
SUBSTITUTE SENATE BILL 5334

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Smith, Long and Johnson)

Read first time 02/02/95.

1 AN ACT Relating to the Washington business corporation act;
2 amending RCW 23B.14.220, 23B.14.300, 23B.14.330, 23B.14.340,
3 23B.07.320, 23B.08.080, and 34.08.020; reenacting and amending RCW
4 23B.01.400; and adding a new section to chapter 23B.14 RCW.

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

6 **Sec. 1.** RCW 23B.01.400 and 1991 c 269 s 35 and 1991 c 72 s 28 are
7 each reenacted and amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this title.

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

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

14 (3) "Conspicuous" means so written that a reasonable person against
15 whom the writing is to operate should have noticed it. For example,
16 printing in italics or boldface or contrasting color, or typing in
17 capitals or underlined, is conspicuous.

1 (4) "Corporation" or "domestic corporation" means a corporation for
2 profit, which is not a foreign corporation, incorporated under or
3 subject to the provisions of this title.

4 (5) "Deliver" includes (a) mailing and (b) for purposes of
5 delivering a demand, consent, or waiver to the corporation or one of
6 its officers, transmission by facsimile equipment.

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

15 (7) "Effective date of notice" has the meaning provided in RCW
16 23B.01.410.

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

19 (9) "Entity" includes a corporation and foreign corporation, not-
20 for-profit corporation, profit and not-for-profit unincorporated
21 association, business trust, estate, partnership, trust, and two or
22 more persons having a joint or common economic interest, and the state,
23 United States, and a foreign government.

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

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

29 (12) "Governmental subdivision" includes authority, county,
30 district, and municipality.

31 (13) "Includes" denotes a partial definition.

32 (14) "Individual" includes the estate of an incompetent or deceased
33 individual.

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

38 (16) "Means" denotes an exhaustive definition.

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

1 (18) "Person" includes an individual and an entity.

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

5 (20) "Proceeding" includes civil suit and criminal, administrative,
6 and investigatory action.

7 (21) "Public company" means a corporation that has a class of
8 shares registered with the federal securities and exchange commission
9 pursuant to section 12 of the securities exchange act of 1934, or
10 section 8 of the investment company act of 1940, or any successor
11 statute, and that has more than three hundred holders of record of its
12 shares.

13 (22) "Record date" means the date established under chapter 23B.07
14 RCW on which a corporation determines the identity of its shareholders
15 and their shareholdings for purposes of this title. The determinations
16 shall be made as of the close of business on the record date unless
17 another time for doing so is specified when the record date is fixed.

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

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

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

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

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

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

36 (29) "Voting group" means all shares of one or more classes or
37 series that under the articles of incorporation or this title are
38 entitled to vote and be counted together collectively on a matter at a
39 meeting of shareholders. All shares entitled by the articles of

1 incorporation or this title to vote generally on the matter are for
2 that purpose a single voting group.

3 **Sec. 2.** RCW 23B.14.220 and 1989 c 165 s 162 are each amended to
4 read as follows:

5 (1) A corporation administratively dissolved under RCW 23B.14.210
6 may apply to the secretary of state for reinstatement within ~~((two))~~
7 five years after the effective date of dissolution. The application
8 must:

9 (a) Recite the name of the corporation and the effective date of
10 its administrative dissolution;

11 (b) State that the ground or grounds for dissolution either did not
12 exist or have been eliminated; and

13 (c) State that the corporation's name satisfies the requirements of
14 RCW 23B.04.010.

15 (2) If the secretary of state determines that the application
16 contains the information required by subsection (1) of this section and
17 that the name is available, the secretary of state shall reinstate the
18 corporation and give the corporation written notice of the
19 reinstatement that recites the effective date of reinstatement. If the
20 name is not available, the corporation must file articles of amendment
21 changing its name with its application for reinstatement.

22 (3) When the reinstatement is effective, it relates back to and
23 takes effect as of the effective date of the administrative dissolution
24 and the corporation resumes carrying on its business as if the
25 administrative dissolution had never occurred.

26 (4) The application must be authorized either by action of the
27 shareholders, or of the corporation's board of directors, membership in
28 both groups determined as of the date of administrative dissolution.
29 If vacancies in the board of directors occur after the date of
30 dissolution, the shareholders, or the remaining directors, even if less
31 than a quorum of the board, may fill the vacancies. A special meeting
32 of the shareholders for purposes of authorizing the application for
33 reinstatement, or for purposes of electing directors, may be called by
34 any person who was an officer, director, or shareholder of the
35 corporation at the time of administrative dissolution.

