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**SENATE BILL 5489**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Pedersen, Padden, Dhingra, and Mullet; by request of Washington State Bar Association

AN ACT Relating to business entities; and amending RCW 23B.01.400, 23B.06.230, 23B.06.400, 23B.07.020, 23B.07.070, 23B.07.200, 23B.11.010, 23B.11.030, 23B.11.050, 23B.11.060, 23B.11.090, 23B.11.100, 23B.13.020, 23B.13.200, 23B.13.210, 23B.13.220, 23B.13.230, 25.10.011, 25.10.101, 25.10.491, 25.10.496, 25.10.546, 25.10.771, 25.10.791, 25.15.006, 25.15.046, 25.15.116, 25.15.121, 25.15.131, and 25.15.441.

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

**PART I**

**BUSINESS CORPORATIONS**

**Sec.**  RCW 23B.01.400 and 2021 c 84 s 1 are each amended to read as follows:

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

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

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

(3) "Conspicuous" means so prepared that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, capitals, or underlined is conspicuous.

(4) "Controlling interest" means ownership of an entity's outstanding shares or interests in such number as to entitle the holder at the time to elect a majority of the entity's directors or other governors without regard to voting power which may thereafter exist upon a default, failure, or other contingency.

(5) "Corporate action" means any resolution, act, policy, contract, transaction, plan, adoption or amendment of articles of incorporation or bylaws, or other matter approved by or submitted for approval to a corporation's incorporators, board of directors or a committee thereof, or shareholders.

(6) "Corporation" or "domestic corporation" means a corporation for profit, including a social purpose corporation, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(7) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with RCW 23B.01.410, by electronic transmission.

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

(9) "Document" means:

(a) Any tangible medium on which information is inscribed, and includes handwritten, typed, printed, or similar instruments or copies of such instruments; and

(b) An electronic record.

(10) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11) "Electronic mail" means an electronic transmission directed to a unique electronic mail address, which electronic mail will be deemed to include any files attached thereto and any information hyperlinked to a website if the electronic mail includes the contact information of an officer or agent of the corporation who is available to assist with accessing such files and information.

(12) "Electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox, commonly referred to as the "local part" of the address, and a reference to an internet domain, commonly referred to as the "domain part" of the address, whether or not displayed, to which electronic mail can be sent or delivered.

(13) "Electronic record" means information that is stored in an electronic or other nontangible medium and: (a) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice; or (b) if not retrievable in paper form by the recipient through an automated process used in conventional commercial practice, is otherwise authorized in accordance with RCW 23B.01.410(10).

(14) "Electronic transmission" or "electronically transmitted" means internet transmission, telephonic transmission, electronic mail transmission, transmission of a telegram, cablegram, or datagram, the use of, or participation in, one or more electronic networks or databases including one or more distributed electronic networks or databases, or any other form or process of communication, not directly involving the physical transfer of paper or another tangible medium, which:

(a) Is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, or, if not retrievable in paper form by the recipient through an automated process used in conventional commercial practice, is otherwise authorized in accordance with RCW 23B.01.410(10).

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

(16) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, two or more persons having a joint or common economic interest, the state, United States, and a foreign governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(17) "Execute," "executes," or "executed" means, with present intent to authenticate or adopt a document:

(a) To sign or adopt a tangible symbol to the document, and includes any manual, facsimile, or conformed signature;

(b) To attach or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature; or

(c) With respect to a document to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.

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

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

(20) "General social purpose" means the general social purpose for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with RCW 23B.25.040(1)(c).

(21) "Governmental subdivision" includes authority, county, district, and municipality.

(22) "Governor" has the meaning given that term in RCW 23.95.105.

(23) "Includes" denotes a partial definition.

(24) "Individual" includes the estate of an incompetent or deceased individual.

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

(26) "Means" denotes an exhaustive definition.

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

(28) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

(30) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(31) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute.

(32) "Qualified director" means (a) with respect to a director's conflicting interest transaction as defined in RCW 23B.08.700, any director who does not have either (i) a conflicting interest respecting the transaction, or (ii) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction; (b) with respect to RCW 23B.08.735, a qualified director under (a) of this subsection if the business opportunity were a director's conflicting interest transaction; and (c) with respect to RCW 23B.02.020(2)(g), a director who is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply, or (ii) who has a familial, financial, professional, or employment relationship with another officer to whom the limitation or elimination would apply, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the limitation or elimination.

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

(34) "Registered office" means the address of the corporation's registered agent.

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

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

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

(38) "Social purpose" includes any general social purpose and any specific social purpose.

(39) "Social purpose corporation" means a corporation that has elected to be governed as a social purpose corporation under chapter 23B.25 RCW.

(40) "Specific social purpose" means the specific social purpose or purposes for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with RCW 23B.25.040(2)(a).

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

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

(43) "Subsidiary" means an entity in which the corporation has, directly or indirectly, a controlling interest.

