

SHB 3046 - S COMM AMD
By Committee on Judiciary

ADOPTED 03/02/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 24.03 RCW
4 to read as follows:

5 Superior courts may dissolve a nonprofit corporation:

6 (1) Except as provided in the articles of incorporation or bylaws,
7 in a proceeding by fifty members or members holding at least five
8 percent of the voting power, whichever is less, by one or more
9 directors, or by the attorney general if it is established that:

10 (a) The directors are deadlocked in the management of the corporate
11 affairs, the members, if any, are unable to break the deadlock, and
12 irreparable injury to the corporation or its mission is threatened or
13 being suffered because of the deadlock;

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

17 (c) The members are deadlocked in voting power and have failed, for
18 a period that includes at least two consecutive annual meeting dates,
19 to elect successors to directors whose terms have, or otherwise would
20 have, expired;

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

22 (e) The corporation has insufficient assets to continue its
23 activities and it is no longer able to assemble a quorum of directors
24 or members;

25 (2) In a proceeding by a creditor, if it is established that:

26 (a) The creditor's claim has been reduced to judgment, the
27 execution on the judgment returned unsatisfied, and the corporation is
28 insolvent; or

29 (b) The corporation has admitted in a record that the creditor's
30 claim is due and owing and the corporation is insolvent; or

1 (3) In a proceeding by the corporation to have its voluntary
2 dissolution continued under court supervision.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 24.03 RCW
4 to read as follows:

5 (1) Venue for a proceeding brought by the attorney general to
6 dissolve a corporation pursuant to section 1 of this act lies in the
7 court specified in RCW 24.03.260. Venue for a proceeding brought by
8 any other party named in section 1 of this act lies in the county where
9 a corporation's principal office (or, if none in this state, its
10 registered office) is or was last located.

11 (2) It is not necessary to make directors or members parties to a
12 proceeding to dissolve a nonprofit corporation unless relief is sought
13 against them individually.

14 (3) A court in a proceeding brought to dissolve a nonprofit
15 corporation may issue injunctions, appoint a general or custodial
16 receiver with all powers and duties the court directs, take other
17 action required to preserve the corporate assets wherever located, and
18 carry on the activities of the corporation until a full hearing can be
19 held.

20 (4) A court in a judicial proceeding brought to dissolve a
21 nonprofit corporation may appoint one or more general receivers to wind
22 up and liquidate, or one or more custodial receivers to manage, the
23 affairs of the corporation. The court shall hold a hearing, after
24 giving notice to all parties to the proceeding and any interested
25 persons designated by the court, before appointing a general or
26 custodial receiver. The court appointing a general or custodial
27 receiver has exclusive jurisdiction over the corporation and all of its
28 property wherever located.

29 (5) The court may require the general or custodial receiver to post
30 bond, with or without sureties, in an amount the court directs.

31 (6) The court shall describe the powers and duties of the general
32 or custodial receiver in its appointing order, which may be amended
33 from time to time. Among other powers:

34 (a) The general receiver:

35 (i) May dispose of all or any part of the assets of the nonprofit
36 corporation wherever located, at a public or private sale, if
37 authorized by the court; and

1 (ii) May sue and defend in his or her own name as general receiver
2 of the corporation in all courts of this state;

3 (b) The custodial receiver may exercise all of the powers of the
4 corporation, through or in place of its board of directors, to the
5 extent necessary to manage the affairs of the corporation consistent
6 with its mission and in the best interests of the corporation, and its
7 creditors.

8 (7) During a general receivership, the court may redesignate the
9 general receiver a custodial receiver, and during a custodial
10 receivership may redesignate the custodial receiver a general receiver,
11 if doing so is consistent with the mission of the nonprofit corporation
12 and in the best interests of the corporation and its creditors.

13 (8) The court from time to time during the general or custodial
14 receivership may order compensation paid and expense disbursements or
15 reimbursements made to the general or custodial receiver and counsel
16 from the assets of the nonprofit corporation or proceeds from the sale
17 of the assets.

