

CERTIFICATION OF ENROLLMENT

SENATE BILL 5148

Chapter 269, Laws of 1991
(partial veto)

52nd Legislature
1991 Regular Session

LIMITED PARTNERSHIPS--REVISED PROVISIONS

EFFECTIVE DATE: 7/28/91

Passed by the Senate April 22, 1991
Yeas 45 Nays 1

JOEL PRITCHARD
President of the Senate

Passed by the House April 17, 1991
Yeas 95 Nays 0

JOE KING
**Speaker of the
House of Representatives**

Approved May 17, 1991, with
the exception of sections 8
and 9, which are vetoed.

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5148** as passed by the Senate and the House of Representatives on the dates hereon set forth.

GORDON A. GOLOB
Secretary

FILED

May 17, 1991 - 1:24 p.m.

**Secretary of State
State of Washington**

SENATE BILL 5148

AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Senators Nelson, A. Smith and Newhouse.

Read first time January 22, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to limited partnerships; amending RCW 25.10.020,
2 25.10.030, 25.10.100, 25.10.110, 25.10.130, 25.10.140, 25.10.160,
3 25.10.180, 25.10.190, 25.10.210, 25.10.600, 25.10.370, 25.10.440,
4 23B.01.400, 23B.04.010, and 23B.13.020; adding new sections to chapter
5 25.10 RCW; adding new sections to chapter 23B.11 RCW; adding a new
6 article to chapter 25.10 RCW; creating a new section; and repealing RCW
7 25.10.380.

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

9 **Sec. 1.** RCW 25.10.020 and 1987 c 55 s 2 are each amended to read
10 as follows:

11 (1) The name of each limited partnership formed pursuant to this
12 chapter as set forth in its certificate of limited partnership:

13 ~~((1))~~ (a) Shall contain the words "limited partnership" or the
14 abbreviation "L.P.";

1 ~~((2))~~ (b) May not contain the name of a limited partner unless
2 ~~((a))~~ (i) it is also the name of a general partner, or the corporate
3 name of a corporate general partner, or ~~((b))~~ (ii) the business of
4 the limited partnership had been carried on under that name before the
5 admission of that limited partner;

6 ~~((3) May not be the same as, or deceptively similar to the name of
7 any domestic corporation or limited partnership existing under the laws
8 of this state or any foreign corporation or limited partnership
9 authorized to transact business in this state, or a name the exclusive
10 right to which is, at the time, reserved in the manner provided in this
11 title, or under the provisions of RCW 23A.08.060, or the name of a
12 corporation or limited partnership which has in effect a registration
13 of its corporate or limited partnership name as provided in this title
14 or under the provisions of Title 23A RCW, unless:~~

15 ~~(a) The written consent of such other domestic or foreign
16 corporation or limited partnership or holder of a reserved or
17 registered name to use the same or deceptively similar name has been
18 filed with the certificate and one or more words or numerals are added
19 or deleted to make the name distinguishable from the other name as
20 determined by the secretary of state; or~~

21 ~~(b) A certified copy of a final decree of a court of competent
22 jurisdiction establishing the prior right of the limited partnership to
23 use the name in this state is filed with the certificate;~~

24 ~~(4))~~ (c) May not contain any of the following words or phrases:
25 "Bank", "banking", "banker", "trust", "cooperative"; or any combination
26 of the words "industrial" and "loan"; or any combination of any two or
27 more of the words "building", "savings", "loan", "home", "association"
28 and "society"; or any other words or phrases prohibited by any statute
29 of this state;

1 (d) Except as authorized by subsections (2) and (3) of this
2 section, must be distinguishable upon the records of the secretary of
3 state from:

4 (i) The name or reserved name of a foreign or domestic limited
5 partnership;

6 (ii) The corporate name of a corporation incorporated or authorized
7 to transact business in this state;

8 (iii) A corporate name reserved or registered under RCW 23B.04.020
9 or 23B.04.030;

10 (iv) The fictitious name adopted pursuant to RCW 23B.15.060 by a
11 foreign corporation authorized to transact business in this state
12 because its real name is unavailable; and

13 (v) The corporate name of a not-for-profit corporation incorporated
14 or authorized to conduct affairs in this state.

15 (2) A limited partnership may apply to the secretary of state for
16 authorization to use a name that is not distinguishable upon the
17 records from one or more of the names described in subsection (1) of
18 this section. The secretary of state shall authorize use of the name
19 applied for if:

20 (a) The other limited partnership, corporation, or holder consents
21 to the use in writing and files with the secretary of state documents
22 necessary to change its name or the name reserved or registered to a
23 name that is distinguishable upon the records of the secretary of state
24 from the name of the applying limited partnership; or

25 (b) The applicant delivers to the secretary of state a certified
26 copy of the final judgment of a court of competent jurisdiction
27 establishing the applicant's right to use the name applied for in this
28 state.

29 (3) A limited partnership may use the name, including the
30 fictitious name, of another domestic or foreign limited partnership or

1 corporation that is used in this state if the other limited partnership
2 or corporation is organized, incorporated, or authorized to transact
3 business in this state and the proposed user limited partnership:

4 (a) Has merged with the other limited partnership or corporation;
5 or

6 (b) Results from reorganization with the other limited partnership
7 or corporation.

8 (4) A name shall not be considered distinguishable upon the records
9 of the secretary of state by virtue of:

10 (a) A variation in the designation, under subsection (1)(a) of this
11 section, used for the same name;

12 (b) The addition or deletion of an article or conjunction such as
13 "the" or "and" from the same name;

14 (c) Punctuation, capitalization, or special characters or symbols
15 in the same name; or

16 (d) Use of abbreviation or the plural form of a word in the same
17 name.

18 (5) This title does not control the use of assumed business names
19 or "trade names."

20 **Sec. 2.** RCW 25.10.030 and 1981 c 51 s 3 are each amended to read
21 as follows:

22 (1) The exclusive right to the use of a name may be reserved by:

23 (a) Any person intending to organize a limited partnership under
24 this chapter and to adopt that name;

25 (b) Any domestic limited partnership or any foreign limited
26 partnership registered in this state which, in either case, intends to
27 adopt that name;

28 (c) Any foreign limited partnership intending to register in this
29 state and to adopt that name; and

1 (d) Any person intending to organize a foreign limited partnership
2 and intending to have it registered in this state and adopt that name.

3 (2) The reservation shall be made by filing with the secretary of
4 state an application, executed by the applicant, to reserve a specified
5 name. If the secretary of state finds that the name is available for
6 use by a domestic or foreign limited partnership, he or she shall
7 reserve the name for the exclusive use of the applicant for a period of
8 one hundred and eighty days. Such reservation shall be limited to one
9 filing and ~~((one renewal for a like period))~~ shall be nonrenewable.

10 The right to the exclusive use of a reserved name may be
11 transferred to any other person by filing in the office of the
12 secretary of state a notice of the transfer, executed by the applicant
13 for whom the name was reserved and specifying the name and address of
14 the transferee.

