the votes of the electing corporation's shareholders entitled to be cast on the corporate action, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and each other voting group entitled under the articles of incorporation to vote separately on the corporate action.

(2) The board of directors of a corporation electing to become a social purpose corporation may condition its submission of the proposed election on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate group on the proposed election.

(3) To elect to become a social purpose corporation, an electing corporation must amend its articles of incorporation to include the matters required to be set forth in the articles of incorporation pursuant to RCW 23B.25.040(1).

(4) After an election to become a social purpose corporation is approved, and at any time prior to filing the articles of amendment to amend the electing corporation's articles of incorporation in compliance with subsection (3) of this section, the planned election may be abandoned by the electing corporation, subject to any contractual rights, without further shareholder approval, in the manner determined by the board of directors.

(5) The election to become a social purpose corporation shall be effective upon the later of the filing of the articles of amendment with the secretary of state or the effective date or time set forth in the articles of amendment.

(6) Upon the effective time of the election to become a social purpose corporation, the electing corporation shall thereafter be a social purpose corporation and shall be subject to all of the provisions of this chapter and the existence of the social purpose corporation shall be deemed to have commenced on the date the electing corporation was incorporated.

(7) The election to become a social purpose corporation shall not be deemed to affect any obligations or liabilities of the electing corporation incurred prior to its election to become a social purpose corporation or the personal liability of any person incurred prior to such election. [2012 c 215 § 14.]

23B.25.140 Corporation ceasing to be a social purpose corporation—Conditions—Election. (1) Any social purpose corporation may elect to cease to be a social purpose corporation if, pursuant to the proposed election, each of the following conditions are met:

(a) Each share of the same class or series of the electing social purpose corporation shall, unless all shareholders of the class or series consent, be treated equally with respect to any cash, rights, securities, or other property to be received by, or any obligations or restrictions to be imposed on, the holder of that share;

(b) The board of directors of the electing social purpose corporation must recommend the election to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the proposed election; and

(c) In addition to any other voting conditions imposed by the board of directors under subsection (2) of this section, the election must be approved by an affirmative vote of at least two-thirds of the voting group comprising all the votes of the electing social purpose corporation's shareholders entitled to be cast on the corporate action, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and each other voting group entitled under the articles of incorporation to vote separately on the corporate action.

(2) The board of directors of a social purpose corporation electing to cease to be a social purpose corporation may condition its submission of the proposed election on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate group on the proposed election.

(3) To elect to cease to be a social purpose corporation, an electing social purpose corporation must amend its articles of incorporation to remove the matters required to be set forth in the articles of incorporation pursuant to RCW 23B.25.040(1) (a) and (b).

(4) After an election to cease to be a social purpose corporation is approved, and at any time prior to the filing of the articles of amendment to amend the electing social purpose corporation's articles of incorporation in compliance with subsection (3) of this section, the planned election may be abandoned by the electing social purpose corporation, subject to any contractual rights, without further shareholder approval, in the manner determined by the board of directors.

(5) The election to cease to be a social purpose corporation shall be effective upon the later of the filing of the articles of amendment with the secretary of state or the effective date or time set forth in the articles of amendment.

(6) Upon the effective time of the election to cease to be a social purpose corporation, the electing social purpose corporation shall thereafter be a corporation which is not a social purpose corporation and shall be subject to all of the provisions of this title applicable to corporations generally and the existence of the corporation shall be deemed to have commenced on the date the electing social purpose corporation was incorporated.

(7) The election to cease to be a social purpose corporation shall not be deemed to affect any obligations or liabilities of the electing social purpose corporation incurred prior to its election to cease to be a social purpose corporation or the personal liability of any person incurred prior to such election. [2012 c 215 § 15.]

23B.25.150 Social purpose report required—Timing—Information—Failure to comply. (1) The board of directors of a social purpose corporation shall cause a social purpose report to be furnished to the shareholders by making such report publicly accessible, free of charge, at the corporation's principal internet website address, not later than four months after the close of the corporation's fiscal year, and such report shall remain available on that website through the end of the corporation's fiscal year.