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

(45) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

(46) "Writing" or "written" means any information in the form of a document.

**Sec.**  RCW 23B.06.230 and 1989 c 165 s 51 are each amended to read as follows:

(1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect to shares of another class or series unless (a) the articles of incorporation so authorize, (b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (c) there are no outstanding shares of the class or series to be issued.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

**Sec.**  RCW 23B.06.400 and 2009 c 189 s 12 are each amended to read as follows:

(1) A board of directors may approve and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection ((~~(2)~~)) (3) of this section.

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors. If the board of directors does not fix a record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, the record date is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its liabilities as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

((~~(3)~~)) (4) For purposes of determinations under subsection ((~~(2)~~)) (3) of this section:

(a) The board of directors may base a determination that a distribution is not prohibited under subsection ((~~(2)~~)) (3) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and

(b) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section.

((~~(4)~~)) (5) The effect of a distribution under subsection ((~~(2)~~)) (3) of this section is measured:

(a) In the case of a distribution of indebtedness, the terms of which provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made; or

(b) In the case of any other distribution:

(i) If the distribution is by purchase, redemption, or other acquisition of the corporation's shares, the effect of the distribution is measured as of the earlier of the date any money or other property is transferred or debt incurred by the corporation, or the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(ii) If the distribution is of indebtedness other than that described in ((~~subsection (4)~~)) (a) and (b)(i) of this subsection, the effect of the distribution is measured as of the date the indebtedness is distributed; and

(iii) In all other cases, the effect of the distribution is measured as of the date the distribution is approved if payment occurs within one hundred twenty days after the date of approval, or the date the payment is made if it occurs more than one hundred twenty days after the date of approval.

((~~(5)~~)) (6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise by agreement.

((~~(6)~~)) (7) In circumstances to which this section and related sections of this title are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions.

((~~(7)~~)) (8) A transfer of the assets of a dissolved corporation to a trust or other successor entity of the type described in RCW 23B.14.030(4) constitutes a distribution subject to subsection ((~~(2)~~)) (3) of this section only when and to the extent that the trust or successor entity distributes assets to shareholders.

**Sec.**  RCW 23B.07.020 and 2020 c 57 s 48 are each amended to read as follows:

(1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) Except as set forth in subsections (2) and (3) of this section, if shareholders holding at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting execute, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) The right of shareholders of a public company to call a special meeting may be limited or denied to the extent provided in the articles of incorporation.

(3) If the corporation is other than a public company, the articles of incorporation or bylaws may require the demand specified in subsection (1)(b) of this section be made by a greater percentage, not in excess of twenty-five percent, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting.

(4) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to demand a special meeting is the first date on which an executed shareholder demand is delivered to the corporation. No written demand for a special meeting will be effective unless, within 60 days after the earliest date on which a demand delivered to the corporation as required by this section was executed, written demands executed by shareholders holding at least the percentage of votes specified in subsection (1)(b) of this section or, if applicable, fixed in accordance with subsection (2) or (3) of this section, have been delivered to the corporation.

(5) Subject to subsection (6) of this section:

(a) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws; and

(b) If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(6) Unless the articles of incorporation or bylaws provide otherwise, if the board of directors or another person is authorized in the bylaws to determine the place of special meetings, the board of directors or such other person may, in the sole discretion of the board of directors or such other person, determine that a special meeting will not involve a physical assembly of shareholders at a particular geographic location, but instead will be held solely by means of remote communication, in accordance with RCW 23B.07.080.

(7) Only business within the purpose or purposes described in the meeting notice required by RCW 23B.07.050(3) may be conducted at a special shareholders' meeting.

**Sec.**  RCW 23B.07.070 and 2009 c 189 s 16 are each amended to read as follows:

(1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to approve any other corporate action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix ((~~a future date as~~)) the record date, which date may not precede the date on which the resolution fixing the record date is approved.

(2) If not otherwise fixed under subsection (1) of this section or RCW 23B.07.030, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(3) ((~~If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.~~

~~(4) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.~~

~~(5)~~)) A record date fixed under this section may not be more than seventy days before the meeting of shareholders or more than ten days prior to the date on which the first shareholder consent is executed under RCW 23B.07.040(1)(b).

((~~(6)~~)) (4) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

((~~(7)~~)) (5) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

**Sec.**  RCW 23B.07.200 and 2020 c 57 s 52 are each amended to read as follows:

(1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders on the record date who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder. Nothing contained in this section requires the corporation to include on such list the electronic mail address or other electronic contact information of a shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning ten days prior to the meeting and continuing through the meeting((~~,~~)) either: (a) On a reasonably accessible electronic network, on condition that the information necessary to gain access to the list is provided in or accompanies the notice of the meeting; or (b) at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. If the corporation elects to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to shareholders or their agents or attorneys. A shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation ((~~shall~~)) must make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list at any time during the meeting or any adjournment. If the meeting is held solely by means of remote communication in accordance with RCW 23B.07.010(4) or 23B.07.020(6), then the list must be available for inspection by any shareholder, the shareholder's agent, or the shareholder's attorney during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided with the notice of the meeting.

