CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2657

Chapter 196, Laws of 2010

61st Legislature
2010 Regular Session

LIMITED LIABILITY COMPANIES--DISSOLUTION

EFFECTIVE DATE: 06/10/10

Passed by the House March 6, 2010
Yeas 95  Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate March 2, 2010
Yeas 46  Nays 0

BRAD OWEN
President of the Senate

Approved March 24, 2010, 1:56 p.m.

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 2657 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

CERTIFICATE

FILED
March 24, 2010

CHRISTINE GREGOIRE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to the dissolution of limited liability companies; amending RCW 25.15.005, 25.15.070, 25.15.085, 25.15.095, 25.15.270, 25.15.290, 25.15.293, 25.15.295, 25.15.303, 25.15.340, and 25.15.805; adding new sections to chapter 25.15 RCW; and repealing RCW 25.15.080.

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

Sec. 1. RCW 25.15.005 and 2008 c 198 s 4 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Certificate of formation" means the certificate referred to in RCW 25.15.070, and the certificate as amended.

(2) "Event of dissociation" means an event that causes a person to cease to be a member as provided in RCW 25.15.130.

(3) "Foreign limited liability company" means an entity that is formed under:

(a) The limited liability company laws of any state other than this state; or

(b) The laws of any foreign country that is: (i) An unincorporated association, (ii) formed under a statute pursuant to which an
1 association may be formed that affords to each of its members limited
2 liability with respect to the liabilities of the entity, and (iii) not
3 required, in order to transact business or conduct affairs in this
4 state, to be registered or qualified under Title 23B or 24 RCW, or any
5 other chapter of the Revised Code of Washington authorizing the
6 formation of a domestic entity and the registration or qualification in
7 this state of similar entities formed under the laws of a jurisdiction
8 other than this state.

(4) "Limited liability company" and "domestic limited liability
company" means a limited liability company having one or more members
that is organized and existing under this chapter.

(5) "Limited liability company agreement" means any written
agreement of the members, or any written statement of the sole member,
as to the affairs of a limited liability company and the conduct of its
business which is binding upon the member or members.

(6) "Limited liability company interest" means a member's share of
the profits and losses of a limited liability company and a member's
right to receive distributions of the limited liability company's
assets.

(7) "Manager" or "managers" means, with respect to a limited
liability company that has set forth in its certificate of formation
that it is to be managed by managers, the person, or persons designated
in accordance with RCW 25.15.150(2).

(8) "Member" means a person who has been admitted to a limited
liability company as a member as provided in RCW 25.15.115 and who has
not been dissociated from the limited liability company.

(9) "Person" means an individual, corporation, business trust,
estate, trust, partnership, limited liability company, association,
joint venture, government, governmental subdivision, agency, or
instrumentality, or a separate legal entity comprised of two or more of
these entities, or any other legal or commercial entity.

(10) "Professional limited liability company" means a limited
liability company which is organized for the purpose of rendering
professional service and whose certificate of formation sets forth that
it is a professional limited liability company subject to RCW
25.15.045.

(11) "Professional service" means the same as defined under RCW
18.100.030.
(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than the state of Washington.

Sec. 2. RCW 25.15.070 and 1994 c 211 s 201 are each amended to read as follows:

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

(a) The name of the limited liability company;

(b) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by RCW 25.15.020;

(c) The address of the principal place of business of the limited liability company;

(d) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve;

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

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

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

(2) Effect of filing:

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

(b) The secretary of state's filing of the certificate of formation is conclusive proof that the persons executing the certificate satisfied all conditions precedent to the formation ((except in a proceeding by the state to cancel the certificate)).
(c) A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation).

Sec. 3. RCW 25.15.085 and 2002 c 74 s 17 are each amended to read as follows:

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

(a) Each original certificate of formation must be signed by the person or persons forming the limited liability company;
(b) A reservation of name may be signed by any person;
(c) A transfer of reservation of name must be signed by, or on behalf of, the applicant for the reserved name;
(d) A registration of name must be signed by any member or manager of the foreign limited liability company;
(e) A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members;
(f) A certificate of dissolution must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to RCW 25.15.295(3);
(g) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited liability company, limited partnership, or corporation; and
(h) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the state must be signed by any member or manager of the foreign limited liability company.
(2) Any person may sign a certificate, articles of merger, limited liability company agreement, or other document by an attorney-in-fact or other person acting in a valid representative capacity, so long as each document signed in such manner identifies the capacity in which the signator signed.

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

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

Sec. 4. RCW 25.15.095 and 2002 c 74 s 18 are each amended to read as follows:

(1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, of the certificate of formation or any other document required to be filed pursuant to this chapter, except as set forth under RCW 25.15.105 or unless a duplicate is not required under rules adopted under RCW 25.15.007, shall be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter, he or she shall, when all required filing fees have been paid:

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

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

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

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

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

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

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

(4) Upon the filing of a certificate of amendment (or judicial decree of amendment) or restated certificate in the office of the secretary of state, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein. ((Upon the filing of a certificate of cancellation (or a judicial decree thereof), or articles of merger which act as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of articles of merger which act as a certificate of cancellation, as provided for therein, or as specified in RCW 25.15.290, the certificate of formation is canceled.))