15 **Sec. 3.** RCW 25.10.100 and 1987 c 55 s 7 are each amended to read
16 as follows:

17 (1) Upon the dissolution and ~~((commencement))~~ completion of winding
18 up of a limited partnership or at any time there are no limited
19 partners, duplicate originals of a certificate of ~~((dissolution))~~
20 cancellation shall be filed with the secretary of state and set forth:

21 (a) The name of the limited partnership;

22 (b) The date and place of filing of its original certificate of
23 limited partnership;

24 (c) The reason for dissolution ~~((and commencement of winding up))~~;
25 ~~((and))~~

26 (d) The effective date, which shall be a later date certain, of
27 cancellation if it is not to be effective upon the filing of the
28 certificate; and

1 (e) Any other information the person filing the certificate
2 determines.

3 (2) A certificate of limited partnership shall be canceled upon the
4 effective date of a certificate of cancellation. ~~((A certificate of
5 cancellation shall be filed upon the completion of winding up the
6 limited partnership. Duplicate originals of a certificate of
7 cancellation shall be filed with the secretary of state and shall set
8 forth:~~

9 ~~(a) The name of the limited partnership;~~

10 ~~(b) The date and place of filing of its original certificate of
11 limited partnership;~~

12 ~~(c) The effective date, which shall be a later date certain, of
13 cancellation if it is not to be effective upon the filing of the
14 certificate; and~~

15 ~~(d) Any other information the person filing the certificate
16 determines.))~~

17 (3) A certificate of limited partnership for a domestic limited
18 partnership which is not the surviving entity in a merger shall be
19 canceled upon the effective date of the merger.

20 **Sec. 4.** RCW 25.10.110 and 1987 c 55 s 8 are each amended to read
21 as follows:

22 (1) Each ~~((certificate))~~ document required by this article to be
23 filed in the office of the secretary of state shall be executed in the
24 following manner:

25 (a) Each original certificate of limited partnership must be signed
26 by all general partners named therein;

27 (b) A certificate of amendment or restatement must be signed by at
28 least one general partner and by each other general partner designated
29 in the certificate as a new general partner; ~~((and))~~

1 (c) A certificate of ~~((dissolution and a certificate of))~~
2 cancellation must be signed by all general partners or the limited
3 partners winding up the partnership pursuant to RCW 25.10.460;

4 (d) If a surviving domestic limited partnership is filing articles
5 of merger, the articles of merger must be signed by at least one
6 general partner of the domestic limited partnership, or if the articles
7 of merger are being filed by a surviving foreign limited partnership or
8 by a corporation, the articles of merger must be signed by a person
9 authorized by such foreign limited partnership or corporation; and

10 (e) A foreign limited partnership's application for a certificate
11 of authority must be signed by one of its general partners.

12 (2) Any person may sign a certificate, articles of merger, or
13 partnership agreement by an attorney-in-fact: PROVIDED, That each
14 document signed in such manner identifies the capacity in which the
15 signator signed.

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

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

24 **Sec. 5.** RCW 25.10.130 and 1987 c 55 s 10 are each amended to read
25 as follows:

26 (1) Two signed copies of the certificate of limited partnership and
27 of any certificates of amendment, restatement, ~~((dissolution,))~~ or
28 cancellation (or of any judicial decree of amendment or cancellation)
29 shall be delivered to the secretary of state. A person who executes a

1 certificate as an agent or fiduciary need not exhibit evidence of his
2 authority as a prerequisite to filing. Unless the secretary of state
3 finds that any certificate does not conform to law, upon receipt of all
4 filing fees required by law the secretary of state shall:

5 (a) Endorse on each duplicate original the word "Filed" and the
6 effective date of the filing;

7 (b) File one duplicate original; and

8 (c) Return the other duplicate original to the person who filed it
9 or the person's representative.

10 (2) Upon the filing of a certificate of amendment or restatement,
11 or judicial decree of amendment, in the office of the secretary of
12 state, the certificate of limited partnership shall be amended or
13 restated as set forth therein, and upon the effective date of a
14 certificate of cancellation or a judicial decree thereof, the
15 certificate of limited partnership is canceled.

16 **Sec. 6.** RCW 25.10.140 and 1987 c 55 s 11 are each amended to read
17 as follows:

18 If any certificate of limited partnership or certificate of
19 amendment, restatement, (~~dissolution~~) or cancellation contains a
20 false statement, one who suffers loss by reliance on the statement may
21 recover damages for the loss from:

22 (1) Any person who executes the certificate, or causes another to
23 execute it on his behalf, and knew, and any general partner who knew or
24 should have known, the statement to be false at the time the
25 certificate was executed; and

26 (2) Any general partner who thereafter knows or should have known
27 that any arrangement or other fact described in the certificate has
28 changed, making the statement inaccurate in any respect within a
29 sufficient time before the statement was relied upon reasonably to have

1 enabled that general partner to cancel or amend the certificate, or to
2 file a petition for its cancellation or amendment under RCW 25.10.120.

3 **Sec. 7.** RCW 25.10.160 and 1987 c 55 s 13 are each amended to read
4 as follows:

5 Upon the return by the secretary of state pursuant to RCW 25.10.130
6 of a certificate marked "Filed", the general partners shall promptly
7 deliver or mail a copy of the certificate of limited partnership and
8 each certificate of amendment, restatement, (~~((dissolution,))~~) or
9 cancellation to each limited partner unless the partnership agreement
10 provides otherwise.

12 ***Sec. 8.** RCW 25.10.180 and 1981 c 51 s 18 are each amended to read
13 as follows:

14 (~~((Subject to RCW 25.10.190,))~~) (1) The partnership agreement may
15 grant to all or a specified group of the limited partners the right to
16 vote on a per capita or other basis upon any matter.

17 (2) The partnership agreement may authorize any one or more limited
18 partners to exercise all or any part of the other rights and powers a
19 general partner has under RCW 25.10.240(1).

20 *Sec. 8 was vetoed, see message at end of chapter.

22 ***Sec. 9.** RCW 25.10.190 and 1987 c 55 s 15 are each amended to read
23 as follows:

24 (1) Except as provided in subsection (~~((4))~~) (2) of this section,
25 a limited partner is not liable for the obligations of a limited
26 partnership by reason of being a limited partner. A limited partner
27 does not become liable for the obligations of the limited partnership
28 by participating in the management or control of the business of the
29 limited partnership unless the limited partner is also a general

1 partner ((or, in addition to the exercise of rights and powers as a
2 limited partner, the limited partner participates in the control of the
3 business. However, if the limited partner participates in the control
4 of the business, the limited partner is liable only to persons who
5 transact business with the limited partnership reasonably believing,
6 based upon the limited partner's conduct, that the limited partner is
7 a general partner)).