(4) If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect the shareholders' list before or at the meeting, the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection is complete.

(5) A shareholder's right to copy the shareholders' list, and a shareholder's right to otherwise inspect and copy the record of shareholders, is governed by RCW 23B.16.020(3).

(6) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of corporate action approved at the meeting.

**Sec.**  RCW 23B.11.010 and 2020 c 194 s 11 are each amended to read as follows:

(1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve a plan of merger.

(2) The plan of merger must include:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part, or of canceling some or all of such shares.

(3) The plan of merger may include:

(a) Amendments to the articles of incorporation of the surviving corporation, or a restatement that includes one or more amendments to the surviving corporation's articles of incorporation; and

(b) Other provisions relating to the merger.

(4) The terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

**Sec.**  RCW 23B.11.030 and 2011 c 328 s 6 are each amended to read as follows:

(1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(b) The shareholders entitled to vote must approve the plan, except as provided in subsection (7) of this section.

(3) The board of directors may condition its submission of the proposed plan of merger or share exchange on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy ((~~or summary~~)) of the plan or a summary of the material terms and conditions of the proposed merger or share exchange and the consideration to be received by shareholders.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of merger must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan, unless shareholder approval is not required under subsection (7) of this section. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of merger and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of merger under the circumstances described in RCW 23B.11.035.

(6) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of share exchange must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of share exchange and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of share exchange under the circumstances described in RCW 23B.11.035.

(7) Approval by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) Unless the articles of incorporation provide otherwise, approval by the shareholders of a public company is not required for a plan of merger if:

(a) The plan of merger expressly: (i) Permits or requires the merger to be effected under this subsection; and (ii) provides that, if the merger is to be effected under this subsection, the merger will be effected as soon as practicable following the satisfaction of the requirements of (f) of this subsection;

(b) Another party to the merger or a parent of another party to the merger makes an offer to purchase, on the terms stated in the plan of merger, any and all of the outstanding shares of the corporation that, absent this subsection, would be entitled to vote on the plan of merger, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(c) The offer discloses that the plan of merger states that the merger will be effected as soon as practicable following the satisfaction of the requirements of (f) of this subsection and that the shares of the corporation that are not tendered in response to the offer will be treated as provided in (h) of this subsection;

(d) The offer remains open for at least 10 days;

(e) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) The: (i) Shares purchased by the offeror in accordance with the offer; (ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing; and (iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or other interests in that offeror, parent, or subsidiary, are collectively entitled to cast at least the minimum number of votes on the merger that, absent this subsection, would be required by this chapter for the approval of the merger by the shareholders entitled to vote on the merger at a meeting at which all shares entitled to vote on the approval were present and voted;

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into the corporation; and

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and which is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in (f)(ii) or (iii) of this subsection need not be converted into or exchanged for the consideration described in this subsection (9)(h).

(10) As used in subsection (9) of this section:

(a) "Offer" means the offer referred to in subsection (9)(b) of this section.

(b) "Offeror" means the person making the offer.

(c) "Parent" of an entity means a person that owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares of or other interests in that entity.

(d) Shares tendered in response to the offer will be deemed to have been "purchased" in accordance with the offer at the earlier time as of which:

(i) The offeror has irrevocably accepted those shares for payment; and

(ii) Either: (A) In the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares; or (B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

(e) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares or other interests.

(11) After a merger or share exchange is approved, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder approval, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

**Sec.**  RCW 23B.11.050 and 1989 c 165 s 135 are each amended to read as follows:

(1) After a plan of merger ((~~or share exchange~~)) is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving ((~~or acquiring corporation~~)) entity shall deliver to the secretary of state for filing articles of merger ((~~or share exchange setting forth~~)) stating:

((~~(1)~~)) (a) The ((~~plan of merger or share exchange~~)) name and jurisdiction of organization of each party to the merger;

(b) The name and jurisdiction of organization of the surviving entity;

(c) If the surviving entity of the merger is a domestic corporation and its articles of incorporation are amended or amended and restated, the amendments to the surviving entity's articles of incorporation or the amended and restated articles of incorporation of the surviving entity;

((~~(2)~~)) (d) If shareholder approval of any domestic corporation party to the merger was not required, a statement to that effect; ((~~or~~

~~(3)~~)) (e) If approval of the shareholders of one or more domestic corporations party to the merger ((~~or share exchange~~)) was required, a statement that the merger ((~~or share exchange~~)) was duly approved by the shareholders of such domestic corporation pursuant to RCW 23B.11.030; and

(f) If approval of the shareholders of one or more other entities party to the merger was required, a statement that the merger was duly approved by the interest holders of such other entity in accordance with the organic law of such other entity.