(2) The social purpose report shall include a narrative discussion concerning the social purpose or purposes of the corporation, including the corporation's efforts intended to promote its social purpose or purposes. The narrative discussion may include the following information:

(a) Identification and discussion of the short-term and long-term objectives of the corporation relating to its social purpose or purposes;

(b) Identification and discussion of the material actions taken by the corporation during the fiscal year to achieve its social purpose or purposes;

(c) Identification of material actions that the corporation expects to take in the future with respect to achievement of its social purpose or purposes; and

(d) A description of the financial, operating, or other measures used by the corporation during the fiscal year for evaluating its performance in achieving its social purpose or purposes.

(3) The requirements of subsection (1) of this section shall be satisfied if a social purpose corporation with an outstanding class of securities registered under section 12 of the securities exchange act of 1934 both complies with section 240.14a-16 of Title 17 of the Code of Federal Regulations, as amended from time to time, with respect to the obligation of a corporation to furnish an annual report to shareholders pursuant to section 240.14a-3(b) of Title 17 of the Code of Federal Regulations, and includes the information required by subsection (2) of this section in the annual report.

(4) The failure to furnish to shareholders a social purpose report required by subsection (1) of this section does not affect the validity of any corporate action.

(5) The superior court of the county in which the social purpose corporation's registered office is located may, after notice to the corporation, summarily order a social purpose report to be furnished to shareholders on application of any shareholder of a social purpose corporation if a social purpose report was not furnished to shareholders for at least two consecutive fiscal years. [2012 c 215 § 16.]

Chapter 23B.30 RCW
DEFECTIVE CORPORATE ACTIONS

Sections

23B.30.010 Definitions.
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23B.30.010 Definitions. As used in this chapter:

(1) "Date of the defective corporate action" means the date the defective corporate action was purported to have been taken, or, if the exact date is unknown, the approximate date thereof.

(2) "Defective corporate action" means (a) any corporate action purportedly taken that is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization, and (b) an overissue.

(3) "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of this title, the articles of incorporation or bylaws of the corporation, a corporate resolution, or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.

(4) "Overissue" means the purported issuance of:

(a) Shares of a class or series in excess of the number of shares of a class or series the corporation was authorized to issue in accordance with RCW 23B.06.010 at the time of such purported issuance; or

(b) Shares of any class or series that was not authorized for issuance by the articles of incorporation at the time of such purported issuance.

(5) "Putative shares" means the shares of any class or series of the corporation (including shares issuable upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation, or interests with respect thereto) that were purportedly created or issued as a result of a defective corporate action, that:

(a) But for any failure of authorization would constitute valid shares; or

(b) Cannot be determined by the board of directors to be valid shares.

(6) "Valid shares" means the shares of any class or series of the corporation that have been duly authorized and validly issued in accordance with this title, including as a result of ratification or validation in accordance with this chapter.

(7)(a) "Validation effective time," with respect to any defective corporate action ratified or validated in accordance with this chapter, means the later of:

(i) The time at which the ratification of the defective corporate action is approved by shareholders, or if approval of shareholders is not required, the time at which the notice

required by RCW 23B.30.050 becomes effective in accordance with RCW 23B.01.410; and

(ii) The time at which any articles of validation filed in accordance with RCW 23B.30.070 become effective.

(b) The validation effective time will not be affected by the commencement or pendency of any proceeding in accordance with RCW 23B.30.080(1)(b) or otherwise, unless otherwise ordered by the court. [2017 c 28 § 1.]

23B.30.020 Chapter not exclusive. (1) A defective corporate action is not void or voidable solely as a result of a failure of authorization if ratified in accordance with RCW 23B.30.030 or validated in accordance with RCW 23B.30.080.