18 (9) The assets of the corporation or the proceeds resulting from
19 the sale, conveyance, or other disposition thereof shall be applied and
20 distributed as follows:

21 (a) All costs and expenses of the court proceedings and all
22 liabilities and obligations of the corporation shall be paid,
23 satisfied, and discharged, or adequate provision shall be made
24 therefor;

25 (b) Assets held by the corporation upon condition requiring return,
26 transfer, or conveyance, which condition occurs by reason of the
27 dissolution or liquidation, shall be returned, transferred, or conveyed
28 in accordance with such requirements;

29 (c) Assets received and held by the corporation subject to
30 limitations permitting their use only for charitable, religious,
31 eleemosynary, benevolent, educational, or similar purposes, but not
32 held upon a condition requiring return, transfer, or conveyance by
33 reason of the dissolution or liquidation, shall be transferred or
34 conveyed to one or more domestic or foreign corporations, societies, or
35 organizations engaged in activities substantially similar to those of
36 the dissolving or liquidating corporation as the court may direct;

37 (d) Other assets, if any, shall be distributed in accordance with
38 the provisions of the articles of incorporation or the bylaws to the

1 extent that the articles of incorporation or bylaws determine the
2 distributive rights of members, or any class or classes of members, or
3 provide for distribution to others;

4 (e) Any remaining assets may be distributed to such persons,
5 societies, organizations, or domestic or foreign corporations, whether
6 for profit or not for profit, specified in the plan of distribution
7 adopted as provided in this chapter, or where no plan of distribution
8 has been adopted, as the court may direct.

9 (10) Subsections (4) through (8) of this section do not apply to a
10 church or its integrated auxiliaries.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 24.03 RCW
12 to read as follows:

13 (1) If after a hearing the court determines that one or more
14 grounds for judicial dissolution described in section 1 of this act
15 exist, it may enter a decree dissolving the nonprofit corporation and
16 specifying the effective date of the dissolution, and the clerk of the
17 court shall deliver a certified copy of the decree to the secretary of
18 state, who shall file it.

19 (2) After entering the decree of dissolution, the court shall
20 direct the winding up and liquidation of the nonprofit corporation's
21 affairs in accordance with this chapter.

22 **Sec. 4.** RCW 7.60.025 and 2006 c 52 s 1 are each amended to read as
23 follows:

24 (1) A receiver may be appointed by the superior court of this state
25 in the following instances, but except in any case in which a
26 receiver's appointment is expressly required by statute, or any case in
27 which a receiver's appointment is sought by a state agent whose
28 authority to seek the appointment of a receiver is expressly conferred
29 by statute, or any case in which a receiver's appointment with respect
30 to real property is sought under (b)(ii) of this subsection, a receiver
31 shall be appointed only if the court additionally determines that the
32 appointment of a receiver is reasonably necessary and that other
33 available remedies either are not available or are inadequate:

34 (a) On application of any party, when the party is determined to
35 have a probable right to or interest in property that is a subject of
36 the action and in the possession of an adverse party, or when the

1 property or its revenue-producing potential is in danger of being lost
2 or materially injured or impaired. A receiver may be appointed under
3 this subsection (1)(a) whether or not the application for appointment
4 of a receiver is combined with, or is ancillary to, an action seeking
5 a money judgment or other relief;

6 (b) Provisionally, during the pendency of any action to foreclose
7 upon any lien against or for forfeiture of any interest in real or
8 personal property, or after notice of a trustee's sale has been given
9 under RCW 61.24.040, or after notice of forfeiture has been given under
10 RCW 61.30.040, on application of any person, when the interest in the
11 property that is the subject of foreclosure or forfeiture of the person
12 seeking the receiver's appointment is determined to be probable and
13 either:

14 (i) The property or its revenue-producing potential is in danger of
15 being lost or materially injured or impaired; or

16 (ii) The appointment of a receiver with respect to the real or
17 personal property that is the subject of the action, the notice of
18 trustee's sale or notice of forfeiture is provided for by agreement or
19 is reasonably necessary to effectuate or enforce an assignment of rents
20 or other revenues from the property;

21 (c) After judgment, in order to give effect to the judgment;

22 (d) To dispose of property according to provisions of a judgment
23 dealing with its disposition;

24 (e) To the extent that property is not exempt from execution, at
25 the instance of a judgment creditor either before or after the issuance
26 of any execution, to preserve or protect it, or prevent its transfer;

27 (f) If and to the extent that property is subject to execution to
28 satisfy a judgment, to preserve the property during the pendency of an
29 appeal, or when an execution has been returned unsatisfied, or when an
30 order requiring a judgment debtor to appear for proceedings
31 supplemental to judgment has been issued and the judgment debtor fails
32 to submit to examination as ordered;

33 (g) Upon an attachment of real or personal property when the
34 property attached is of a perishable nature or is otherwise in danger
35 of waste, impairment, or destruction, or where the abandoned property's
36 owner has absconded with, secreted, or abandoned the property, and it
37 is necessary to collect, conserve, manage, control, or protect it, or

1 to dispose of it promptly, or when the court determines that the nature
2 of the property or the exigency of the case otherwise provides cause
3 for the appointment of a receiver;

4 (h) In an action by a transferor of real or personal property to
5 avoid or rescind the transfer on the basis of fraud, or in an action to
6 subject property or a fund to the payment of a debt;

