

CERTIFICATION OF ENROLLMENT

SENATE BILL 6596

Chapter 52, Laws of 2006

59th Legislature
2006 Regular Session

CORPORATIONS--DISSOLUTION

EFFECTIVE DATE: 6/7/06

Passed by the Senate February 11, 2006
YEAS 41 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 1, 2006
YEAS 98 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6596** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

Approved March 14, 2006.

FILED

March 14, 2006 - 3:23 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6596

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By Senators Kline, Johnson, Weinstein and Esser

Read first time 01/16/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to the dissolution of Washington corporations;
2 amending RCW 7.60.025, 23B.06.400, 23B.08.310, 23B.12.010, 23B.14.010,
3 23B.14.020, 23B.14.030, 23B.14.050, 23B.14.060, 23B.14.210, 23B.14.220,
4 23B.14.300, 23B.14.310, 23B.14.320, 23B.14.340, and 23B.14.400; and
5 adding new sections to chapter 23B.14 RCW.

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

7 **Sec. 1.** RCW 7.60.025 and 2004 c 165 s 4 are each amended to read
8 as follows:

9 (1) A receiver may be appointed by the superior court of this state
10 in the following instances, but except in any case in which a
11 receiver's appointment is expressly required by statute, or any case in
12 which a receiver's appointment is sought by a state agent whose
13 authority to seek the appointment of a receiver is expressly conferred
14 by statute, or any case in which a receiver's appointment with respect
15 to real property is sought under (b)(ii) of this subsection, a receiver
16 shall be appointed only if the court additionally determines that the
17 appointment of a receiver is reasonably necessary and that other
18 available remedies either are not available or are inadequate:

1 (a) On application of any party, when the party is determined to
2 have a probable right to or interest in property that is a subject of
3 the action and in the possession of an adverse party, or when the
4 property or its revenue-producing potential is in danger of being lost
5 or materially injured or impaired. A receiver may be appointed under
6 this subsection (1)(a) whether or not the application for appointment
7 of a receiver is combined with, or is ancillary to, an action seeking
8 a money judgment or other relief;

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

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

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

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

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

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

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

36 (g) Upon an attachment of real or personal property when the
37 property attached is of a perishable nature or is otherwise in danger
38 of waste, impairment, or destruction, or where the abandoned property's

1 owner has absconded with, secreted, or abandoned the property, and it
2 is necessary to collect, conserve, manage, control, or protect it, or
3 to dispose of it promptly, or when the court determines that the nature
4 of the property or the exigency of the case otherwise provides cause
5 for the appointment of a receiver;

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

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

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

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

18 (l) As provided under RCW 11.64.022;

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

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

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

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

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

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

1 (s) In an action by the director of financial institutions under
2 RCW 21.20.390 in cases involving actual or threatened violations of the
3 securities act of Washington or under RCW 21.30.120 in cases involving
4 actual or threatened violations of chapter 21.30 RCW with respect to
5 certain businesses and transactions involving commodities;

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

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

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

20 (w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030,
21 in the case of a bank or trust company or, under and subject to RCW
22 32.24.070 through 32.24.090, in the case of a mutual savings bank;

23 (x) Under and subject to RCW 31.12.637 and 31.12.671 through
24 31.12.724, in the case of credit unions;

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

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

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

1 industrial development facilities or bonds of the Washington state
2 housing finance commission, or any financing document securing any such
3 bonds;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **Sec. 2.** RCW 23B.06.400 and 1990 c 178 s 10 are each amended to
10 read as follows:

11 (1) A board of directors may authorize and the corporation may make
12 distributions to its shareholders subject to restriction by the
13 articles of incorporation and the limitation in subsection (2) of this
14 section.

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

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

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

24 (3) For purposes of determinations under subsection (2) of this
25 section:

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

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

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

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

9 (b) In the case of any other distribution:

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

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

20 (iii) In all other cases, the effect of the distribution is
21 measured as of the date the distribution is authorized if payment
22 occurs within one hundred twenty days after the date of authorization,
23 or the date the payment is made if it occurs more than one hundred
24 twenty days after the date of authorization.

