

RCW 24.03A.610 Liability for unlawful distributions. (1) A director or officer is personally liable to the nonprofit corporation for the amount of any distribution that exceeds the amount the corporation could have distributed without violating RCW 24.03A.155 if:

(a) The nature or amount of the distribution was material to the interests of the corporation for any reason under all of the facts and circumstances including, but not limited to, federal excise tax liability or federal tax penalties imposed on the corporation as a result of the distribution;

(b) The director or officer voted for or assented to that distribution as a director, or participated beyond the level of a ministerial function in making that distribution as an officer; and

(c) The party asserting liability establishes that, when taking the action, the director or officer violated the standard of conduct set forth in subsection (2) of this section.

(2) A director or officer may be held liable under this section:

(a) For a distribution by a charitable corporation, or a distribution of assets held for charitable purposes, if the director did not comply with RCW 24.03A.495 or the officer did not comply with RCW 24.03A.590; or

(b) If the conduct of the director or officer with respect to the distribution constitutes gross negligence.

(3) A director or officer held liable under this section for an unlawful distribution is entitled to:

(a) Contribution from every other director or officer who could be held liable under this section for the unlawful distribution; and

(b) Recoupment from each person of the pro rata portion of the amount of the unlawful distribution the person received:

(i) Whether or not the person knew the distribution was made in violation of this chapter, for a distribution by a charitable corporation or of property held for charitable purposes; or

(ii) Knowing the distribution was made in violation of this chapter, for a distribution of property not held for charitable purposes.

(4) A proceeding to enforce:

(a) The liability of a director or officer under this section is barred, unless it is commenced within three years after the date on which the distribution was made; or

(b) Contribution or recoupment under subsection (3) of this section is barred, unless it is commenced within one year after the liability of the claimant under this section has been finally adjudicated. [2021 c 176 s 2702.]

Effective date—2021 c 176: See note following RCW 24.03A.005.