(2) After a plan of share exchange has been approved by the shareholders of the corporation whose shares will be acquired in the share exchange, the acquiring corporation shall deliver to the secretary of state for filing articles of share exchange, executed by the acquiring corporation and the corporation whose shares will be acquired in the share exchange, stating:

(a) The name of the corporation whose shares will be acquired in the share exchange;

(b) The name of the acquiring corporation; and

(c) A statement that the plan of share exchange was duly approved by the shareholders of the corporation whose shares will be acquired in the share exchange pursuant to RCW 23B.11.030.

(3) The definitions in RCW 23B.09.005 apply to this section unless the context clearly requires otherwise.

**Sec.**  RCW 23B.11.060 and 1989 c 165 s 136 are each amended to read as follows:

(1) When a merger takes effect:

(a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation has all liabilities of each corporation party to the merger;

(d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the ((~~plan~~)) articles of merger; and

(f) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the articles of merger or to their rights under chapter 23B.13 RCW.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under chapter 23B.13 RCW.

**Sec.**  RCW 23B.11.090 and 2015 c 188 s 111 are each amended to read as follows:

After a plan of merger for one or more corporations and one or more limited partnerships, one or more partnerships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), is approved by the partners for each limited partnership as required by RCW 25.10.781, is approved by the partners of each partnership as required by RCW 25.05.380, or is approved by the members of each limited liability company as required by RCW 25.15.421, the surviving entity must:

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The ((~~plan of merger~~)) name and jurisdiction of organization of each party to the merger;

(b) The name of the surviving corporation;

(c) If the surviving corporation's articles of incorporation are amended or amended and restated, the amendments to the surviving corporation's articles of incorporation or the amended and restated articles of incorporation of the surviving corporation;

((~~(b)~~)) (d) A statement that the merger was duly approved by the shareholders of each corporation that is a party to the merger pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

((~~(c)~~)) (e) A statement that the merger was duly approved ((~~by the partners of each limited partnership pursuant to RCW 25.10.781~~)) as required by the organic law of each other party that is a party to the merger.

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.786.

(3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.

(4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.426.

(5) The definitions in RCW 23B.09.005 apply to this section unless the context clearly requires otherwise.

**Sec.**  RCW 23B.11.100 and 1998 c 103 s 1312 are each amended to read as follows:

(1) When a merger of one or more corporations((~~,~~)) or one or more ((~~limited partnerships, one or more partnerships, or one or more limited liability companies~~)) other entities takes effect, and a corporation is the surviving entity:

((~~(1)~~)) (a) Every other corporation((~~,~~)) and every ((~~limited partnership, every partnership, and every limited liability company~~)) other entity party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation, and every ((~~limited partnership, partnership, and limited liability company~~)) other entity, ceases;

((~~(2)~~)) (b) The title to all real estate and other property owned by each ((~~corporation, limited partnership, partnership, and limited liability company~~)) entity party to the merger is vested in the surviving corporation without reversion or impairment;

((~~(3)~~)) (c) The surviving corporation has all the liabilities of each ((~~corporation, limited partnership, partnership, and limited liability company~~)) entity party to the merger;

((~~(4)~~)) (d) A proceeding pending against any ((~~corporation, limited partnership, partnership, or limited liability company~~)) entity party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the ((~~corporation, limited partnership, partnership, or limited liability company~~)) entity whose existence ceased;

((~~(5)~~)) (e) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the ((~~plan~~)) articles of merger;

((~~(6)~~)) (f) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 23B.13 RCW; and

((~~(7)~~)) (g) The former interest holders of ((~~partnership interests of~~)) every ((~~limited partnership or partnership party to the merger and the former holders of member interests of every limited liability company~~)) other entity party to the merger are entitled only to the rights provided in the plan of merger or to their rights under ((~~chapter 25.10 RCW~~)) the organic law of that other entity.

(2) The definitions in RCW 23B.09.005 apply to this section unless the context clearly requires otherwise.

**Sec.**  RCW 23B.13.020 and 2017 c 28 s 14 are each amended to read as follows:

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, or would have been required but for the provisions of RCW 23B.11.030(9), and the shareholder was, or but for the provisions of RCW 23B.11.030(9) would have been, entitled to vote on the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;

(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;

(c) A sale, lease, exchange, or other disposition, which has become effective, of all, or substantially all, of the property and assets of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on the sale, lease, exchange, or other disposition, including a disposition in dissolution, but not including a disposition pursuant to court order or a disposition for cash pursuant to a plan by which all or substantially all of the net proceeds of the disposition will be distributed to the shareholders within one year after the date of the disposition;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation;

(e) Any action described in RCW 23B.25.120;

(f) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or

(g) A plan of entity conversion in the case of a conversion of a domestic corporation to a foreign corporation, which has become effective, to which the domestic corporation is a party as the converting entity, if: (i) The shareholder was entitled to vote on the plan; and (ii) the shareholder does not receive shares in the surviving entity that have terms as favorable to the shareholder in all material respects and that represent at least the same percentage interest of the total voting rights of the outstanding shares of the surviving entity as the shares held by the shareholder before the conversion.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.831 through 25.10.886, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation.