(2) Ratification under RCW 23B.30.030 or validation under RCW 23B.30.080 is not the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification or validation in accordance with this chapter does not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, nor does it create a presumption that any such corporate action is or was a defective corporate action or void or voidable. [2017 c 28 § 2.]

23B.30.030 Ratification. (1) Except as otherwise required by subsection (2) of this section, to ratify a defective corporate action under this chapter, the board of directors must adopt a resolution stating:

(a) The defective corporate action to be ratified and, if the defective corporate action involved the purported issuance of putative shares, the number and class or series of putative shares purportedly issued;

(b) The date of the defective corporate action and, if the defective corporate action involved the purported issuance of putative shares, the date or dates on which the putative shares were purportedly issued;

(c) The nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(d) That the ratification of the defective corporate action is approved.

(2) To ratify a defective corporate action under this chapter involving the election of the initial board of directors of the corporation under RCW 23B.02.050(1)(b), a majority of the persons who, at the time of the ratification, are exercising the powers of directors must adopt a resolution stating:

(a) The name of the person or persons who first purportedly approved corporate action as initial directors of the corporation;

(b) The earlier of the date on which that person or those persons first purportedly approved corporate action or purportedly were elected as initial directors; and

(c) That the ratification of the election of that person or those persons as the initial directors of the corporation is approved.

(3) If any provision of this title, the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party at the time the resolution required by subsection (1) of this section is adopted, would have required shareholder approval of the defective corporate action to be ratified, either on the date of the defective corporate action or at the time the resolution required by subsection (1) of this section is adopted, for the ratification of the defective corporate action to be approved:

(a) The board of directors must submit the ratification of the defective corporate action for approval by the shareholders in accordance with RCW 23B.30.040;

(b) The board of directors must recommend the ratification of the defective corporate action to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(c) The shareholders entitled to vote must approve the ratification of the defective corporate action as provided in RCW 23B.30.040. [2017 c 28 § 3.]

23B.30.040 Ratification—Quorum—Voting. (1) The quorum and voting requirements applicable to the adoption by the board of directors of the resolution required by RCW 23B.30.030(1) are the quorum and voting requirements that would be applicable if the defective corporate action was being approved at the time the resolution required by RCW 23B.30.030(1) is adopted.

(2) Except as provided in subsection (3) of this section, the quorum and voting requirements applicable to the approval by shareholders of the ratification of the defective corporate action required by RCW 23B.30.030(3) are the quorum and voting requirements that would be applicable if the defective corporate action was being approved at the time the ratification of the defective corporate action is approved.

(3) The approval by shareholders of the ratification of a defective corporate action under this chapter involving the election of directors requires that the votes cast within a voting group favoring such ratification exceed the votes cast within the voting group opposing such ratification at a meeting at which a quorum is present.

(4) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders in accordance with RCW 23B.30.030(3) (and without giving effect to any ratification of a defective corporate action involving the purported issuance of putative shares that would become valid shares as a result of the approval of such matter) are neither entitled to vote nor to be counted for quorum purposes in any vote to approve the ratification of any defective corporate action.

(5) If the ratification of a defective corporate action involving the purported issuance of putative shares would result in an overissue, in addition to the approval required by RCW 23B.30.030, the board of directors and shareholders must approve an amendment to the articles of incorporation in accordance with chapter 23B.10 RCW to increase the number of shares of a class or series that the corporation is authorized to issue or to create a class or series of shares that the corporation is authorized to issue so there would be no overissue. [2017 c 28 § 4.]

23B.30.050 Ratification and validation—Notice. (1) If the ratification of a defective corporate action does not require approval of the shareholders under RCW 23B.30.030(3):

(a) The corporation shall notify, promptly after the adoption of the resolution described in RCW 23B.30.030 (1) or (2), each holder of valid shares and putative shares, whether or not entitled to vote, as of the date of the adoption of that resolution by the board of directors, that the ratification of a defective corporate action has been approved by the board of directors pursuant to RCW 23B.30.030. This notice must also be given to each person who was a holder of valid shares or putative shares, whether or not entitled to vote, as of the date of the defective corporate action, other than to those persons whose identities or addresses for notice cannot be determined from the records of the corporation.