7 (i) In an action against any person who is not an individual if the
8 object of the action is the dissolution of that person, or if that
9 person has been dissolved, or if that person is insolvent or is not
10 generally paying the person's debts as those debts become due unless
11 they are the subject of bona fide dispute, or if that person is in
12 imminent danger of insolvency;

13 (j) In accordance with RCW 7.08.030 (4) and (6), in cases in which
14 a general assignment for the benefit of creditors has been made;

15 (k) In quo warranto proceedings under chapter 7.56 RCW;

16 (l) As provided under RCW 11.64.022;

17 (m) In an action by the department of licensing under RCW
18 18.35.220(3) with respect to persons engaged in the business of
19 dispensing of hearing aids, RCW (~~18.85.350~~) 18.85.430 in the case of
20 persons engaged in the business of a real estate broker, associate real
21 estate broker, or real estate salesperson, or RCW 19.105.470 with
22 respect to persons engaged in the business of camping resorts;

23 (n) In an action under RCW 18.44.470 or 18.44.490 in the case of
24 persons engaged in the business of escrow agents;

25 (o) Upon a petition with respect to a nursing home in accordance
26 with and subject to receivership provisions under chapter 18.51 RCW;

27 (p) Under RCW 19.40.071(3), in connection with a proceeding for
28 relief with respect to a transfer fraudulent as to a creditor or
29 creditors;

30 (q) Under RCW 19.100.210(1), in an action by the attorney general
31 or director of financial institutions to restrain any actual or
32 threatened violation of the franchise investment protection act;

33 (r) In an action by the attorney general or by a prosecuting
34 attorney under RCW 19.110.160 with respect to a seller of business
35 opportunities;

36 (s) In an action by the director of financial institutions under
37 RCW 21.20.390 in cases involving actual or threatened violations of the

1 securities act of Washington or under RCW 21.30.120 in cases involving
2 actual or threatened violations of chapter 21.30 RCW with respect to
3 certain businesses and transactions involving commodities;

4 (t) In an action for or relating to dissolution of a business
5 corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or
6 23B.14.320, for dissolution of a nonprofit corporation under ((RCW
7 ~~24.03.270~~)) section 2 of this act, for dissolution of a mutual
8 corporation under RCW 24.06.305, or in any other action for the
9 dissolution or winding up of any other entity provided for by Title 23,
10 23B, 24, or 25 RCW;

11 (u) In any action in which the dissolution of any public or private
12 entity is sought, in any action involving any dispute with respect to
13 the ownership or governance of such an entity, or upon the application
14 of a person having an interest in such an entity when the appointment
15 is reasonably necessary to protect the property of the entity or its
16 business or other interests;

17 (v) Under RCW 25.05.215, in aid of a charging order with respect to
18 a partner's interest in a partnership;

19 (w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030,
20 in the case of a bank or trust company or, under and subject to RCW
21 32.24.070 through 32.24.090, in the case of a mutual savings bank;

22 (x) Under and subject to RCW 31.12.637 and 31.12.671 through
23 31.12.724, in the case of credit unions;

24 (y) Upon the application of the director of financial institutions
25 under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable
26 to agricultural lenders, under RCW 31.40.120 in actions to enforce
27 chapter 31.40 RCW applicable to entities engaged in federally
28 guaranteed small business loans, under RCW 31.45.160 in actions to
29 enforce chapter 31.45 RCW applicable to persons licensed as check
30 cashers or check sellers, or under RCW 19.230.230 in actions to enforce
31 chapter 19.230 RCW applicable to persons licensed under the uniform
32 money services act;

33 (z) Under RCW 35.82.090 or 35.82.180, with respect to a housing
34 project;

35 (aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce
36 rights under any revenue bonds issued for the purpose of financing
37 industrial development facilities or bonds of the Washington state

1 housing finance commission, or any financing document securing any such
2 bonds;

3 (bb) Under and subject to RCW 43.70.195, in an action by the
4 secretary of health or by a local health officer with respect to a
5 public water system;

6 (cc) As contemplated by RCW 61.24.030, with respect to real
7 property that is the subject of nonjudicial foreclosure proceedings
8 under chapter 61.24 RCW;

9 (dd) As contemplated by RCW 61.30.030(3), with respect to real
10 property that is the subject of judicial or nonjudicial forfeiture
11 proceedings under chapter 61.30 RCW;

12 (ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien
13 for common expenses against a dwelling unit subject to the horizontal
14 property regimes act, chapter 64.32 RCW;

15 (ff) Under RCW 64.34.364(10), in an action by a unit owners'
16 association to foreclose a lien for nonpayment of delinquent
17 assessments against condominium units;