**Sec.**  RCW 23B.13.200 and 2009 c 189 s 42 are each amended to read as follows:

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval by a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 would be submitted for approval by a vote at a shareholders' meeting but for the provisions of RCW 23B.11.030(9), the offer made pursuant to RCW 23B.11.030(9) must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(3) If corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, the shareholder consent described in RCW 23B.07.040(1)(b) and the notice described in RCW 23B.07.040(3)(a) must include a statement that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

**Sec.**  RCW 23B.13.210 and 2020 c 57 s 69 are each amended to read as follows:

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must (a) deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected, and (b) not vote such shares in favor of the proposed corporate action.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 does not require shareholder approval pursuant to RCW 23B.11.030(9), a shareholder who wishes to assert dissenters' rights with respect to any class or series of shares:

(a) Shall deliver to the corporation before the shares are purchased pursuant to the offer under RCW 23B.11.030(9) written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected; and

(b) Shall not tender, or cause to be tendered, any shares of such class or series in response to such offer.

(3) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, a shareholder who wishes to assert dissenters' rights must not execute the consent or otherwise vote such shares in favor of the proposed corporate action.

((~~(3)~~)) (4) A shareholder who does not satisfy the requirements of subsection (1) ((~~or~~)), (2), or (3) of this section is not entitled to payment for the shareholder's shares under this chapter.

**Sec.**  RCW 23B.13.220 and 2013 c 97 s 2 are each amended to read as follows:

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection ((~~(5)~~)) (6) of this section.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.11.030(9), the corporation shall within 10 days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(2) a notice in compliance with subsection (6) of this section.

(3) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210((~~(2)~~)) (3) shall comply with subsection ((~~(5)~~)) (6) of this section.

((~~(3)~~)) (4) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders of the subsidiary other than the parent a notice in compliance with subsection ((~~(5)~~)) (6) of this section.

((~~(4)~~)) (5) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW 23B.10.020(4)(b), is not required to be approved by the shareholders of the corporation, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance with subsection ((~~(5)~~)) (6) of this section.

((~~(5)~~)) (6) Any notice under subsection (1), (2), (3), ((~~or~~)) (4), or (5) of this section must:

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1), (2), (3), ((~~or~~)) (4), or (5) of this section is delivered; and

(e) Be accompanied by a copy of this chapter.

**Sec.**  RCW 23B.13.230 and 2013 c 97 s 3 are each amended to read as follows:

(1) A shareholder sent a notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to RCW 23B.13.220((~~(5)~~)) (6)(c), and deposit the shareholder's certificates, all in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (1) of this section retains all other rights of a shareholder until the proposed corporate action is effected.

(3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the notice, is not entitled to payment for the shareholder's shares under this chapter.

**PART II**

**LIMITED PARTNERSHIPS**

**Sec.**  RCW 25.10.011 and 2020 c 57 s 81 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 limited partnership" means the certificate required by RCW 25.10.201, including the certificate as amended or restated.

(2) "Contribution," except in the term "right of contribution," means any benefit provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) A comparable order under federal, state, or foreign law governing insolvency.

(4) "Designated office" means the principal office indicated in the limited partnership's most recent annual report, or, if the principal office is not located within this state, the office of the limited partnership's registered agent.

(5) "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to RCW 25.10.401(3).

(7) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one or more general partners and one or more limited partners. "Foreign limited partnership" includes a foreign limited liability limited partnership.

(8) "General partner" means:

(a) With respect to a limited partnership, a person that:

(i) Becomes a general partner under RCW 25.10.371; or

(ii) Was a general partner in a limited partnership when the limited partnership became subject to this chapter under RCW 25.10.911 (1) or (2); and

(b) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

(9) "Limited liability limited partnership," except in the term "foreign limited liability limited partnership," means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

(10) "Limited partner" means:

(a) With respect to a limited partnership, a person that:

(i) Becomes a limited partner under RCW 25.10.301; or

(ii) Was a limited partner in a limited partnership when the limited partnership became subject to this chapter under RCW 25.10.911 (1) or (2); and

(b) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(11) "Limited partnership," except in the terms "foreign limited partnership" and "foreign limited liability limited partnership," means an entity, having one or more general partners and one or more limited partners, that is formed under this chapter by two or more persons or becomes subject to this chapter under article 11 of this chapter or RCW 25.10.911 (1) or (2). "Limited partnership" includes a limited liability limited partnership.

(12) "Partner" means a limited partner or general partner.

(13) "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. "Partnership agreement" includes the agreement as amended or restated.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; ((~~public corporation,~~)) or any other legal or commercial entity.

(15) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(16) "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

(17) "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.

(18) "Required information" means the information that a limited partnership is required to maintain under RCW 25.10.091.