(b) The notice specified in (a) of this subsection must contain or be accompanied by (i) a copy of the resolution adopted by the board of directors in accordance with RCW 23B.30.030 (1) or (2), or (ii) the information required by RCW 23B.30.030 (1) (a) through (d) or (2) (a) through (c), as applicable. This notice must also include a statement that any action before a court to determine whether the ratification of the defective corporate action complied with the requirements imposed by this chapter must be brought within sixty days from the validation effective time.

(2) If the ratification of a defective corporate action requires approval of the shareholders under RCW 23B.30.030(3), and if the approval of the shareholders is to be given at a meeting:

(a) The corporation shall notify each holder of valid shares and putative shares, whether or not entitled to vote, as of the record date for the meeting, of the proposed meeting of shareholders at which the ratification is to be submitted for approval in accordance with RCW 23B.07.050. This notice must also be given to each person who was a holder of valid shares or putative shares, whether or not entitled to vote, as of the date of the defective corporate action, other than to those persons whose identities or addresses for notice cannot be determined from the records of the corporation; and

(b) The notice specified in (a) of this subsection must state that the purpose, or one of the purposes, of the meeting is to consider ratification of a defective corporate action and must contain or be accompanied by (i) a copy of the resolution adopted by the board of directors in accordance with RCW 23B.30.030(1), or (ii) the information required by RCW 23B.30.030(1) (a) through (d). This notice must also include a statement that any action before a court to determine whether the ratification of the defective corporate action complied with the requirements imposed by this chapter must be brought within sixty days from the validation effective time.

(3) If the ratification of a defective corporate action requires approval of the shareholders under RCW 23B.30.030(3), and if the approval of the shareholders is to be without a meeting or a vote in accordance with RCW 23B.07.040:

(a) The corporation or the person soliciting consents shall give the notice required under RCW 23B.07.040(3)(a) and the corporation shall give the notice required under RCW 23B.07.040(3)(b) to each holder of valid shares and putative shares, whether or not entitled to vote, as of the record date for the shareholder consent. These notices must also be given to each person who was a holder of valid shares or putative shares, whether or not entitled to vote, as of the date of the defective corporate action, other than to those persons whose identities or addresses for notice cannot be determined from the records of the corporation; and

(b) The notices specified in (a) of this subsection must describe the ratification of the defective corporate action being approved and must contain or be accompanied by (i) a copy of the resolution adopted by the board of directors in accordance with RCW 23B.30.030 (1) or (2), or (ii) the information required by RCW 23B.30.030 (1)(a) through (d) or (2)(a) through (c), as applicable. These notices must also include a statement that any action before a court to determine whether the ratification of the defective corporate action complied with the requirements imposed by this chapter must be brought within sixty days from the validation effective time.

(4) If a defective corporate action is validated in accordance with RCW 23B.30.080:

(a) The corporation shall notify, promptly after the validation, each holder of valid shares and putative shares, whether or not entitled to vote, as of the date of the validation, that the validation of a defective corporate action has taken place pursuant to RCW 23B.30.080. This notice must also be given to each person who was a holder of valid shares or putative shares, whether or not entitled to vote, as of the date of the defective corporate action, other than to those persons whose identities or addresses for notice cannot be determined from the records of the corporation.

(b) The notice specified in (a) of this subsection must contain or be accompanied by a copy of the information required by RCW 23B.30.080(2).

(5) Any notice required by this section may be given in any manner permitted by RCW 23B.01.410 and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, as amended, may be given by filing or furnishing the notice with the United States securities and exchange commission. [2017 c 28 § 5.]

