
SUBSTITUTE HOUSE BILL 2657

State of Washington **61st Legislature** **2010 Regular Session**

By House Judiciary (originally sponsored by Representative Pedersen)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to the dissolution of limited liability companies;
2 amending RCW 25.15.070, 25.15.085, 25.15.095, 25.15.270, 25.15.290,
3 25.15.293, 25.15.295, 25.15.303, 25.15.340, and 25.15.805; adding new
4 sections to chapter 25.15 RCW; and repealing RCW 25.15.080.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 25.15.070 and 1994 c 211 s 201 are each amended to
7 read as follows:

8 (1) In order to form a limited liability company, one or more
9 persons must execute a certificate of formation. The certificate of
10 formation shall be filed in the office of the secretary of state and
11 set forth:

- 12 (a) The name of the limited liability company;
- 13 (b) The address of the registered office and the name and address
14 of the registered agent for service of process required to be
15 maintained by RCW 25.15.020;
- 16 (c) The address of the principal place of business of the limited
17 liability company;
- 18 (d) If the limited liability company is to have a specific date of

1 dissolution, the latest date on which the limited liability company is
2 to dissolve;

3 (e) If management of the limited liability company is vested in a
4 manager or managers, a statement to that effect;

5 (f) Any other matters the members decide to include therein; and

6 (g) The name and address of each person executing the certificate
7 of formation.

8 (2) Effect of filing:

9 (a) Unless a delayed effective date is specified, a limited
10 liability company is formed when its certificate of formation is filed
11 by the secretary of state. A delayed effective date for a certificate
12 of formation may be no later than the ninetieth day after the date it
13 is filed.

14 (b) The secretary of state's filing of the certificate of formation
15 is conclusive proof that the persons executing the certificate
16 satisfied all conditions precedent to the formation (~~(except in a~~
17 ~~proceeding by the state to cancel the certificate)~~).

18 (c) A limited liability company formed under this chapter shall be
19 a separate legal entity(~~(, the existence of which as a separate legal~~
20 ~~entity shall continue until cancellation of the limited liability~~
21 ~~company's certificate of formation)~~).

22 **Sec. 2.** RCW 25.15.085 and 2002 c 74 s 17 are each amended to read
23 as follows:

24 (1) Each document required by this chapter to be filed in the
25 office of the secretary of state shall be executed in the following
26 manner, or in compliance with the rules established to facilitate
27 electronic filing under RCW 25.15.007, except as set forth in RCW
28 25.15.105(4)(b):

29 (a) Each original certificate of formation must be signed by the
30 person or persons forming the limited liability company;

31 (b) A reservation of name may be signed by any person;

32 (c) A transfer of reservation of name must be signed by, or on
33 behalf of, the applicant for the reserved name;

34 (d) A registration of name must be signed by any member or manager
35 of the foreign limited liability company;

36 (e) A certificate of amendment or restatement must be signed by at

1 least one manager, or by a member if management of the limited
2 liability company is reserved to the members;

3 (f) A certificate of (~~(cancellation)~~) dissolution must be signed by
4 the person or persons authorized to wind up the limited liability
5 company's affairs pursuant to RCW 25.15.295(~~(+1)~~) (3);

6 (g) If a surviving domestic limited liability company is filing
7 articles of merger, the articles of merger must be signed by at least
8 one manager, or by a member if management of the limited liability
9 company is reserved to the members, or if the articles of merger are
10 being filed by a surviving foreign limited liability company, limited
11 partnership, or corporation, the articles of merger must be signed by
12 a person authorized by such foreign limited liability company, limited
13 partnership, or corporation; and

14 (h) A foreign limited liability company's application for
15 registration as a foreign limited liability company doing business
16 within the state must be signed by any member or manager of the foreign
17 limited liability company.