(19) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol;

(b) To attach to or logically associate with the record an electronic symbol, sound, or process; or

(c) With respect to a record to be filed with the secretary of state, to comply with the standard for filing with the office of the secretary of state as prescribed by the secretary of state.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) "Tangible medium" means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible material.

(22) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(23) "Transferable interest" means a partner's right to receive distributions.

(24) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

**Sec.**  RCW 25.10.101 and 2009 c 188 s 112 are each amended to read as follows:

A partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

**Sec.**  RCW 25.10.491 and 2009 c 188 s 507 are each amended to read as follows:

When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount ((~~owed~~)) due and payable to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

**Sec.**  RCW 25.10.496 and 2009 c 188 s 508 are each amended to read as follows:

(1) A limited partnership may not make a distribution in violation of the partnership agreement.

(2) A limited partnership may not make a distribution ((~~if after~~)) to the extent that at the time of the distribution, after giving effect to the distribution:

(a) The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

(b) The limited partnership's total assets would be less than the sum of its total liabilities other than liabilities to partners on account of their partnership interests and liabilities for which recourse of creditors is limited to specified property of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.

(3) A limited partnership may base a determination that a distribution is not prohibited under subsection (2) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(4) Except as otherwise provided in subsection (7) of this section, the effect of a distribution under subsection (2) of this section is measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and

(b) In all other cases, as of the date:

(i) The distribution is authorized, if the payment occurs within one hundred twenty days after that date; or

(ii) The payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.

(5) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(6) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection (2) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(7) ((~~If indebtedness is issued as~~)) The effect of a distribution of indebtedness under subsection (2) of this section is measured:

(a) In the case of a distribution of indebtedness described in subsection (6) of this section, each payment of principal or interest ((~~on the indebtedness~~)) is treated as a distribution, the effect of which is measured on the date the payment is actually made; and

(b) In the case of a distribution of any other indebtedness, the effect of the distribution is measured as of the date the indebtedness is distributed.

**Sec.**  RCW 25.10.546 and 2009 c 188 s 701 are each amended to read as follows:

The only interest of a partner that is transferable is the partner's transferable interest. A transferable interest is personal property. A partner has no interest in specific partnership property.

**Sec.**  RCW 25.10.771 and 2015 c 176 s 6127 are each amended to read as follows:

(1) An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) ((~~All~~)) The title to all real estate and other property owned by the converting organization remains vested in the converted organization without reversion or impairment;

(b) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(c) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(e) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(f) Except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of article 8 of this chapter.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not registered to transact business in this state may be served with process pursuant to RCW 23.95.450 for purposes of enforcing an obligation under this subsection.

**Sec.**  RCW 25.10.791 and 2015 c 176 s 6129 are each amended to read as follows:

(1) When a merger becomes effective:

(a) The surviving organization continues;

(b) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(c) ((~~All~~)) The title to all real estate and other property owned by each constituent organization that ceases to exist vests in the surviving organization without reversion or impairment;

(d) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(e) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(f) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(g) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(h) Except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of article 8 of this chapter; and

(i) Any amendments provided for in the articles of merger for the organizational document that created the surviving organization become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not registered to transact business in this state may be served with process pursuant to RCW 23.95.450 for the purposes of enforcing an obligation under this subsection.

**PART III**

**LIMITED LIABILITY COMPANIES**

**Sec.**  RCW 25.15.006 and 2020 c 57 s 82 are each amended to read as follows:

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

(1) "Agreed value" means the value of the contributions made by a member to the limited liability company. Such value shall equal the amount agreed upon in a limited liability company agreement or, if no value is agreed upon, the value shall be determined based on the records of the limited liability company.

(2) "Certificate of formation" means the certificate of formation required by RCW 25.15.071 and such certificate as amended or restated.

(3) "Distribution" means a transfer of money or other property from a limited liability company to a member in the member's capacity as a member or to a transferee on account of a transferable interest owned by the transferee.

(4) "Execute," "executes," or "executed" means with present intent to authenticate or adopt a record:

(a) To sign or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(5) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(6) "Foreign professional limited liability company" means a foreign limited liability company formed for the purpose of rendering professional services.

(7) "Limited liability company" or "domestic limited liability company" means a limited liability company having one or more members or transferees that is formed under this chapter.

((~~(7)~~)) (8) "Limited liability company agreement" means the agreement, including the agreement as amended or restated, whether oral, implied, in a record, or in any combination, of the member or members of a limited liability company concerning the affairs of the limited liability company and the conduct of its business.

((~~(8)~~)) (9) "Manager" means a person, or a board, committee, or other group of persons, named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement.

((~~(9)~~)) (10) "Manager-managed" means, with respect to a limited liability company, that the limited liability company agreement vests management of the limited liability company in one or more managers.

((~~(10)~~)) (11) "Member" means a person who has been admitted to a limited liability company as a member as provided in RCW 25.15.116 and who has not been dissociated from the limited liability company.