36 **Sec. 3.** RCW 23B.14.300 and 1993 c 290 s 3 are each amended to read
37 as follows:

1 The superior courts may dissolve a corporation:

2 (1) In a proceeding by the attorney general if it is established
3 that:

4 (a) The corporation obtained its articles of incorporation through
5 fraud; or

6 (b) The corporation has continued to exceed or abuse the authority
7 conferred upon it by law;

8 (2) In a proceeding by a shareholder if it is established that:

9 (a) The directors are deadlocked in the management of the corporate
10 affairs, the shareholders are unable to break the deadlock, and
11 irreparable injury to the corporation is threatened or being suffered,
12 or the business and affairs of the corporation can no longer be
13 conducted to the advantage of the shareholders generally, because of
14 the deadlock;

15 (b) The directors or those in control of the corporation have
16 acted, are acting, or will act in a manner that is illegal, oppressive,
17 or fraudulent;

18 (c) The shareholders are deadlocked in voting power and have
19 failed, for a period that includes at least two consecutive annual
20 meeting dates, to elect successors to directors whose terms have
21 expired, and irreparable injury to the corporation is threatened or
22 being suffered, or the business and affairs of the corporation can no
23 longer be conducted to the advantage of the shareholders generally,
24 because of the deadlock;

25 (d) The corporate assets are being misapplied or wasted; or

26 (e) The corporation has ceased all business activity and has
27 failed, within a reasonable time, to dissolve, to liquidate its assets,
28 or to distribute its remaining assets among its shareholders;

29 (3) In a proceeding by a creditor if it is established that:

30 (a) The creditor's claim has been reduced to judgment, the
31 execution on the judgment was returned unsatisfied, and the corporation
32 is insolvent; or

33 (b) The corporation has admitted in writing that the creditor's
34 claim is due and owing and the corporation is insolvent; or

35 (4) In a proceeding by the corporation to have its voluntary
36 dissolution continued under court supervision.

37 **Sec. 4.** RCW 23B.14.330 and 1989 c 165 s 166 are each amended to
38 read as follows:

1 (1) If after a hearing the court determines that one or more
2 grounds for judicial dissolution described in RCW 23B.14.300 exist, it
3 may enter a decree dissolving the corporation and specifying the
4 effective date of the dissolution, ~~((and the clerk of the court shall
5 deliver a certified copy of the decree to the secretary of state, who
6 shall file it))~~ or, with or without ordering dissolution, may make such
7 other orders and decrees and issue such injunctions in the case as
8 justice and equity require.

9 (2) ~~((After entering the))~~ The court shall not enter or sign any
10 decree of dissolution until it receives a copy of a revenue clearance
11 certificate for the corporation issued pursuant to RCW 82.32.260.

12 (3) If the court enters a decree of dissolution, the petitioner or
13 moving party shall deliver a certified copy of the decree and a copy of
14 the revenue clearance certificate to the secretary of state, who shall
15 file them. The court shall then direct the winding up and liquidation
16 of the corporation's business and affairs in accordance with RCW
17 23B.14.050 ((and the notification of claimants in accordance with RCW
18 23B.14.060)).

19 **Sec. 5.** RCW 23B.14.340 and 1990 c 178 s 6 are each amended to read
20 as follows:

21 The dissolution of a corporation either: (1) By the ~~((issuance of
22 a certificate of))~~ filing by the secretary of state of its articles of
23 dissolution, (2) by administrative dissolution by the secretary of
24 state, ((+2)) (3) by a decree of court, or ((+3)) (4) by expiration
25 of its period of duration shall not take away or impair any remedy
26 available against such corporation, its directors, officers, or
27 shareholders, for any right or claim existing, or any liability
28 incurred, prior to such dissolution if action or other proceeding
29 thereon is commenced within two years after the date of such
30 dissolution. Any such action or proceeding against the corporation may
31 be defended by the corporation in its corporate name.

32 **Sec. 6.** RCW 23B.07.320 and 1993 c 290 s 4 are each amended to read
33 as follows:

34 (1) An agreement among the shareholders of a corporation that is
35 not contrary to public policy and that complies with this section is
36 effective among the shareholders and the corporation even though it is

1 inconsistent with one or more other provisions of this title in that
2 it:

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

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

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

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

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

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

22 (g) (~~Resolves any issue about which there exists~~) Provides a
23 process by which a deadlock among directors or shareholders may be
24 resolved;

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

28 (i) Otherwise governs the exercise of the corporate powers or the
29 management of the business and affairs of the corporation or the
30 relationship among the shareholders, the directors, and the
31 corporation, or among any of them(~~, and is not contrary to public~~
32 ~~policy~~)).

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

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

37 (b) Subject to amendment only by all persons who are shareholders
38 at the time of the amendment, unless the agreement provides otherwise;
39 and

1 (c) Valid for ten years, unless the agreement provides otherwise.