18 (2) Any person may sign a certificate, articles of merger, limited
19 liability company agreement, or other document by an attorney-in-fact
20 or other person acting in a valid representative capacity, so long as
21 each document signed in such manner identifies the capacity in which
22 the signator signed.

23 (3) The person executing the document shall sign it and state
24 beneath or opposite the signature the name of the person and capacity
25 in which the person signs. The document must be typewritten or
26 printed, and must meet such legibility or other standards as may be
27 prescribed by the secretary of state.

28 (4) The execution of a certificate or articles of merger by any
29 person constitutes an affirmation under the penalties of perjury that
30 the facts stated therein are true.

31 **Sec. 3.** RCW 25.15.095 and 2002 c 74 s 18 are each amended to read
32 as follows:

33 (1) The original signed copy, together with a duplicate copy that
34 may be either a signed, photocopied, or conformed copy, of the
35 certificate of formation or any other document required to be filed
36 pursuant to this chapter, except as set forth under RCW 25.15.105 or
37 unless a duplicate is not required under rules adopted under RCW

1 25.15.007, shall be delivered to the secretary of state. If the
2 secretary of state determines that the documents conform to the filing
3 provisions of this chapter, he or she shall, when all required filing
4 fees have been paid:

5 (a) Endorse on each signed original and duplicate copy the word
6 "filed" and the date of its acceptance for filing;

7 (b) Retain the signed original in the secretary of state's files;
8 and

9 (c) Return the duplicate copy to the person who filed it or the
10 person's representative.

11 (2) If the secretary of state is unable to make the determination
12 required for filing by subsection (1) of this section at the time any
13 documents are delivered for filing, the documents are deemed to have
14 been filed at the time of delivery if the secretary of state
15 subsequently determines that:

16 (a) The documents as delivered conform to the filing provisions of
17 this chapter; or

18 (b) Within twenty days after notification of nonconformance is
19 given by the secretary of state to the person who delivered the
20 documents for filing or the person's representative, the documents are
21 brought into conformance.

22 (3) If the filing and determination requirements of this chapter
23 are not satisfied completely within the time prescribed in subsection
24 (2)(b) of this section, the documents shall not be filed.

25 (4) Upon the filing of a certificate of amendment (or judicial
26 decree of amendment) or restated certificate in the office of the
27 secretary of state, or upon the future effective date or time of a
28 certificate of amendment (or judicial decree thereof) or restated
29 certificate, as provided for therein, the certificate of formation
30 shall be amended or restated as set forth therein. (~~Upon the filing
31 of a certificate of cancellation (or a judicial decree thereof), or
32 articles of merger which act as a certificate of cancellation, or upon
33 the future effective date or time of a certificate of cancellation (or
34 a judicial decree thereof) or of articles of merger which act as a
35 certificate of cancellation, as provided for therein, or as specified
36 in RCW 25.15.290, the certificate of formation is canceled.~~)

1 **Sec. 4.** RCW 25.15.270 and 2009 c 437 s 1 are each amended to read
2 as follows:

3 A limited liability company is dissolved and its affairs shall be
4 wound up upon the first to occur of the following:

5 (1)(a) The dissolution date, if any, specified in the certificate
6 of formation. If a dissolution date is not specified in the
7 certificate of formation, the limited liability company's existence
8 will continue until the first to occur of the events described in
9 subsections (2) through (6) of this section. If a dissolution date is
10 specified in the certificate of formation, the certificate of formation
11 may be amended and the existence of the limited liability company may
12 be extended by vote of all the members.