18 (gg) Upon application of the attorney general under RCW
19 64.36.220(3), in aid of any writ or order restraining or enjoining
20 violations of chapter 64.36 RCW applicable to timeshares;

21 (hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment
22 or performance of municipal bonds issued with respect to facilities
23 used to abate, control, or prevent pollution;

24 (ii) Upon the application of the department of social and health
25 services under RCW 74.42.580, in cases involving nursing homes;

26 (jj) Upon the application of the utilities and transportation
27 commission under RCW 80.28.040, with respect to a water company that
28 has failed to comply with an order of such commission within the time
29 deadline specified therein;

30 (kk) Under RCW 87.56.065, in connection with the dissolution of an
31 irrigation district;

32 (ll) Upon application of the attorney general or the department of
33 licensing, in any proceeding that either of them are authorized by
34 statute to bring to enforce Title 18 or 19 RCW; the securities act of
35 Washington, chapter 21.20 RCW; the Washington commodities act, chapter
36 21.30 RCW; the land development act, chapter 58.19 RCW; or under
37 chapter 64.36 RCW relating to the regulation of timeshares;

1 (mm) Upon application of the director of financial institutions in
2 any proceeding that the director of financial institutions is
3 authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

4 (nn) In such other cases as may be provided for by law, or when, in
5 the discretion of the court, it may be necessary to secure ample
6 justice to the parties.

7 (2) The superior courts of this state shall appoint as receiver of
8 property located in this state a person who has been appointed by a
9 federal or state court located elsewhere as receiver with respect to
10 the property specifically or with respect to the owner's property
11 generally, upon the application of the person or of any party to that
12 foreign proceeding, and following the appointment shall give effect to
13 orders, judgments, and decrees of the foreign court affecting the
14 property in this state held by the receiver, unless the court
15 determines that to do so would be manifestly unjust or inequitable.
16 The venue of such a proceeding may be any county in which the person
17 resides or maintains any office, or any county in which any property
18 over which the receiver is to be appointed is located at the time the
19 proceeding is commenced.

20 (3) At least seven days' notice of any application for the
21 appointment of a receiver shall be given to the owner of property to be
22 subject thereto and to all other parties in the action, and to other
23 parties in interest as the court may require. If any execution by a
24 judgment creditor under Title 6 RCW or any application by a judgment
25 creditor for the appointment of a receiver, with respect to property
26 over which the receiver's appointment is sought, is pending in any
27 other action at the time the application is made, then notice of the
28 application for the receiver's appointment also shall be given to the
29 judgment creditor in the other action. The court may shorten or expand
30 the period for notice of an application for the appointment of a
31 receiver upon good cause shown.

32 (4) The order appointing a receiver in all cases shall reasonably
33 describe the property over which the receiver is to take charge, by
34 category, individual items, or both if the receiver is to take charge
35 of less than all of the owner's property. If the order appointing a
36 receiver does not expressly limit the receiver's authority to
37 designated property or categories of property of the owner, the

1 receiver is a general receiver with the authority to take charge over
2 all of the owner's property, wherever located.

3 (5) The court may condition the appointment of a receiver upon the
4 giving of security by the person seeking the receiver's appointment, in
5 such amount as the court may specify, for the payment of costs and
6 damages incurred or suffered by any person should it later be
7 determined that the appointment of the receiver was wrongfully
8 obtained.

9 NEW SECTION. **Sec. 5.** The following acts or parts of acts are each
10 repealed:

11 (1) RCW 24.03.265 (Jurisdiction of court to liquidate assets and
12 affairs of corporation) and 1986 c 240 s 39 & 1967 c 235 s 54;

13 (2) RCW 24.03.270 (Procedure in liquidation of corporation by
14 court) and 1967 c 235 s 55; and

15 (3) RCW 24.03.290 (Decree of involuntary dissolution) and 1967 c
16 235 s 59.

17 NEW SECTION. **Sec. 6.** This act is prospective and applies only to
18 actions or proceedings commenced on or after the effective date of this
19 act.

20 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of the
22 state government and its existing public institutions, and takes effect
23 immediately."

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24 On page 1, line 2 of the title, after "corporation;" strike the
25 remainder of the title and insert "amending RCW 7.60.025; adding new
26 sections to chapter 24.03 RCW; creating a new section; repealing RCW
27 24.03.265, 24.03.270, and 24.03.290; and declaring an emergency."

EFFECT: Restores language authorizing a superior court to dissolve a nonprofit corporation in an action brought by the attorney general. Replaces the term "custodian" with "custodial receiver" to conform to terminology used in state law governing receivership. Corrects a reference to nonprofit corporation dissolution in a statute governing general and custodial receivers. Adds an emergency clause.

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