8 (2) ((A limited partner does not participate in the control of the
9 business within the meaning of subsection (1) of this section solely by
10 doing one or more of the following:

11 (a) Being a contractor for or an agent or employee of the limited
12 partnership or of a general partner, or being an officer, director, or
13 shareholder of a general partner that is a corporation;

14 (b) Consulting with and advising a general partner with respect to
15 the business of the limited partnership;

16 (c) Acting as surety for the limited partnership or guaranteeing or
17 assuming one or more specific obligations of the limited partnership or
18 providing collateral for partnership obligations;

19 (d) Taking any action required or permitted by law to bring or
20 pursue a derivative action in the right of the limited partnership;

21 (e) Requesting or attending a meeting of partners;

22 (f) Proposing, approving, or disapproving, by voting or otherwise,
23 on one or more of the following matters:

24 (i) The dissolution and winding up of the limited partnership;

25 (ii) The sale, exchange, lease, mortgage, pledge, or other transfer
26 of all or substantially all of the assets of the limited partnership;

27 (iii) The incurrence of indebtedness by the limited partnership
28 other than in the ordinary course of its business;

29 (iv) A change in the nature of its business;

30 (v) The admission or removal of a limited partner;

1 ~~(vi) The admission or removal of a general partner;~~

2 ~~(vii) A transaction involving an actual or potential conflict of~~
3 ~~interest between a general partner and the limited partnership or the~~
4 ~~limited partners;~~

5 ~~(viii) An amendment to the partnership agreement or certificate of~~
6 ~~limited partnership; or~~

7 ~~(ix) Matters related to the business of the limited partnership not~~
8 ~~otherwise enumerated in this subsection (2), that the partnership~~
9 ~~agreement states in writing may be subject to the approval or~~
10 ~~disapproval of limited partners or a committee of limited partners;~~

11 ~~(g) Winding up the limited partnership pursuant to RCW 25.10.460 or~~
12 ~~conducting the affairs of the limited partnership during any portion of~~
13 ~~the ninety days referred to in RCW 25.10.440; or~~

14 ~~(h) Exercising any right or power permitted to limited partners~~
15 ~~under this chapter and not specifically enumerated in this subsection~~
16 ~~(2).~~

17 ~~(3) The enumeration in subsection (2) of this section does not mean~~
18 ~~that the possession or exercise of any other powers by a limited~~
19 ~~partner constitutes participation by him in the control of the business~~
20 ~~of the limited partnership.~~

21 ~~(4)) A limited partner who knowingly permits his or her name to be~~
22 ~~used in the name of the limited partnership, except under circumstances~~
23 ~~permitted by RCW ((25.10.020(2))) 25.10.020(1)(b), is liable to~~
24 ~~creditors who extend credit to the limited partnership without actual~~
25 ~~knowledge that the limited partner is not a general partner.~~

26 *Sec. 9 was vetoed, see message at end of chapter.

27 **Sec. 10.** RCW 25.10.210 and 1987 c 55 s 17 are each amended to read
28 as follows:

1 Each limited partner or limited partner's agent or attorney has the
2 right to:

3 (1) Inspect and copy any of the partnership records required to be
4 maintained by RCW 25.10.050; and

5 (2) Obtain from the general partners from time to time upon
6 reasonable demand (a) true and full information regarding the state of
7 the business and financial condition of the limited partnership, (b)
8 promptly after becoming available, a copy of the limited partnership's
9 federal income tax returns and state business and occupation tax return
10 for each year, and (c) other information regarding the affairs of the
11 limited partnership as is just and reasonable.

12 NEW SECTION. **Sec. 11.** A new section is added to chapter 25.10 RCW
13 to read as follows:

14 (1) One or more domestic limited partnerships may merge with one or
15 more domestic limited partnerships or domestic corporations pursuant to
16 a plan of merger approved or adopted as provided in section 13 of this
17 act.

18 (2) The plan of merger must set forth:

19 (a) The name of each limited partnership and corporation planning
20 to merge and the name of the surviving limited partnership or
21 corporation into which the other limited partnership or corporation
22 plans to merge;

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

24 (c) The manner and basis of converting the partnership interests of
25 each limited partnership and the shares of each corporation party to
26 the merger into the partnership interests, shares, obligations, or
27 other securities of the surviving or any other limited partnership or
28 corporation or into cash or other property in whole or part.

29 (3) The plan of merger may set forth:

1 (a) Amendments to the certificate of limited partnership of the
2 surviving limited partnership;

3 (b) Amendments to the articles of incorporation of the surviving
4 corporation; and

5 (c) Other provisions relating to the merger.

6 (4) If the plan of merger does not specify a delayed effective
7 date, it shall become effective upon the filing of articles of merger.
8 If the plan of merger specifies a delayed effective time and date, the
9 plan of merger becomes effective at the time and date specified. If
10 the plan of merger specifies a delayed effective date but no time is
11 specified, the plan of merger is effective at the close of business on
12 that date. A delayed effective date for a plan of merger may not be
13 later than the ninetieth day after the date it is filed.

14 **Sec. 12.** RCW 25.10.600 and 1987 c 55 s 35 are each amended to read
15 as follows:

16 The secretary of state shall adopt rules establishing fees which
17 shall be charged and collected for:

18 (1) Filing of a certificate of limited partnership for a domestic
19 or foreign limited partnership;

20 (2) Filing of a certificate of cancellation (~~(or a certificate of~~
21 ~~dissolution)~~) for a domestic or foreign limited partnership;

22 (3) Filing of a certificate of amendment or restatement for a
23 domestic or foreign limited partnership;

24 (4) Filing an application to reserve or transfer a limited
25 partnership name;

26 (5) Filing any other statement or report authorized or permitted to
27 be filed;

28 (6) Copies, certified copies, certificates, service of process
29 filings, and expedited filings or other special services.

1 In the establishment of a fee schedule, the secretary of state shall,
2 insofar as is possible and reasonable, be guided by the fee schedule
3 provided for corporations registering pursuant to Title ((23A)) 23B
4 RCW. Fees for copies, certified copies, certificates of record, and
5 service of process filings shall be as provided for in RCW
6 ((~~23A.40.030~~) 23B.01.220.

7 All fees collected by the secretary of state shall be deposited
8 with the state treasurer pursuant to law.

9 NEW SECTION. Sec. 13. A new section is added to chapter 25.10 RCW
10 to read as follows:

11 (1) Unless otherwise provided in its partnership agreement,
12 approval of a plan of merger by a domestic limited partnership party to
13 a merger shall occur when the plan is approved (a) by all general
14 partners of such limited partnership, and (b) by the limited partners
15 or, if there is more than one class of limited partners, then by each
16 class or group of limited partners of such limited partnership, in
17 either case, by limited partners who own more than fifty percent of the
18 then current percentage or other interest in the profits of such
19 limited partnership owned by all limited partners or by the limited
20 partners in each class or group, as appropriate.

21 (2) If a domestic corporation is a party to the merger, the plan of
22 merger shall be adopted and approved as provided in chapter 23B.11 RCW.

23 NEW SECTION. Sec. 14. A new section is added to chapter 25.10 RCW
24 to read as follows:

25 After a plan of merger is approved or adopted, the surviving
26 limited partnership or corporation shall deliver to the secretary of
27 state for filing articles of merger setting forth:

28 (1) The plan of merger;

1 (2) If the approval of any partners or shareholders of one or more
2 limited partnerships or corporations party to the merger was not
3 required, a statement to that effect; or

4 (3) If the approval of any partners or shareholders of one or more
5 of the limited partnerships or corporations party to the merger was
6 required, a statement that the merger was duly approved by such
7 partners and shareholders pursuant to section 13 of this act or chapter
8 23B.11 RCW.