13 (b) This subsection does not apply to a limited liability company
14 formed under RCW 30.08.025 or 32.08.025;

15 (2) The happening of events specified in a limited liability
16 company agreement;

17 (3) The written consent of all members;

18 (4) Unless the limited liability company agreement provides
19 otherwise, ninety days following an event of dissociation of the last
20 remaining member, unless those having the rights of assignees in the
21 limited liability company under RCW 25.15.130(1) have, by the ninetieth
22 day, voted to admit one or more members, voting as though they were
23 members, and in the manner set forth in RCW 25.15.120(1);

24 (5) The entry of a decree of judicial dissolution under RCW
25 25.15.275; or

26 (6) The ~~((expiration of five years after the effective date of~~
27 ~~dissolution under RCW 25.15.285 without the reinstatement))~~
28 administrative dissolution of the limited liability company by the
29 secretary of state under RCW 25.15.285(2), unless the limited liability
30 company is reinstated by the secretary of state under RCW 25.15.290.

31 NEW SECTION. **Sec. 5.** A new section is added to chapter 25.15 RCW
32 to read as follows:

33 (1) After dissolution occurs under RCW 25.15.270, the limited
34 liability company may deliver to the secretary of state for filing a
35 certificate of dissolution signed in accordance with RCW 25.15.085.

36 (2) A certificate of dissolution filed under subsection (1) of this
37 section must set forth:

- 1 (a) The name of the limited liability company; and
2 (b) A statement that the limited liability company is dissolved
3 under RCW 25.15.270.

4 **Sec. 6.** RCW 25.15.290 and 2009 c 437 s 2 are each amended to read
5 as follows:

6 (1) A limited liability company that has been administratively
7 dissolved under RCW 25.15.285 may apply to the secretary of state for
8 reinstatement within five years after the effective date of
9 dissolution. The application must be delivered to the secretary of
10 state for filing and state:

11 (a) ~~((Recite))~~ The name of the limited liability company and the
12 effective date of its administrative dissolution;

13 (b) ~~((State))~~ That the ground or grounds for dissolution either did
14 not exist or have been eliminated; and

15 (c) ~~((State))~~ That the limited liability company's name satisfies
16 the requirements of RCW 25.15.010.

17 (2) If the secretary of state determines that ~~((the))~~ an
18 application contains the information required by subsection (1) of this
19 section and that the name is available, the secretary of state shall
20 reinstate the limited liability company and give the limited liability
21 company written notice, as provided in RCW 25.15.285(1), of the
22 reinstatement that recites the effective date of reinstatement. If the
23 name is not available, the limited liability company must file with its
24 application for reinstatement an amendment to its certificate of
25 formation reflecting a change of name.

26 (3) When ~~((the))~~ reinstatement ~~((is))~~ becomes effective, it relates
27 back to and takes effect as of the effective date of the administrative
28 dissolution and the limited liability company may resume carrying on
29 its ~~((business))~~ activities as if the administrative dissolution had
30 never occurred.

31 ~~((4) If an application for reinstatement is not made within the
32 five-year period set forth in subsection (1) of this section, or if the
33 application made within this period is not granted, the limited
34 liability company's certificate of formation is deemed canceled.))~~

35 **Sec. 7.** RCW 25.15.293 and 2009 c 437 s 3 are each amended to read
36 as follows:

1 (1) A limited liability company (~~voluntarily~~) dissolved under RCW
2 25.15.270 (2) or (3) that has filed a certificate of dissolution under
3 section 5 of this act may (~~apply to the secretary of state for~~
4 ~~reinstatement~~) revoke its dissolution within one hundred twenty days
5 (~~after the effective date~~) of filing its certificate of dissolution.

6 (~~The application must:~~

7 (a) ~~Recite the name of the limited liability company and the~~
8 ~~effective date of its voluntary dissolution;~~

9 (b) ~~State that the ground or grounds for voluntary dissolution have~~
10 ~~been eliminated; and~~

11 (c) ~~State that the limited liability company's name satisfies the~~
12 ~~requirements of RCW 25.15.010.~~

13 (2) ~~If the secretary of state determines that the application~~
14 ~~contains the information required by subsection (1) of this section and~~
15 ~~that the name is available, the secretary of state shall reinstate the~~
16 ~~limited liability company and give the limited liability company~~
17 ~~written notice of the reinstatement that recites the effective date of~~
18 ~~reinstatement. If the name is not available, the limited liability~~
19 ~~company must file with its application for reinstatement an amendment~~
20 ~~to its certificate of formation reflecting a change of name.~~