23B.30.060 Ratification and validation—Effect. From and after the validation effective time:

(1) Each defective corporate action ratified in accordance with RCW 23B.30.030 or validated in accordance with RCW 23B.30.080:

(a) Is not void or voidable as a result of the failure of authorization identified (i) in the resolution adopted by the board of directors in accordance with RCW 23B.30.030 (1) or (2), or (ii) by the court in accordance with RCW 23B.30.080(2); and

(b) Is deemed to be a valid corporate action taken on the date of the defective corporate action;

(2) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the resolution adopted by the board of directors in accordance with RCW 23B.30.030(1) or by the court in accordance with RCW 23B.30.080(2) is not void or voidable as a result of the failure of authorization identified in that resolution or by that court, and each such putative share or fraction of a putative share is deemed to be an identical valid share or fraction of a valid share issued at the time it was purportedly issued; and

(3) Any corporate action taken subsequent to the date of the defective corporate action ratified or validated in accordance with this chapter in reliance on that defective corporate action having been validly taken, and any subsequent defective corporate action resulting directly or indirectly from that original defective corporate action, is deemed to be valid as of the time that corporate action was taken. [2017 c 28 § 6.]

23B.30.070 Defective corporate action—Filings—Articles of validation. (1) If a defective corporate action ratified or validated under this chapter would have required under any other section of this title a document to be filed with the secretary of state, then, whether or not a document was previously filed in respect of that defective corporate action and in lieu of filing the document otherwise required by this title, the corporation shall deliver to the secretary of state for filing articles of validation setting forth:

(a) The defective corporate action that was ratified or validated and, if the defective corporate action involved the purported issuance of putative shares, the number and class or series of putative shares purportedly issued;

(b) The date of the defective corporate action that was ratified or validated and, if the defective corporate action involved the purported issuance of putative shares, the date or dates on which the putative shares were purportedly issued;

(c) The nature of the failure of authorization with respect to the defective corporate action that was ratified or validated;

(d) A statement that the defective corporate action was (i) ratified in accordance with RCW 23B.30.030, including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the shareholders approved the ratification of the defective corporate action, or (ii) validated in accordance with RCW 23B.30.080, including the date on which the court validated the defective corporate action; and

(e) The information required by subsection (2) of this section.

(2) The articles of validation must also contain the following information:

(a) If the corporation previously filed a document in respect of a defective corporate action that was ratified or validated and no changes to that document are required to give effect to the ratification or validation of the defective corporate action in accordance with RCW 23B.30.040(5), the corporation shall (i) describe the document, together with any articles of correction thereto, including its filing date, in the articles of validation, and (ii) attach a copy of the document, together with any articles of correction thereto, to the articles of validation;

(b) If the corporation previously filed a document in respect of a defective corporate action that was ratified or validated and any change to that document is required to give effect to the ratification or validation of the defective corporate action in accordance with RCW 23B.30.040(5), the corporation shall (i) describe the previously filed document, together with any articles of correction thereto, including its filing date, (ii) attach a copy of the document containing all of the information required to be included under the applicable section or sections of this title to give effect to the defective corporate action that was ratified or validated to the articles of validation, and (iii) state the date and time that the filing is deemed to have become effective; or

(c) If the corporation did not previously file a document in respect of a defective corporate action that was ratified or validated and that defective corporate action would have required a filing under any other section of this title, the corporation shall (i) attach a copy of a document containing all of the information required to be included under the applicable section or sections of this title to give effect to the defective corporate action that was ratified or validated to the articles of validation, and (ii) state the date and time that the filing is deemed to have become effective.

(3) Articles of validation that comply with this section supersede any other document in respect of a defective corporate action that was ratified in accordance with RCW 23B.30.030 or validated in accordance with RCW 23B.30.080. [2020 c 57 § 79; 2017 c 28 § 7.]

23B.30.080 Judicial proceedings to validate or challenge ratification. (1) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, or any shareholder of the corporation, including any person who was a shareholder of the corporation as of the date of a defective corporate action, the superior courts may:

(a) Validate any defective corporate action that has not been ratified in accordance with RCW 23B.30.030; or

(b) Determine that any ratification of a defective corporate action under RCW 23B.30.030 is not valid or effective because it failed to comply with the procedural requirements imposed by this chapter.