((~~(11)~~)) (12) "Member-managed" means, with respect to a limited liability company, that the limited liability company is not manager-managed.

((~~(12)~~)) (13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

((~~(13)~~)) (14) "Principal office" means the office, in or out of this state, so designated in the annual report, where the principal executive offices of a domestic or foreign limited liability company are located.

((~~(14)~~)) (15) "Professional limited liability company" means a limited liability company that is formed in accordance with RCW 25.15.046 for the purpose of rendering professional service.

((~~(15)~~)) (16) "Professional service" means the same as defined under RCW 18.100.030.

((~~(16)~~)) (17) "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.

((~~(17)~~)) (18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

((~~(18)~~)) (19) "Tangible medium" means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible material.

((~~(19)~~)) (20) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, gift, and transfer by operation of law, except as otherwise provided in RCW 25.15.251(6).

((~~(20)~~)) (21) "Transferable interest" means a member's or transferee's right to receive distributions of the limited liability company's assets.

((~~(21)~~)) (22) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

(23) "Withdraw" or "withdrawal" means, with respect to a member of a limited liability company or a holder of a transferable interest in a limited liability company, that the member or holder of the transferable interest provides written notice to the limited liability company of its intent to surrender all of its transferable interest and rights as a member to the limited liability company. A withdrawal is effective as of the later of the date the limited liability company receives the written notice of withdrawal or the date specified in such notice.

**Sec.**  RCW 25.15.046 and 2015 c 176 s 7105 are each amended to read as follows:

(1) A person or group of persons duly licensed or otherwise legally authorized to render the same professional services within this state may form and become a member or members of a professional limited liability company under the provisions of this chapter for the purposes of rendering professional service.

(2) A professional limited liability company is subject to all the provisions of chapter 18.100 RCW that apply to a professional corporation. A professional limited liability company's managers, members, agents, and employees are subject to all the provisions of chapter 18.100 RCW that apply to the directors, officers, shareholders, agents, or employees of a professional corporation, except as provided otherwise in this section and RCW 25.15.048.

(3) If the limited liability company's members are required to be licensed to practice such profession, and the limited liability company fails to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, or other evidence of financial responsibility of a kind designated by rule by the state insurance commissioner and in the amount of at least one million dollars or a greater amount as the state insurance commissioner may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the business, then the limited liability company's members are personally liable to the extent that, had the insurance, bond, or other evidence of responsibility been maintained, it would have covered the liability in question.

(4) For purposes of applying chapter 18.100 RCW to a professional limited liability company, the terms "director" or "officer" means manager, "shareholder" means member, "corporation" means professional limited liability company, "articles of incorporation" means certificate of formation, "shares" or "capital stock" means a limited liability company interest, "incorporator" means the person who executes the certificate of formation, and "bylaws" means the limited liability company agreement.

(5) The name of a professional limited liability company must comply with RCW 23.95.305.

(6) Subject to Article VII of this chapter, the following may be a member of a professional limited liability company and may be the transferee of the interest of an ineligible person or deceased member of the professional limited liability company:

(a) A professional corporation, if its shareholders, directors, and its officers, other than the secretary and the treasurer, are licensed or otherwise legally authorized to render the same specific professional services as the professional limited liability company; ((~~and~~))

(b) Another professional limited liability company, if the managers and members of both professional limited liability companies are licensed or otherwise legally authorized to render the same specific professional services; and

(c) A foreign professional limited liability company, if the managers and members of the foreign professional limited liability company are duly licensed or otherwise legally authorized to render the same specific professional services in any jurisdiction other than this state as the managers and members of the professional limited liability company.

(7) Formation of a limited liability company under this section does not restrict the application of the uniform disciplinary act under chapter 18.130 RCW, or any applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential.

**Sec.**  RCW 25.15.116 and 2015 c 188 s 25 are each amended to read as follows:

(1) In connection with the admission of the initial member or members of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

(a) The formation of the limited liability company; or

(b) The time provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when the person's admission is reflected in the records of the limited liability company.

(2) After the admission of the initial member or members of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company;

(b) In the case of a transferee of a limited liability company interest, upon compliance with any procedure for admission provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company agreement; ((~~or~~))

(c) In the case of a person being admitted as a member of a surviving or resulting limited liability company pursuant to a merger or conversion approved in accordance with this chapter, as provided in the limited liability company agreement of the surviving or resulting limited liability company or in the agreement of merger or plan of merger or conversion, and in the event of any inconsistency, the terms of the agreement of merger or plan of merger or conversion control; and in the case of a person being admitted as a member of a limited liability company pursuant to a merger or conversion in which such limited liability company is not the surviving or resulting limited liability company in the merger or conversion, as provided in the limited liability company agreement of such limited liability company; or

(d) In the case of a transferee acquiring all of the transferor's limited liability company interest from a transferor that is the only member of the limited liability company, upon the effectiveness of the transfer.