21 (3) ~~When the reinstatement is effective, it relates back to and~~
22 ~~takes effect as of the effective date of the voluntary dissolution and~~
23 ~~the limited liability company may resume carrying on its business as if~~
24 ~~the voluntary dissolution had never occurred.~~

25 (4) ~~If an application for reinstatement is not made within the one~~
26 ~~hundred twenty day period set forth in subsection (1) of this section,~~
27 ~~or if the application made within this period is not granted, the~~
28 ~~secretary of state shall cancel the limited liability company's~~
29 ~~certificate of formation.)~~

30 (2)(a) Except as provided in (b) of this subsection, revocation of
31 dissolution must be approved in the same manner as the dissolution was
32 approved unless that approval permitted revocation in some other
33 manner, in which event the dissolution may be revoked in the manner
34 permitted.

35 (b) If dissolution occurred upon the happening of events specified
36 in the limited liability company agreement, revocation of dissolution
37 must be approved in the manner necessary to amend the provisions of the

1 limited liability company agreement specifying the events of
2 dissolution.

3 (3) After the revocation of dissolution is approved, the limited
4 liability company may revoke the dissolution and the certificate of
5 dissolution by delivering to the secretary of state for filing a
6 certificate of revocation of dissolution, together with a copy of its
7 certificate of dissolution, that set forth:

8 (a) The name of the limited liability company and a statement that
9 the name satisfies the requirements of RCW 25.15.010; if the name is
10 not available, the limited liability company must file a certificate of
11 amendment changing its name with the certificate of revocation of
12 dissolution;

13 (b) The effective date of the dissolution that was revoked;

14 (c) The date that the revocation of dissolution was approved;

15 (d) If the limited liability company's managers revoked the
16 dissolution, a statement to that effect;

17 (e) If the limited liability company's managers revoked a
18 dissolution approved by the company's members, a statement that
19 revocation was permitted by action by the managers alone pursuant to
20 that approval; and

21 (f) If member approval was required to revoke the dissolution, a
22 statement that revocation of the dissolution was duly approved by the
23 members in accordance with subsection (2) of this section.

24 (4) Revocation of dissolution and revocation of the certificate of
25 dissolution are effective upon the filing of the certificate of
26 revocation of dissolution.

27 (5) When the revocation of dissolution and revocation of the
28 certificate of dissolution are effective, they relate back to and take
29 effect as of the effective date of the dissolution and the limited
30 liability company resumes carrying on its activities as if the
31 dissolution had never occurred.

32 **Sec. 8.** RCW 25.15.295 and 1994 c 211 s 806 are each amended to
33 read as follows:

34 ~~((1) Unless otherwise provided in a limited liability company~~
35 ~~agreement, a manager who has not wrongfully dissolved a limited~~
36 ~~liability company or, if none, the members or a person approved by the~~
37 ~~members or, if there is more than one class or group of members, then~~

1 by each class or group of members, in either case, by members
2 contributing, or required to contribute, more than fifty percent of the
3 agreed value (as stated in the records of the limited liability company
4 required to be kept pursuant to RCW 25.15.135) of the contributions
5 made, or required to be made, by all members, or by the members in each
6 class or group, as appropriate, may wind up the limited liability
7 company's affairs. The superior courts, upon cause shown, may wind up
8 the limited liability company's affairs upon application of any member
9 or manager, his or her legal representative or assignee, and in
10 connection therewith, may appoint a receiver.

11 (2) Upon dissolution of a limited liability company and until the
12 filing of a certificate of cancellation as provided in RCW 25.15.080,
13 the persons winding up the limited liability company's affairs may, in
14 the name of, and for and on behalf of, the limited liability company,
15 prosecute and defend suits, whether civil, criminal, or administrative,
16 gradually settle and close the limited liability company's business,
17 dispose of and convey the limited liability company's property,
18 discharge or make reasonable provision for the limited liability
19 company's liabilities, and distribute to the members any remaining
20 assets of the limited liability company.)