9 NEW SECTION. **Sec. 15.** A new section is added to chapter 25.10 RCW
10 to read as follows:

11 (1) When a merger takes effect:

12 (a) Every other limited partnership or corporation that is party to
13 the merger merges into the surviving limited partnership or corporation
14 and the separate existence of every limited partnership and corporation
15 except the surviving limited partnership or corporation ceases;

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

20 (c) The surviving limited partnership or corporation has all
21 liabilities of each limited partnership and corporation that is party
22 to the merger;

23 (d) A proceeding pending against any limited partnership or
24 corporation that is party to the merger may be continued as if the
25 merger did not occur or the surviving limited partnership or
26 corporation may be substituted in the proceeding for the limited
27 partnership or corporation whose existence ceased;

28 (e) The partnership agreement of the surviving limited partnership
29 is amended to the extent provided in the plan of merger;

1 (f) The articles of incorporation of the surviving corporation are
2 amended to the extent provided in the plan of merger; and

3 (g) The former holders of the partnership interests of every
4 domestic limited partnership that is party to the merger and the former
5 holders of the shares of every domestic corporation that is party to
6 the merger are entitled only to the rights provided in the articles of
7 merger or to their rights under sections 17 through 28 of this act or
8 to the rights under chapter 23B.13 RCW.

9 (2) Unless otherwise agreed, a merger of a domestic limited
10 partnership, including a domestic limited partnership which is not the
11 surviving entity in the merger, shall not require the domestic limited
12 partnership to wind up its affairs under RCW 25.10.460 or pay its
13 liabilities and distribute its assets under RCW 25.10.470.

14 NEW SECTION. **Sec. 16.** A new section is added to chapter 25.10 RCW
15 to read as follows:

16 (1) One or more foreign limited partnerships and one or more
17 foreign corporations may merge with one or more domestic limited
18 partnerships or domestic corporations if:

19 (a) The merger is permitted by the law of the jurisdiction under
20 which each foreign limited partnership was organized, and each foreign
21 corporation was incorporated, and each foreign limited partnership and
22 foreign corporation complies with that law in effecting the merger;

23 (b) The surviving entity complies with section 14 of this act;

24 (c) Each domestic limited partnership complies with section 13 of
25 this act; and

26 (d) Each domestic corporation complies with section 38 of this act.

27 (2) Upon the merger taking effect, a surviving foreign limited
28 partnership or corporation is deemed to appoint the secretary of state
29 as its agent for service of process in a proceeding to enforce any

1 obligation or the rights of dissenting partners or shareholders of each
2 domestic limited partnership or domestic corporation party to the
3 merger.

4 NEW SECTION. **Sec. 17.** As used in this article:

5 (1) "Limited partnership" means the domestic limited partnership in
6 which the dissenter holds or held a partnership interest, or the
7 surviving limited partnership or corporation by merger, whether foreign
8 or domestic, of that limited partnership.

9 (2) "Dissenter" means a partner who is entitled to dissent from a
10 plan of merger and who exercises that right when and in the manner
11 required by this article.

12 (3) "Fair value," with respect to a dissenter's partnership
13 interest, means the value of the partnership interest immediately
14 before the effectuation of the merger to which the dissenter objects,
15 excluding any appreciation or depreciation in anticipation of the
16 merger unless exclusion would be inequitable.

17 (4) "Interest" means interest from the effective date of the merger
18 until the date of payment, at the average rate currently paid by the
19 limited partnership on its principal bank loans or, if none, at a rate
20 that is fair and equitable under all the circumstances.

21 NEW SECTION. **Sec. 18.** (1) Except as provided in section 20 or
22 22(2) of this act, a partner of a domestic limited partnership is
23 entitled to dissent from, and obtain payment of, the fair value of the
24 partner's partnership interest in the event of consummation of a plan
25 of merger to which the limited partnership is a party as permitted by
26 section 11 or 16 of this act.

27 (2) A partner entitled to dissent and obtain payment for the
28 partner's partnership interest under this article may not challenge the

1 merger creating the partner's entitlement unless the merger fails to
2 comply with the procedural requirements imposed by this title, Title
3 23B RCW, the partnership agreement, or is fraudulent with respect to
4 the partner or the limited partnership.

5 (3) The right of a dissenting partner to obtain payment of the fair
6 value of the partner's partnership interest shall terminate upon the
7 occurrence of any one of the following events:

8 (a) The proposed merger is abandoned or rescinded;

9 (b) A court having jurisdiction permanently enjoins or sets aside
10 the merger; or

11 (c) The partner's demand for payment is withdrawn with the written
12 consent of the limited partnership.

13 NEW SECTION. **Sec. 19.** (1) Not less than ten days prior to the
14 approval of a plan of merger, the limited partnership must send a
15 written notice to all partners who are entitled to vote on or approve
16 the plan of merger that they may be entitled to assert dissenters'
17 rights under this article. Such notice shall be accompanied by a copy
18 of this article.

19 (2) The limited partnership shall notify in writing all partners
20 not entitled to vote on or approve the plan of merger that the plan of
21 merger was approved, and send them the dissenters' notice as required
22 by section 21 of this act.

23 NEW SECTION. **Sec. 20.** A partner who is entitled to vote on or
24 approve the plan of merger and who wishes to assert dissenters' rights
25 must not vote in favor of or approve the plan of merger. A partner who
26 does not satisfy the requirements of this section is not entitled to
27 payment for the partner's interest under this article.

1 NEW SECTION. **Sec. 21.** (1) If the plan of merger is approved,
2 the limited partnership shall deliver a written dissenters' notice to
3 all partners who satisfied the requirements of section 20 of this act.

4 (2) The dissenters' notice required by section 19(2) of this act or
5 by subsection (1) of this section must be sent within ten days after
6 the approval of the plan of merger, and must:

7 (a) State where the payment demand must be sent;

8 (b) Inform holders of the partnership interest as to the extent
9 transfer of the partnership interest will be restricted as permitted by
10 section 23 of this act after the payment demand is received;

11 (c) Supply a form for demanding payment;

12 (d) Set a date by which the limited partnership must receive the
13 payment demand, which date may not be fewer than thirty nor more than
14 sixty days after the date the notice under this section is delivered;
15 and

16 (e) Be accompanied by a copy of this article.

17 NEW SECTION. **Sec. 22.** (1) A partner who demands payment
18 retains all other rights of a partner until the proposed merger becomes
19 effective.

20 (2) A partner sent a dissenters' notice who does not demand payment
21 by the date set in the dissenters' notice is not entitled to payment
22 for the partner's partnership interest under this article.

23 NEW SECTION. **Sec. 23.** The limited partnership may restrict
24 the transfer of partnership interests from the date the demand for
25 their payment is received until the proposed merger becomes effective
26 or the restriction is released under this article.

1 NEW SECTION. **Sec. 24.** (1) Within thirty days of the later of
2 the date the proposed merger becomes effective, or the payment demand
3 is received, the limited partnership shall pay each dissenter who
4 complied with section 22 of this act the amount the limited partnership
5 estimates to be the fair value of the partnership interest, plus
6 accrued interest.

