

RCW 23B.30.080 Judicial proceedings to validate or challenge ratification. (1) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, or any shareholder of the corporation, including any person who was a shareholder of the corporation as of the date of a defective corporate action, the superior courts may:

(a) Validate any defective corporate action that has not been ratified in accordance with RCW 23B.30.030; or

(b) Determine that any ratification of a defective corporate action under RCW 23B.30.030 is not valid or effective because it failed to comply with the procedural requirements imposed by this chapter.

(2) In connection with a proceeding under subsection (1)(a) of this section, the court shall identify the defective corporate action to be validated, including the information required under RCW 23B.30.030 (1)(a) through (c) or (2)(a) and (b), as applicable, and may make such findings or orders as it deems proper under the circumstances. In determining whether to validate a defective corporate action under subsection (1)(a) of this section, the court may consider the following:

(a) Whether the defective corporate action was originally approved or effectuated with the belief that the approval or effectuation was in compliance with the provisions of this title, the articles of incorporation or bylaws of the corporation, and any corporate resolution or plan or agreement of or to which the corporation is a party that would be relevant in determining whether there was a failure of authorization;

(b) Whether the corporation and board of directors has treated the defective corporate action as a valid action or transaction;

(c) Whether any person has acted in reliance on the public record that the defective corporate action was valid or would be harmed by the failure to validate the defective corporate action;

(d) Whether any person would be harmed by the validation of the defective corporate action, excluding any harm that would have resulted if the defective corporate action had been valid when approved or effectuated; and

(e) Any other factors or considerations that the court deems proper in the circumstances.

(3) The court shall stay any proceeding brought under subsection (1)(a) of this section during any ratification process under RCW 23B.30.030 involving the defective corporate action that is the subject of the proceeding until the earlier of:

(a) The validation effective time; and

(b) (i) If shareholder approval is not required for ratification, the date on which the board of directors votes, but fails to ratify, the defective corporate action, (ii) if shareholder approval is required for ratification in accordance with RCW 23B.30.040 and is to be given at a meeting, the date on which the shareholders vote, but fail to ratify, the defective corporate action, or (iii) if shareholder approval is required for ratification in accordance with RCW 23B.30.040 and is to be given without a meeting, sixty days after the date of execution indicated on the earliest dated shareholder consent approving the ratification that is delivered to the corporation, even though that shareholder consent may not have been delivered to the corporation on that date, if consents executed by a sufficient number of shareholders to approve the ratification are not delivered to the corporation during that sixty-day period.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any proceeding asserting a claim under subsection (1)(b) of this section must be brought within sixty days after the validation effective time, except that this subsection will not apply to any person to whom notice of the ratification was required to have been given pursuant to RCW 23B.30.050, but to whom such notice was not given. Claims under subsection (1)(b) of this section are to be the exclusive basis for challenging the validity or effectiveness of a defective corporate action ratified under RCW 23B.30.030.

(5) Service of process on the corporation for any proceeding under this section may be made in any manner provided by statute of this state or by rule of the court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In a proceeding commenced by the corporation, the court may require notice of the proceeding to be provided to other persons specified by the court and permit such other persons to intervene in the proceeding.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on behalf of the beneficial owner. [2017 c 28 s 8.]