21 (1) A limited liability company continues after dissolution only
22 for the purpose of winding up its activities.

23 (2) In winding up its activities, the limited liability company:

24 (a) May file a certificate of dissolution with the secretary of
25 state to provide notice that the limited liability company is
26 dissolved, preserve the limited liability company's business or
27 property as a going concern for a reasonable time, prosecute and defend
28 actions and proceedings, whether civil, criminal, or administrative,
29 transfer the limited liability company's property, settle disputes, and
30 perform other necessary acts; and

31 (b) Shall discharge the limited liability company's liabilities,
32 settle and close the limited liability company's activities, and
33 marshal and distribute the assets of the company.

34 (3) Unless otherwise provided in a limited liability company
35 agreement, the persons responsible for managing the business and
36 affairs of a limited liability company under RCW 25.15.150 are
37 responsible for winding up the activities of a dissolved limited
38 liability company. If a dissolved limited liability company does not

1 have any managers or members, the legal representative of the last
2 person to have been a member may wind up the activities of the
3 dissolved limited liability company, in which event the legal
4 representative is a manager for the purposes of RCW 25.15.155.

5 (4) If the persons responsible for winding up the activities of a
6 dissolved limited liability company under subsection (3) of this
7 section decline or fail to wind up the limited liability company's
8 activities, a person to wind up the dissolved limited liability
9 company's activities may be appointed by the consent of the transferees
10 owning a majority of the rights to receive distributions as transferees
11 at the time consent is to be effective. A person appointed under this
12 subsection:

13 (a) Is a manager for the purposes of RCW 25.15.155; and

14 (b) Shall promptly amend the certificate of formation to state:

15 (i) The name of the person who has been appointed to wind up the
16 limited liability company; and

17 (ii) The street and mailing address of the person.

18 (5) The superior court may order judicial supervision of the
19 winding up, including the appointment of a person to wind up the
20 dissolved limited liability company's activities, if:

21 (a) On application of a member, the applicant establishes good
22 cause; or

23 (b) On application of a transferee, a limited liability company
24 does not have any managers or members and within a reasonable time
25 following the dissolution no person has been appointed pursuant to
26 subsection (3) or (4) of this section.

27 NEW SECTION. Sec. 9. A new section is added to chapter 25.15 RCW
28 to read as follows:

29 (1) A dissolved limited liability company that has filed a
30 certificate of dissolution with the secretary of state may dispose of
31 the known claims against it by following the procedure described in
32 subsection (2) of this section.

33 (2) A dissolved limited liability company may notify its known
34 claimants of the dissolution in a record. The notice must:

35 (a) Specify the information required to be included in a known
36 claim;

1 (b) Provide a mailing address to which the known claim must be
2 sent;

3 (c) State the deadline for receipt of the known claim, which may
4 not be fewer than one hundred twenty days after the date the notice is
5 received by the claimant; and

6 (d) State that the known claim will be barred if not received by
7 the deadline.

8 (3) A known claim against a dissolved limited liability company is
9 barred if the requirements of subsection (2) of this section are met
10 and:

11 (a) The known claim is not received by the specified deadline; or

12 (b) In the case of a known claim that is timely received but
13 rejected by the dissolved limited liability company, the claimant does
14 not commence an action to enforce the known claim against the limited
15 liability company within ninety days after the receipt of the notice of
16 rejection.