7 (2) The payment must be accompanied by:

8 (a) Copies of the financial statements for the most recent fiscal
9 year maintained as required by RCW 25.10.050;

10 (b) An explanation of how the limited partnership estimated the
11 fair value of the partnership interest;

12 (c) An explanation of how the accrued interest was calculated;

13 (d) A statement of the dissenter's right to demand payment; and

14 (e) A copy of this article.

15 NEW SECTION. **Sec. 25.** (1) If the proposed merger does not
16 become effective within sixty days after the date set for demanding
17 payment, the limited partnership shall release any transfer
18 restrictions imposed as permitted by section 23 of this act.

19 (2) If, after releasing transfer restrictions, the proposed merger
20 becomes effective, the limited partnership must send a new dissenters'
21 notice as provided in sections 19(2) and 21 of this act and repeat the
22 payment demand procedure.

23 NEW SECTION. **Sec. 26.** (1) A dissenter may notify the limited
24 partnership in writing of the dissenter's own estimate of the fair
25 value of the dissenter's partnership interest and amount of interest
26 due, and demand payment of the dissenter's estimate, less any payment
27 under section 24 of this act, if:

1 (a) The dissenter believes that the amount paid is less than the
2 fair value of the dissenter's partnership interest or that the interest
3 due is incorrectly calculated;

4 (b) The limited partnership fails to make payment within sixty days
5 after the date set for demanding payment; or

6 (c) The limited partnership, having failed to effectuate the
7 proposed merger, does not release the transfer restrictions imposed on
8 partnership interests as permitted by section 23 of this act within
9 sixty days after the date set for demanding payment.

10 (2) A dissenter waives the right to demand payment under this
11 section unless the dissenter notifies the limited partnership of the
12 dissenter's demand in writing under subsection (1) of this section
13 within thirty days after the limited partnership made payment for the
14 dissenter's partnership interest.

15 NEW SECTION. **Sec. 27.** (1) If a demand for payment under
16 section 26 of this act remains unsettled, the limited partnership shall
17 commence a proceeding within sixty days after receiving the payment
18 demand and petition the court to determine the fair value of the
19 partnership interest and accrued interest. If the limited partnership
20 does not commence the proceeding within the sixty-day period, it shall
21 pay each dissenter whose demand remains unsettled the amount demanded.

22 (2) The limited partnership shall commence the proceeding in the
23 superior court. If the limited partnership is a domestic limited
24 partnership, it shall commence the proceeding in the county where its
25 office is maintained as required by RCW 25.10.040(1). If the limited
26 partnership is a domestic corporation, it shall commence the proceeding
27 in the county where its principal office, as defined in RCW
28 23B.01.400(17), is located, or if none is in this state, its registered
29 office under RCW 23B.05.010. If the limited partnership is a foreign

1 limited partnership or corporation without a registered office in this
2 state, it shall commence the proceeding in the county in this state
3 where the office of the domestic limited partnership maintained
4 pursuant to RCW 25.10.040(1) merged with the foreign limited
5 partnership or foreign corporation was located.

6 (3) The limited partnership shall make all dissenters (whether or
7 not residents of this state) whose demands remain unsettled parties to
8 the proceeding as in an action against their partnership interests and
9 all parties must be served with a copy of the petition. Nonresidents
10 may be served by registered or certified mail or by publication as
11 provided by law.

12 (4) The limited partnership may join as a party to the proceeding
13 any partner who claims to be a dissenter but who has not, in the
14 opinion of the limited partnership, complied with the provisions of
15 this chapter. If the court determines that such partner has not
16 complied with the provisions of this article, the partner shall be
17 dismissed as a party.

18 (5) The jurisdiction of the court in which the proceeding is
19 commenced is plenary and exclusive. The court may appoint one or more
20 persons as appraisers to receive evidence and recommend decisions on
21 the question of fair value. The appraisers have the powers described
22 in the order appointing them or in any amendment to it. The dissenters
23 are entitled to the same discovery rights as parties in other civil
24 proceedings.

25 (6) Each dissenter made a party to the proceeding is entitled to
26 judgment for the amount, if any, by which the court finds the fair
27 value of the dissenter's partnership interest, plus interest, exceeds
28 the amount paid by the limited partnership.

1 NEW SECTION. **Sec. 28.** (1) The court in a proceeding commenced
2 under section 27 of this act shall determine all costs of the
3 proceeding, including the reasonable compensation and expenses of
4 appraisers appointed by the court. The court shall assess the costs
5 against the limited partnership, except that the court may assess the
6 costs against all or some of the dissenters, in amounts the court finds
7 equitable, to the extent the court finds the dissenters acted
8 arbitrarily, vexatiously, or not in good faith in demanding payment.

9 (2) The court may also assess the fees and expenses of counsel and
10 experts for the respective parties, in amounts the court finds
11 equitable:

12 (a) Against the limited partnership and in favor of any or all
13 dissenters if the court finds the limited partnership did not
14 substantially comply with the requirements of this article; or

15 (b) Against either the limited partnership or a dissenter, in favor
16 of any other party, if the court finds that the party against whom the
17 fees and expenses are assessed acted arbitrarily, vexatiously, or not
18 in good faith with respect to the rights provided by this article.

19 (3) If the court finds that the services of counsel for any
20 dissenter were of substantial benefit to other dissenters similarly
21 situated, and that the fees for those services should not be assessed
22 against the limited partnership, the court may award to these counsel
23 reasonable fees to be paid out of the amounts awarded the dissenters
24 who were benefited.

25 **Sec. 29.** RCW 25.10.370 and 1987 c 55 s 28 are each amended to read
26 as follows:

27 (~~(A partner may not receive a distribution from a limited~~
28 ~~partnership)) (1) A limited partnership shall not make a distribution
29 to a partner to the extent that at the time of the distribution, after~~

1 giving effect to the distribution, (a) the limited partnership would
2 not be able to pay its debts as they become due in the usual course of
3 business, or (b) all liabilities of the limited partnership, other than
4 liabilities to partners on account of their partnership interests and
5 liabilities for which the recourse of creditors is limited to specified
6 property of the limited partnership, exceed the fair value of the
7 ((limited partnership)) assets of the limited partnership, except that
8 the fair value of property that is subject to a liability for which the
9 recourse of creditors is limited shall be included in the assets of the
10 limited partnership only to the extent that the fair value of that
11 property exceeds that liability.

12 (2)(a) A limited partner who receives a distribution in violation
13 of subsection (1) of this section, and who knew at the time of the
14 distribution that the distribution violated subsection (1) of this
15 section, shall be liable to the limited partnership for the amount of
16 the distribution.

17 (b) A limited partner who receives a distribution in violation of
18 subsection (1) of this section, and who did not know at the time of the
19 distribution that the distribution violated subsection (1) of this
20 section, shall not be liable for the amount of the distribution. This
21 subsection (2)(b) shall not affect any obligation or liability of a
22 limited partner under a partnership agreement or other applicable law
23 for the amount of a distribution.

24 (3) A limited partner who receives a distribution from a limited
25 partnership shall have no liability under this chapter for the amount
26 of the distribution after the expiration of three years from the date
27 of the distribution, except to the extent such limited partner shall
28 have agreed in writing to extend liability beyond the expiration of the
29 three-year period.