Sec. 5. RCW 25.15.270 and 2009 c 437 s 1 are each amended to read as follows:

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

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

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

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

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

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

(6) The ((expiration of five years after the effective date of dissolution under RCW 25.15.285)) administrative dissolution of the limited liability company by the secretary of state under RCW 25.15.285(2), unless the limited liability company is reinstated by the secretary of state under RCW 25.15.290.

NEW SECTION. Sec. 6. A new section is added to chapter 25.15 RCW to read as follows:

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

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

(a) The name of the limited liability company; and

(b) A statement that the limited liability company is dissolved under RCW 25.15.270.

Sec. 7. RCW 25.15.290 and 2009 c 437 s 2 are each amended to read as follows:

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

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

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

(c) (State) That the limited liability company's name satisfies the requirements of RCW 25.15.010.
(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the limited liability company and give the limited liability company written notice, as provided in RCW 25.15.285(1), of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited liability company must file with its application for reinstatement an amendment to its certificate of formation reflecting a change of name.

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

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

Sec. 8. RCW 25.15.293 and 2009 c 437 s 3 are each amended to read as follows:

(1) A limited liability company dissolved under RCW 25.15.270 (2) or (3) that has filed a certificate of dissolution under section 6 of this act may revoke its dissolution within one hundred twenty days of filing its certificate of dissolution. (The application must:

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

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

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

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

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

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

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

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

(3) After the revocation of dissolution is approved, the limited liability company may revoke the dissolution and the certificate of dissolution by delivering to the secretary of state for filing a certificate of revocation of dissolution that sets forth:

(a) The name of the limited liability company and a statement that the name satisfies the requirements of RCW 25.15.010; if the name is not available, the limited liability company must file a certificate of amendment changing its name with the certificate 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 limited liability company's managers revoked the dissolution, a statement to that effect;

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

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

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

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

Sec. 9. RCW 25.15.295 and 1994 c 211 s 806 are each amended to read as follows:

((1) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made, or required to be made, by all members, or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs. The superior courts, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, his or her legal representative or assignee, and in connection therewith, may appoint a receiver.

(2) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property,
A limited liability company continues after dissolution only for the purpose of winding up its activities. 

In winding up its activities, the limited liability company:

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

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

Unless otherwise provided in a limited liability company agreement, the persons responsible for managing the business and affairs of a limited liability company under RCW 25.15.150 are responsible for winding up the activities of a dissolved limited liability company. If a dissolved limited liability company does not have any managers or members, the legal representative of the last person to have been a member may wind up the activities of the dissolved limited liability company. In which event the legal representative is a manager for the purposes of RCW 25.15.155.

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

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

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

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

(ii) The street and mailing address of the person.
The superior court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited liability company's activities, if:

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

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

NEW SECTION. Sec. 10. A new section is added to chapter 25.15 RCW to read as follows:

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

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

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

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

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

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

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

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

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

(4) For purposes of this section, "known claim" means any claim or liability that either:
(a)(i) Has matured sufficiently, before or after the effective date of the dissolution, to be legally capable of assertion against the dissolved limited liability company, 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 limited liability company is a party, other than under an implied or statutory warranty as to any product manufactured, sold, distributed, or handled by the dissolved limited liability company; and

(b) As to which the dissolved limited liability company 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.

Sec. 11. RCW 25.15.303 and 2006 c 325 s 1 are each amended to read as follows:

Except as provided in section 10 of this act, the dissolution of a limited liability company does not take away or impair any remedy available to or against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless the limited liability company has filed a certificate of dissolution under section 6 of this act, that has not been revoked under RCW 25.15.293, and an action or other proceeding thereon is not commenced within three years after the ((effective date)) filing of the certificate of dissolution. Such an action or proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its own name.

Sec. 12. RCW 25.15.340 and 1994 c 211 s 907 are each amended to read as follows:

(1) A foreign limited liability company doing business in this state may not maintain any action, suit, or proceeding in this state until it has registered in this state, and has paid to this state all fees and penalties for the years or parts thereof, during which it did business in this state without having registered.
Neither the failure of a foreign limited liability company to register in this state nor the issuance of a certificate of cancellation with respect to a foreign limited liability company's registration in this state impairs:

(a) The validity of any contract or act of the foreign limited liability company;
(b) The right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or
(c) The foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

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

Sec. 13. RCW 25.15.805 and 1994 c 211 s 1302 are each amended to read as follows:

(1) The secretary of state shall adopt rules establishing fees which shall be charged and collected for:
(a) Filing of a certificate of formation for a domestic limited liability company or an application for registration of a foreign limited liability company;
(b) Filing of a certificate of dissolution for a domestic or foreign limited liability company;
(c) Filing a certificate of cancellation for a foreign limited liability company;
(d) Filing of a certificate of amendment or restatement for a domestic or foreign limited liability company;
(e) Filing an application to reserve, register, or transfer a limited liability company name;
(f) Filing any other certificate, statement, or report authorized or permitted to be filed;
(g) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

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

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

NEW SECTION. Sec. 14. RCW 25.15.080 (Cancellation of certificate)
and 1994 c 211 s 203 are each repealed.
Passed by the House March 6, 2010.
Passed by the Senate March 2, 2010.
Approved by the Governor March 24, 2010.
Filed in Office of Secretary of State March 24, 2010.