17 (4) For purposes of this section, "known claim" means any claim or
18 liability that either:

19 (a)(i) Has matured sufficiently, before or after the effective date
20 of the dissolution, to be legally capable of assertion against the
21 dissolved limited liability company, whether or not the amount of the
22 claim or liability is known or determinable; or (ii) is unmatured,
23 conditional, or otherwise contingent but may subsequently arise under
24 any executory contract to which the dissolved limited liability company
25 is a party, other than under an implied or statutory warranty as to any
26 product manufactured, sold, distributed, or handled by the dissolved
27 limited liability company; and

28 (b) As to which the dissolved limited liability company has
29 knowledge of the identity and the mailing address of the holder of the
30 claim or liability and, in the case of a matured and legally assertable
31 claim or liability, actual knowledge of existing facts that either (i)
32 could be asserted to give rise to, or (ii) indicate an intention by the
33 holder to assert, such a matured claim or liability.

34 **Sec. 10.** RCW 25.15.303 and 2006 c 325 s 1 are each amended to read
35 as follows:

36 Except as provided in section 9 of this act, the dissolution of a
37 limited liability company does not take away or impair any remedy

1 available to or against that limited liability company, its managers,
2 or its members for any right or claim existing, or any liability
3 incurred at any time, whether prior to or after dissolution, unless an
4 action or other proceeding thereon is not commenced within three years
5 after the (~~effective date~~) filing of the certificate of dissolution.
6 Such an action or proceeding by or against the limited liability
7 company may be prosecuted or defended by the limited liability company
8 in its own name.

9 **Sec. 11.** RCW 25.15.340 and 1994 c 211 s 907 are each amended to
10 read as follows:

11 (1) A foreign limited liability company doing business in this
12 state may not maintain any action, suit, or proceeding in this state
13 until it has registered in this state, and has paid to this state all
14 fees and penalties for the years or parts thereof, during which it did
15 business in this state without having registered.

16 (2) Neither the failure of a foreign limited liability company to
17 register in this state (~~does not impair~~) nor the issuance of a
18 certificate of cancellation with respect to a foreign limited liability
19 company's registration in this state impairs:

20 (a) The validity of any contract or act of the foreign limited
21 liability company;

22 (b) The right of any other party to the contract to maintain any
23 action, suit, or proceeding on the contract; or

24 (c) (~~Prevent~~) The foreign limited liability company from
25 defending any action, suit, or proceeding in any court of this state.

26 (3) A member or a manager of a foreign limited liability company is
27 not liable for the obligations of the foreign limited liability company
28 solely by reason of the limited liability company's having done
29 business in this state without registration.

30 **Sec. 12.** RCW 25.15.805 and 1994 c 211 s 1302 are each amended to
31 read as follows:

32 (1) The secretary of state shall adopt rules establishing fees
33 which shall be charged and collected for:

34 (a) Filing of a certificate of formation for a domestic limited
35 liability company or an application for registration of a foreign
36 limited liability company;

1 (b) Filing of a certificate of (~~cancellation~~) dissolution for a
2 domestic (~~or foreign~~) limited liability company;

3 (c) Filing a certificate of cancellation for a foreign limited
4 liability company;

5 (d) Filing of a certificate of amendment or restatement for a
6 domestic or foreign limited liability company;

7 (~~(d)~~) (e) Filing an application to reserve, register, or transfer
8 a limited liability company name;

9 (~~(e)~~) (f) Filing any other certificate, statement, or report
10 authorized or permitted to be filed;

11 (~~(f)~~) (g) Copies, certified copies, certificates, service of
12 process filings, and expedited filings or other special services.

13 (2) In the establishment of a fee schedule, the secretary of state
14 shall, insofar as is possible and reasonable, be guided by the fee
15 schedule provided for corporations governed by Title 23B RCW. Fees for
16 copies, certified copies, certificates of record, and service of
17 process filings shall be as provided for in RCW 23B.01.220.

18 (3) All fees collected by the secretary of state shall be deposited
19 with the state treasurer pursuant to law.

20 NEW SECTION. Sec. 13. RCW 25.15.080 (Cancellation of certificate)
21 and 1994 c 211 s 203 are each repealed.

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