1 **Sec. 30.** RCW 25.10.440 and 1987 c 55 s 32 are each amended to read
2 as follows:

3 A limited partnership is dissolved and its affairs shall be wound
4 up upon the happening of the first to occur of the following:

5 (1) At the time specified in the certificate of limited
6 partnership;

7 (2) Upon the happening of events specified in the partnership
8 agreement;

9 (3) Written consent of all partners;

10 (4) An event of withdrawal of a general partner unless at the time
11 there is at least one other general partner and the partnership
12 agreement permits the business of the limited partnership to be carried
13 on by the remaining general partner and that partner does so, but the
14 limited partnership is not dissolved and is not required to be wound up
15 by reason of any event of withdrawal if, within ninety days after the
16 withdrawal, all partners agree in writing to continue the business of
17 the limited partnership and to the appointment of one or more
18 additional general partners if necessary or desired; ~~((or))~~

19 (5) Entry of a decree of judicial dissolution under RCW 25.10.450;
20 or

21 (6) Administrative dissolution under section 32 of this act.

22 NEW SECTION. **Sec. 31.** A new section is added to chapter 25.10 RCW
23 to read as follows:

24 The secretary of state may commence a proceeding under section 32
25 of this act to administratively dissolve a limited partnership if:

26 (1) An amendment to the certificate of limited partnership required
27 by RCW 25.10.090(2)(c) is not filed when specified by that provision;

28 (2) The limited partnership is without a registered agent or
29 registered office in this state for sixty days or more; or

1 (3) The limited partnership does not notify the secretary of state
2 within sixty days that its registered agent or registered office has
3 been changed, that its registered agent has resigned, or that its
4 registered office has been discontinued.

5 NEW SECTION. **Sec. 32.** A new section is added to chapter 25.10 RCW
6 to read as follows:

7 (1) If the secretary of state determines that one or more grounds
8 exist under section 31 of this act for dissolving a limited
9 partnership, the secretary of state shall give the limited partnership
10 written notice of the determination by first class mail, postage
11 prepaid reciting the grounds therefor. Notice shall be sent to the
12 address of the office for records and address of the agent for service
13 of process contained in the certificate having this information which
14 is most recently filed with the secretary of state.

15 (2) If the limited partnership does not correct each ground for
16 dissolution or demonstrate to the reasonable satisfaction of the
17 secretary of state that each ground determined by the secretary of
18 state does not exist within sixty days after notice is sent, the
19 limited partnership is thereupon dissolved, the secretary of state
20 shall give the limited partnership written notice of the dissolution
21 that recites the ground or grounds therefor and its effective date.

22 (3) A limited partnership administratively dissolved continues its
23 limited partnership existence but may not carry on any business except
24 that necessary to wind up and liquidate its business and affairs.

25 (4) The administrative dissolution of a limited partnership does
26 not terminate the authority of its registered agent.

27 NEW SECTION. **Sec. 33.** A new section is added to chapter 25.10 RCW
28 to read as follows:

1 (1) A limited partnership administratively dissolved under section
2 32 of this act may apply to the secretary of state for reinstatement
3 within two years after the effective date of dissolution. The
4 application must:

5 (a) Recite the name of the limited partnership and the effective
6 date of its administrative dissolution;

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

9 (c) State that the limited partnership's name satisfies the
10 requirements of RCW 25.10.020.

11 (2) If the secretary of state determines that the application
12 contains the information required by subsection (1) of this section and
13 that the name is available, the secretary of state shall reinstate the
14 limited partnership and give the limited partnership written notice, as
15 provided in section 32(1) of this act of the reinstatement that recites
16 the effective date of reinstatement. If the name is not available, the
17 limited partnership must file with its application for reinstatement an
18 amendment to its certificate of limited partnership reflecting a change
19 of name.

20 (3) When the reinstatement is effective, it relates back to and
21 takes effect as of the effective date of the administrative dissolution
22 and the limited partnership may resume carrying on its business as if
23 the administrative dissolution had never occurred.

24 (4) If an application for reinstatement is not made within the two-
25 year period set forth in subsection (1) of this section, or if the
26 application made within this period is not granted, the secretary of
27 state shall cancel the limited partnership's certificate of limited
28 partnership.

1 NEW SECTION. **Sec. 34.** RCW 25.10.380 and 1987 c 55 s 29 & 1981
2 c 51 s 38 are each repealed.

3 **Sec. 35.** RCW 23B.01.400 and 1989 c 165 s 14 are each amended to
4 read as follows:

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

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

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

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

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

18 (5) "Deliver" includes mailing.

19 (6) "Distribution" means a direct or indirect transfer of money or
20 other property, except its own shares, or incurrence of indebtedness by
21 a corporation to or for the benefit of its shareholders in respect to
22 any of its shares. A distribution may be in the form of a declaration
23 or payment of a dividend; a purchase, redemption, or other acquisition
24 of shares; a distribution of indebtedness; or otherwise.

25 (7) "Effective date of notice" has the meaning provided in RCW
26 23B.01.410.

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

1 (9) "Entity" includes a corporation and foreign corporation, not-
2 for-profit corporation, profit and not-for-profit unincorporated
3 association, business trust, estate, partnership, trust, and two or
4 more persons having a joint or common economic interest, and the state,
5 United States, and a foreign government.

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

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

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

13 (~~(12)~~) (13) "Includes" denotes a partial definition.

14 (~~(13)~~) (14) "Individual" includes the estate of an incompetent or
15 deceased individual.

16 (~~(14)~~) (15) "Limited partnership" or "domestic limited
17 partnership" means a partnership formed by two or more persons under
18 the laws of this state and having one or more general partners and one
19 or more limited partners.

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

21 (~~(15)~~) (17) "Notice" has the meaning provided in RCW 23B.01.410.

22 (~~(16)~~) (18) "Person" includes an individual and an entity.

23 (~~(17)~~) (19) "Principal office" means the office, in or out of
24 this state, so designated in the annual report where the principal
25 executive offices of a domestic or foreign corporation are located.

26 (~~(18)~~) (20) "Proceeding" includes civil suit and criminal,
27 administrative, and investigatory action.

28 (~~(19)~~) (21) "Public company" means a corporation that has a class
29 of shares registered with the federal securities and exchange
30 commission pursuant to section 12 of the securities exchange act of

1 1934, or section 8 of the investment company act of 1940, or any
2 successor statute, and that has more than three hundred holders of
3 record of its shares.

4 ~~((20))~~ (22) "Record date" means the date established under
5 chapter 23B.07 RCW on which a corporation determines the identity of
6 its shareholders and their shareholdings for purposes of this title.
7 The determinations shall be made as of the close of business on the
8 record date unless another time for doing so is specified when the
9 record date is fixed.

10 ~~((21))~~ (23) "Secretary" means the corporate officer to whom the
11 board of directors has delegated responsibility under RCW 23B.08.400(3)
12 for custody of the minutes of the meetings of the board of directors
13 and of the shareholders and for authenticating records of the
14 corporation.

15 ~~((22))~~ (24) "Shares" means the units into which the proprietary
16 interests in a corporation are divided.

17 ~~((23))~~ (25) "Shareholder" means the person in whose name shares
18 are registered in the records of a corporation or the beneficial owner
19 of shares to the extent of the rights granted by a nominee certificate
20 on file with a corporation.