(3) A person may be admitted as a member of a limited liability company without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

**Sec.**  RCW 25.15.121 and 2015 c 188 s 26 are each amended to read as follows:

(1) Except as otherwise provided by this chapter, the affirmative vote, approval, or consent of a majority of the members is necessary for actions requiring member approval.

(2) The affirmative vote, approval, or consent of all members is required to:

(a) Amend the certificate of formation, except as provided in RCW 25.15.076(2);

(b) Amend the limited liability company agreement;

(c) Authorize a manager, member, or other person to do any act on behalf of the limited liability company that contravenes the limited liability company agreement, including any provision that expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof;

(d) Admit as a member of the limited liability company a person acquiring a limited liability company interest directly from the limited liability company as provided in RCW 25.15.116(2)(a);

(e) Admit as a member of the limited liability company a transferee of a limited liability company interest as provided in RCW 25.15.116(2)(b);

(f) Authorize a member's removal as a member of the limited liability company as provided in RCW 25.15.131(1)(e);

(g) Waive a member's dissociation as a member of the limited liability company as provided in RCW 25.15.131(1) (f), (g), or (h);

(h) ((~~Authorize the withdrawal of a member from the limited liability company as provided in RCW 25.15.131(2);~~

~~(i)~~)) Compromise any member's obligation to make a contribution or return cash or other property paid or distributed to the member in violation of this chapter as provided in RCW 25.15.196(2);

((~~(j)~~)) (i) Amend the certificate of formation and extend the date of dissolution, if a dissolution date is specified in the certificate of formation, as provided in RCW 25.15.265(1);

((~~(k)~~)) (j) Dissolve the limited liability company as provided in RCW 25.15.265(3);

(k) Approve a plan of conversion as provided in RCW 25.15.441(1);

(l) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited liability company's property, other than in the ordinary course of the limited liability company's activities or activities of the kind carried on by the limited liability company; or

(m) Undertake any other act outside the ordinary course of the limited liability company's activities.

(3) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members do not have voting rights.

(4) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. If the limited liability company agreement so provides, voting by members may be on a per capita, profit share, class, group, or any other basis.

(5) A limited liability company agreement may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

**Sec.**  RCW 25.15.131 and 2020 c 312 s 727 are each amended to read as follows:

(1) A person is dissociated as a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member dies or withdraws ((~~by voluntary act~~)) from the limited liability company as provided in subsection (2) of this section;

(b) The transfer of all of the member's transferable interest in the limited liability company;

(c) The member is removed as a member in accordance with the limited liability company agreement;

(d) The occurrence of an event upon which the member ceases to be a member under the limited liability company agreement;

(e) The person is a corporation, limited liability company, general partnership, or limited partnership, and the person is removed as a member by the unanimous consent of the other members, which may be done under this subsection (1)(e) only if:

(i) The person has filed articles of dissolution, a certificate of dissolution or the equivalent, or the person has been administratively or judicially dissolved, or its right to conduct business has been suspended or revoked by the jurisdiction of its incorporation, or the person has otherwise been dissolved; and

(ii) The dissolution has not been revoked or the person or its right to conduct business has not been reinstated within ninety days after the limited liability company notifies the person that it will be removed as a member for any reason identified in (e)(i) of this subsection;

(f) Unless all other members otherwise agree at the time, the member (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order for relief in bankruptcy proceedings; (iv) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of the nature described in (f)(i) through (iv) of this subsection; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(g) Unless all other members otherwise agree at the time, if within one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety days after the expiration of any stay, the appointment is not vacated; or

(h) Unless all other members otherwise agree at the time, in the case of a member who is an individual, the entry of an order by a court of competent jurisdiction adjudicating the member as being subject to a conservatorship under RCW 11.130.360.

(2) A member may withdraw from a limited liability company at ((~~the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw from the limited liability company without the written consent of all other members~~)) any time. The withdrawn member or transferee shall have no right to payment from the limited liability company as a consequence of its withdrawal.

(3) When a person is dissociated as a member of a limited liability company:

(a) The person's right to participate as a member in the management and conduct of the limited liability company's activities terminates;

(b) If the limited liability company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(c) Subject to subsection (5) of this section, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

(4) A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other members which the person incurred while a member.

(5) If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in RCW 25.15.251 and, for the purposes of settling the estate, the rights of a current member under RCW 25.15.136.

**Sec.**  RCW 25.15.441 and 2015 c 188 s 85 are each amended to read as follows:

(1) Subject to RCW 25.15.456, a plan of conversion must be ((~~consented to~~)) approved either by all the members of a converting limited liability company or as provided in a written limited liability company agreement.

(2) Subject to RCW 25.15.456 and any contractual rights, after a conversion is approved, and at any time before a filing is made under RCW 25.15.446, a converting limited liability company may amend the plan or abandon the planned conversion:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, by the same approval as was required to approve the plan.

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