(2) In connection with a proceeding under subsection (1)(a) of this section, the court shall identify the defective corporate action to be validated, including the information required under RCW 23B.30.030 (1)(a) through (c) or (2)(a) and (b), as applicable, and may make such findings or orders as it deems proper under the circumstances. In determining whether to validate a defective corporate action under subsection (1)(a) of this section, the court may consider the following:

(a) Whether the defective corporate action was originally approved or effectuated with the belief that the approval or effectuation was in compliance with the provisions of this title, the articles of incorporation or bylaws of the corporation, and any corporate resolution or plan or agreement of or to which the corporation is a party that would be relevant in determining whether there was a failure of authorization;

(b) Whether the corporation and board of directors has treated the defective corporate action as a valid action or transaction;

(c) Whether any person has acted in reliance on the public record that the defective corporate action was valid or would be harmed by the failure to validate the defective corporate action;

(d) Whether any person would be harmed by the validation of the defective corporate action, excluding any harm that would have resulted if the defective corporate action had been valid when approved or effectuated; and

(e) Any other factors or considerations that the court deems proper in the circumstances.

(3) The court shall stay any proceeding brought under subsection (1)(a) of this section during any ratification pro-

cess under RCW 23B.30.030 involving the defective corporate action that is the subject of the proceeding until the earlier of:

(a) The validation effective time; and

(b)(i) If shareholder approval is not required for ratification, the date on which the board of directors votes, but fails to ratify, the defective corporate action, (ii) if shareholder approval is required for ratification in accordance with RCW 23B.30.040 and is to be given at a meeting, the date on which the shareholders vote, but fail to ratify, the defective corporate action, or (iii) if shareholder approval is required for ratification in accordance with RCW 23B.30.040 and is to be given without a meeting, sixty days after the date of execution indicated on the earliest dated shareholder consent approving the ratification that is delivered to the corporation, even though that shareholder consent may not have been delivered to the corporation on that date, if consents executed by a sufficient number of shareholders to approve the ratification are not delivered to the corporation during that sixty-day period.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any proceeding asserting a claim under subsection (1)(b) of this section must be brought within sixty days after the validation effective time, except that this subsection will not apply to any person to whom notice of the ratification was required to have been given pursuant to RCW 23B.30.050, but to whom such notice was not given. Claims under subsection (1)(b) of this section are to be the exclusive basis for challenging the validity or effectiveness of a defective corporate action ratified under RCW 23B.30.030.

(5) Service of process on the corporation for any proceeding under this section may be made in any manner provided by statute of this state or by rule of the court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In a proceeding commenced by the corporation, the court may require notice of the proceeding to be provided to other persons specified by the court and permit such other persons to intervene in the proceeding.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on behalf of the beneficial owner. [2017 c 28 § 8.]

Chapter 23B.900 RCW
CONSTRUCTION

Sections

23B.900.010 Savings provisions—1989 c 165.
23B.900.030 Repealer—1989 c 165.
23B.900.040 Effective date—1989 c 165.
23B.900.050 Section headings—1989 c 165.

23B.900.010 Savings provisions—1989 c 165. (1) Except as provided in subsection (2) of this section, the repeal of a statute by this title does not affect:

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

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

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

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

(2) If a penalty or punishment imposed for violation of a statute repealed by this title is reduced by this title, the penalty or punishment if not already imposed shall be imposed in accordance with this title. [1989 c 165 § 202.]

23B.900.030 Repealer—1989 c 165. See 1989 c 165 s 204.

23B.900.040 Effective date—1989 c 165. This title shall take effect July 1, 1990. [1989 c 165 § 205.]

23B.900.050 Section headings—1989 c 165. Section headings as used in this title do not constitute any part of the law. [1989 c 165 § 206.]