21 ~~((24))~~ (26) "State," when referring to a part of the United
22 States, includes a state and commonwealth, and their agencies and
23 governmental subdivisions, and a territory and insular possession, and
24 their agencies and governmental subdivisions, of the United States.

25 ~~((25))~~ (27) "Subscriber" means a person who subscribes for shares
26 in a corporation, whether before or after incorporation.

27 ~~((26))~~ (28) "United States" includes a district, authority,
28 bureau, commission, department, and any other agency of the United
29 States.

1 (~~(27)~~) (29) "Voting group" means all shares of one or more
2 classes or series that under the articles of incorporation or this
3 title are entitled to vote and be counted together collectively on a
4 matter at a meeting of shareholders. All shares entitled by the
5 articles of incorporation or this title to vote generally on the matter
6 are for that purpose a single voting group.

7 **Sec. 36.** RCW 23B.04.010 and 1989 c 165 s 37 are each amended to
8 read as follows:

9 (1) A corporate name:

10 (a) Must contain the word "corporation," "incorporated,"
11 "company," or "limited," or the abbreviation "corp.," "inc.," "co.,"
12 or "ltd.";

13 (b) Must not contain language stating or implying that the
14 corporation is organized for a purpose other than those permitted by
15 RCW 23B.03.010 and its articles of incorporation;

16 (c) Must not contain any of the following words or phrases:

17 "Bank," "banking," "banker," "trust," "cooperative," or any combination
18 of the words "industrial" and "loan," or any combination of any two or
19 more (~~{of the}~~) of the words "building," "savings," "loan," "home,"
20 "association," and "society," or any other words or phrases prohibited
21 by any statute of this state; and

22 (d) Except as authorized by subsections (2) and (3) of this
23 section, must be distinguishable upon the records of the secretary of
24 state from:

25 (i) The corporate name of a corporation incorporated or authorized
26 to transact business in this state;

27 (ii) A corporate name reserved or registered under RCW 23B.04.020
28 or 23B.04.030;

1 (iii) The fictitious name adopted pursuant to RCW 23B.15.060 by a
2 foreign corporation authorized to transact business in this state
3 because its real name is unavailable;

4 (iv) The corporate name of a not-for-profit corporation
5 incorporated or authorized to conduct affairs in this state; and

6 (v) The name or reserved name of a foreign or domestic limited
7 partnership formed or registered under chapter 25.10 RCW.

8 (2) A corporation may apply to the secretary of state for
9 authorization to use a name that is not distinguishable upon the
10 records from one or more of the names described in subsection (1) of
11 this section. The secretary of state shall authorize use of the name
12 applied for if:

13 (a) The other corporation, holder, or limited partnership consents
14 to the use in writing and files with the secretary of state documents
15 necessary to change its name or the name reserved or registered to a
16 name that is distinguishable upon the records of the secretary of state
17 from the name of the applying corporation; or

18 (b) The applicant delivers to the secretary of state a certified
19 copy of the final judgment of a court of competent jurisdiction
20 establishing the applicant's right to use the name applied for in this
21 state.

22 (3) A corporation may use the name, including the fictitious name,
23 of another domestic or foreign corporation, or of a domestic or foreign
24 limited partnership, that is used in this state if the other
25 corporation is incorporated or authorized to transact business in this
26 state, or if the limited partnership is formed or authorized to
27 transact business in this state, and the proposed user corporation:

28 (a) Has merged with the other corporation or limited partnership;
29 or

30 (b) Has been formed by reorganization of the other corporation.

1 (4) This title does not control the use of assumed business names
2 or "trade names."

3 **Sec. 37.** RCW 23B.13.020 and 1989 c 165 s 141 are each amended to
4 read as follows:

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

8 (a) Consummation of a plan of merger to which the corporation is a
9 party (i) if shareholder approval is required for the merger by RCW
10 23B.11.030, section 38 of this act, or the articles of incorporation
11 and the shareholder is entitled to vote on the merger, or (ii) if the
12 corporation is a subsidiary that is merged with its parent under RCW
13 23B.11.040;

14 (b) Consummation of a plan of share exchange to which the
15 corporation is a party as the corporation whose shares will be
16 acquired, if the shareholder is entitled to vote on the plan;

17 (c) Consummation of a sale or exchange of all, or substantially
18 all, of the property of the corporation other than in the usual and
19 regular course of business, if the shareholder is entitled to vote on
20 the sale or exchange, including a sale in dissolution, but not
21 including a sale pursuant to court order or a sale for cash pursuant to
22 a plan by which all or substantially all of the net proceeds of the
23 sale will be distributed to the shareholders within one year after the
24 date of sale;

25 (d) An amendment of the articles of incorporation that materially
26 reduces the number of shares owned by the shareholder to a fraction of
27 a share if the fractional share so created is to be acquired for cash
28 under RCW 23B.06.040; or

1 (e) Any corporate action taken pursuant to a shareholder vote to
2 the extent the articles of incorporation, bylaws, or a resolution of
3 the board of directors provides that voting or nonvoting shareholders
4 are entitled to dissent and obtain payment for their shares.

5 (2) A shareholder entitled to dissent and obtain payment for the
6 shareholder's shares under this chapter may not challenge the corporate
7 action creating the shareholder's entitlement unless the action fails
8 to comply with the procedural requirements imposed by this title,
9 sections 17 through 28 of this act, the articles of incorporation, or
10 the bylaws, or is fraudulent with respect to the shareholder or the
11 corporation.

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

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

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

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

20 NEW SECTION. **Sec. 38.** A new section is added to chapter 23B.11
21 RCW to read as follows:

22 (1) One or more domestic corporations may merge with one or more
23 limited partnerships if:

24 (a) The board of directors of each corporation adopts and the
25 shareholders of each corporation approve, if approval would be
26 necessary, the plan of merger as required by RCW 23B.11.030; and

27 (b) The partners of each limited partnership approve the plan of
28 merger as required by section 13 of this act.

29 (2) The plan of merger must set forth:

1 (a) The name of each corporation and limited partnership planning
2 to merge and the name of the surviving corporation or limited
3 partnership into which each other corporation or limited partnership
4 plans to merge;

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

6 (c) The manner and basis of converting the shares of each
7 corporation and the partnership interests of each limited partnership
8 into shares, partnership interests, obligations or other securities of
9 the surviving corporation or limited partnership, or into cash or other
10 property, including shares, obligations, or securities of any other
11 corporation, and partnership interests, obligations, or securities of
12 any other limited partnership, in whole or in part.

13 (3) The plan of merger may set forth:

14 (a) Amendments to the articles of incorporation of the surviving
15 corporation;

16 (b) Amendments to the certificate of limited partnership of the
17 surviving limited partnership; and

18 (c) Other provisions relating to the merger.

19 NEW SECTION. **Sec. 39.** A new section is added to chapter 23B.11
20 RCW to read as follows:

21 After a plan of merger for one or more corporations and one or more
22 limited partnerships is approved by the shareholders of each
23 corporation (or adopted by the board of directors of any corporation
24 for which shareholder approval is not required), and is approved by the
25 partners for each limited partnership as required by section 13 of this
26 act, the surviving entity must:

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

29 (a) The plan of merger;

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

5 (c) A statement that the merger was duly approved by the partners
6 of each limited partnership pursuant to section 13 of this act.