2 (3) The existence of an agreement authorized by this section shall
3 be noted conspicuously on the front or back of each certificate for
4 outstanding shares or on the information statement required by RCW
5 23B.06.260(2). If at the time of the agreement the corporation has
6 shares outstanding represented by certificates, the corporation shall
7 recall the outstanding certificates and issue substitute certificates
8 that comply with this subsection. The failure to note the existence of
9 the agreement on the certificate or information statement shall not
10 affect the validity of the agreement or any action taken pursuant to
11 it. (~~Any purchaser of shares who, at the time of purchase, did not~~
12 ~~have knowledge of the existence of the agreement shall be entitled to~~
13 ~~rescission of the purchase.~~) Unless the agreement provides otherwise,
14 any person who acquires outstanding or newly issued shares in the
15 corporation after an agreement authorized by this section has been
16 effected, whether by purchase, gift, operation of law, or otherwise, is
17 deemed to have assented to the agreement and to be a party to the
18 agreement. A purchaser of shares who is aggrieved because he or she at
19 the time of purchase did not have actual or constructive knowledge of
20 the existence of the agreement may either: (a) Bring an action to
21 rescind the purchase within the earlier of ninety days after discovery
22 of the existence of the agreement or two years after the purchase of
23 the shares; or (b) continue to hold the shares subject to the agreement
24 but with a right of action for any damages resulting from nondisclosure
25 of the existence of the agreement. A purchaser shall be deemed to have
26 constructive knowledge of the existence of the agreement if its
27 existence is noted on the certificate or information statement for the
28 shares in compliance with this subsection and, if the shares are not
29 represented by a certificate, the information statement is delivered to
30 the purchaser at or prior to the time of purchase of the shares. ((An
31 action to enforce the right of rescission authorized by this subsection
32 must be commenced within the earlier of ninety days after discovery of
33 the existence of the agreement or two years after the time of purchase
34 of the shares.))

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

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

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

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

16 **Sec. 7.** RCW 23B.08.080 and 1989 c 165 s 87 are each amended to
17 read as follows:

18 (1) The shareholders may remove one or more directors with or
19 without cause unless the articles of incorporation provide that
20 directors may be removed only for cause.

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

24 (3) If cumulative voting is authorized, ~~((a))~~ and if less than the
25 entire board is to be removed, no director may ~~((not))~~ be removed if
26 the number of votes sufficient to elect the director under cumulative
27 voting is voted against the director's removal. If cumulative voting
28 is not authorized, a director may be removed only if the number of
29 votes cast to remove the director exceeds the number of votes cast not
30 to remove the director.

31 (4) A director may be removed by the shareholders only at a special
32 meeting called for the purpose of removing the director and the meeting
33 notice must state that the purpose, or one of the purposes, of the
34 meeting is removal of the director.

35 NEW SECTION. **Sec. 8.** A new section is added to chapter 23B.14 RCW
36 to read as follows:

1 On the first day of each month, the secretary of state shall
2 prepare a list of corporations dissolved during the preceding month
3 pursuant to RCW 23B.14.030, 23B.14.210, and 23B.14.330.

4 **Sec. 9.** RCW 34.08.020 and 1987 c 186 s 8 are each amended to read
5 as follows:

6 There is hereby created a state publication to be called the
7 Washington State Register, which shall be published on no less than a
8 monthly basis. The register shall contain, but is not limited to, the
9 following materials received by the code reviser's office during the
10 pertinent publication period:

11 (1)(a) The full text of any proposed new or amendatory rule, as
12 defined in RCW 34.05.010, and the citation of any existing rules the
13 repeal of which is proposed, prior to the public hearing on such
14 proposal. Such material shall be considered, when published, to be the
15 official notification of the intended action, and no state agency or
16 official thereof may take action on any such rule except on emergency
17 rules adopted in accordance with RCW 34.05.350, until twenty days have
18 passed since the distribution date of the register in which the rule
19 and hearing notice have been published or a notice regarding the
20 omission of the rule has been published pursuant to RCW 34.05.210(4) as
21 now or hereafter amended;

22 (b) The small business economic impact statement, if required by
23 RCW 19.85.030, preceding the full text of the proposed new or
24 amendatory rule;

25 (2) The full text of any new or amendatory rule adopted, and the
26 citation of any existing rule repealed, on a permanent or emergency
27 basis;

28 (3) Executive orders and emergency declarations of the governor;

29 (4) Public meeting notices of any and all agencies of state
30 government, including state elected officials whose offices are created
31 by Article III of the state Constitution or RCW 48.02.010;

32 (5) Rules of the state supreme court which have been adopted but
33 not yet published in an official permanent codification;

34 (6) Summaries of attorney general opinions and letter opinions,
35 noting the number, date, subject, and other information, and prepared
36 by the attorney general for inclusion in the register;

37 (7) Juvenile disposition standards and security guidelines proposed
38 and adopted under RCW 13.40.030;

1 (8) Proposed and adopted rules of the commission on judicial
2 conduct; (~~and~~)

3 (9) The maximum allowable rates of interest and retail installment
4 contract service charges filed by the state treasurer under RCW
5 19.52.025 and 63.14.135. In addition, the highest rate of interest
6 permissible for the current month and the maximum retail installment
7 contract service charge for the current year shall be published in each
8 issue of the register. The publication of the maximum allowable
9 interest rate established pursuant to RCW 19.52.025 shall be
10 accompanied by the following advisement: NOTICE: FEDERAL LAW PERMITS
11 FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE
12 HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL
13 INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET
14 FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION; and

15 (10) A list of corporations dissolved during the preceding month
16 filed by the secretary of state under chapter 23B.14 RCW.

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