7 (2) If the surviving entity is a limited partnership, comply with
8 the requirements in section 14 of this act.

9 NEW SECTION. **Sec. 40.** A new section is added to chapter 23B.11
10 RCW to read as follows:

11 When a merger of one or more corporations and one or more limited
12 partnerships takes effect, and a corporation is the surviving entity:

13 (1) Every other corporation and every limited partnership party to
14 the merger merges into the surviving corporation and the separate
15 existence of every corporation except the surviving corporation, and
16 every limited partnership, ceases;

17 (2) The title to all real estate and other property owned by each
18 corporation and limited partnership party to the merger is vested in
19 the surviving corporation without reversion or impairment;

20 (3) The surviving corporation has all the liabilities of each
21 corporation and limited partnership party to the merger;

22 (4) A proceeding pending against any corporation or limited
23 partnership party to the merger may be continued as if the merger did
24 not occur or the surviving corporation may be substituted in the
25 proceeding for the corporation or limited partnership whose existence
26 ceased;

27 (5) The articles of incorporation of the surviving corporation are
28 amended to the extent provided in the plan of merger;

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

4 (7) The former holders of partnership interests of every limited
5 partnership party to the merger are entitled only to the rights
6 provided in the plan of merger or to their rights under chapter 25.10
7 RCW.

8 NEW SECTION. **Sec. 41.** A new section is added to chapter 23B.11
9 RCW to read as follows:

10 (1) One or more foreign limited partnerships and one or more
11 foreign corporations may merge with one or more domestic corporations,
12 provided that:

13 (a) The merger is permitted by the law of the jurisdiction under
14 which each foreign limited partnership was organized and the law of the
15 state or country under which each foreign corporation was incorporated
16 and each foreign limited partnership or foreign corporation complies
17 with that law in effecting the merger;

18 (b) If the surviving entity is a foreign or domestic corporation,
19 that corporation complies with section 39 of this act;

20 (c) If the surviving entity is a foreign or domestic limited
21 partnership, that limited partnership complies with section 14 of this
22 act;

23 (d) Each domestic corporation complies with section 38 of this act;
24 and

25 (e) Each domestic limited partnership complies with section 13 of
26 this act.

27 (2) Upon the merger taking effect, a surviving foreign corporation
28 or limited partnership is deemed:

1 (a) To appoint the secretary of state as its agent for service of
2 process in a proceeding to enforce any obligation or the rights of
3 dissenting shareholders or partners of each domestic corporation or
4 domestic limited partnership party to the merger; and

5 (b) To agree that it will promptly pay to the dissenting
6 shareholders or partners of each domestic corporation or domestic
7 limited partnership party to the merger the amount, if any, to which
8 they are entitled under chapter 23B.13 RCW, in the case of dissenting
9 shareholders, or under chapter 25.10 RCW, in the case of dissenting
10 partners.

11 NEW SECTION. **Sec. 42.** Sections 17 through 28 of this act
12 constitute a new article in chapter 25.10 RCW and shall be codified
13 with the heading of "DISSENTERS' RIGHTS."

14 NEW SECTION. **Sec. 43.** A new section is added to chapter 25.10 RCW
15 to read as follows:

16 The secretary of state may commence a proceeding under section 45
17 of this act to revoke registration of a foreign limited partnership
18 authorized to transact business in this state if:

19 (1) The foreign limited partnership is without a registered agent
20 or registered office in this state for sixty days or more;

21 (2) The foreign limited partnership does not inform the secretary
22 of state under RCW 25.10.520 that its registered agent or registered
23 office has changed, that its registered agent has resigned, or that its
24 registered office has been discontinued within sixty days of the
25 change, resignation, or discontinuance;

26 (3) A general partner or other agent of the foreign limited
27 partnership signed a document knowing it was false in any material

1 respect with intent that the document be delivered to the secretary of
2 state for filing; or

3 (4) The secretary of state receives a duly authenticated
4 certificate from the secretary of state or other official having
5 custody of partnership records in the jurisdiction under which the
6 foreign limited partnership was organized stating that the foreign
7 limited partnership has been dissolved or its limited partnership
8 certificate canceled.

9 NEW SECTION. **Sec. 44.** A new section is added to chapter 25.10 RCW
10 to read as follows:

11 (1) If the secretary of state determines that one or more grounds
12 exist under section 43 of this act for revocation of a foreign limited
13 partnership's registration, the secretary of state shall give the
14 foreign limited partnership written notice of the determination by
15 first class mail, postage prepaid, stating in the notice the ground or
16 grounds for and effective date of the secretary of state's
17 determination, which date shall not be earlier than the date on which
18 the notice is mailed.

19 (2) If the foreign limited partnership does not correct each ground
20 for revocation or demonstrate to the reasonable satisfaction of the
21 secretary of state that each ground determined by the secretary of
22 state does not exist within sixty days after notice is effective, the
23 secretary of state shall revoke the foreign limited partnership's
24 registration by signing a certificate of revocation that recites the
25 ground or grounds for revocation and its effective date. The secretary
26 of state shall file the original of the certificate and mail a copy to
27 the foreign limited partnership.

28 (3) Documents to be mailed by the secretary of state to a foreign
29 limited partnership for which provision is made in this section shall

1 be sent to the foreign limited partnership at the address of the agent
2 for service of process contained in the application or certificate of
3 this partnership which is most recently filed with the secretary of
4 state.

5 (4) The authority of a foreign limited partnership to transact
6 business in this state ceases on the date shown on the certificate
7 revoking its registration.

8 (5) The secretary of state's revocation of a foreign limited
9 partnership's registration appoints the secretary of state the foreign
10 limited partnership's agent for service of process in any proceeding
11 based on a cause of action which arose during the time the foreign
12 limited partnership was authorized to transact business in this state.

13 (6) Revocation of a foreign limited partnership's registration does
14 not terminate the authority of the registered agent of the foreign
15 limited partnership.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 17, 1991, with the exception of
certain items which were vetoed.

Filed in Office of Secretary of State May 17, 1991.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 8 and
3 9, Senate Bill No. 5148 entitled:

4 "AN ACT Relating to Limited Partnerships."

5 This legislation provides beneficial flexibility to limited
6 partnerships so they can merge with each other or with corporations.
7 Additional statutory changes clarify and add certainty to filing
8 requirements.

9 Sections 8 and 9, however, would significantly change business
10 operations in this state against the public interest. Limited
11 partnerships evolved so certain business partners could invest with
12 limited personal liability. In return for the limited liability, these
13 partners have been proscribed from engaging in certain managerial
14 activities. This concept protects creditors, other limited partners,
15 clients and others who do business with partnerships. The amendments
16 in this bill turn this concept on its face and extend the liability
17 shield for limited partners, while removing the limits on their
18 managerial control of the business.

1 For these reasons, I have vetoed sections 8 and 9 of Senate Bill
2 No. 5148.

3 With the exception of sections 8 and 9, Senate Bill No. 5148 is
4 approved."