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

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

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

1 **Sec. 3.** RCW 23B.08.310 and 1989 c 165 s 98 are each amended to
2 read as follows:

3 (1) A director who votes for or assents to a distribution made in
4 violation of RCW 23B.06.400 or the articles of incorporation is
5 personally liable to the corporation for the amount of the distribution
6 that exceeds (~~what~~) the amount that could have been distributed
7 without violating RCW 23B.06.400 or the articles of incorporation if it
8 is established that the director did not perform the director's duties
9 in compliance with RCW 23B.08.300. In any proceeding commenced under
10 this section, a director has all of the defenses ordinarily available
11 to a director.

12 (2) A director held liable under subsection (1) of this section for
13 an unlawful distribution is entitled to contribution:

14 (a) From every other director who could be held liable under
15 subsection (1) of this section for the unlawful distribution; and

16 (b) From each shareholder for the amount the shareholder accepted
17 knowing the distribution was made in violation of RCW 23B.06.400 or the
18 articles of incorporation.

19 (3) A shareholder who accepts a distribution made in violation of
20 RCW 23B.06.400 or the articles of incorporation is personally liable to
21 the corporation for the amount of any distribution received by the
22 shareholder to the extent it exceeds the amount that could have been
23 distributed to the shareholder without violating RCW 23B.06.400 or the
24 articles of incorporation, if it is established that the shareholder
25 accepted the distribution knowing that it was made in violation of RCW
26 23B.06.400 or the articles of incorporation.

27 (4) A shareholder held liable under subsection (3) of this section
28 for an unlawful distribution is entitled to contribution from every
29 other shareholder who could be held liable under subsection (3) of this
30 section for the unlawful distribution.

31 (5) A proceeding under this section is barred unless it is
32 commenced (~~within~~) prior to the earlier of (a) the expiration of two
33 years after the date on which the effect of the distribution was
34 measured under RCW 23B.06.400(4), or (b) the expiration of the survival
35 period specified in RCW 23B.14.340.

36 **Sec. 4.** RCW 23B.12.010 and 1990 c 178 s 12 are each amended to
37 read as follows:

1 (1) A corporation may on the terms and conditions and for the
2 consideration determined by the board of directors:

3 (a) Sell, lease, exchange, or otherwise dispose of all, or
4 substantially all, of its property in the usual (~~and regular~~) course
5 of business; or

6 (b) Mortgage, pledge, dedicate to the repayment of indebtedness,
7 whether with or without recourse, or otherwise encumber any or all of
8 its property whether or not any of these actions are in the usual (~~and~~
9 ~~regular~~) course of business.

10 (2) Unless the articles of incorporation require it, approval by
11 the shareholders of a transaction described in subsection (1) of this
12 section is not required.

13 (3) A dedication of a corporation's assets to the repayment of its
14 creditors may be effected by the board of directors through an
15 assignment for the benefit of creditors in accordance with chapter 7.08
16 RCW or by obtaining the appointment of a general receiver in accordance
17 with chapter 7.60 RCW, and the assumption of control over the
18 corporation's assets by an assignee for the benefit of creditors or by
19 a general receiver relieves the directors of any further duties with
20 respect to the liquidation of the corporation's assets or the
21 application of any assets or proceeds toward satisfaction of the claims
22 of creditors.

23 **Sec. 5.** RCW 23B.14.010 and 1989 c 165 s 154 are each amended to
24 read as follows:

25 (1) A majority of the initial directors, or, if initial directors
26 were not named in the articles of incorporation and have not been
27 elected, a majority of the incorporators, of a corporation that
28 (~~either~~) has not issued shares (~~or has not commenced business~~) may
29 (~~dissolve~~) authorize dissolution of the corporation (~~by delivering~~
30 ~~to the secretary of state for filing:~~

31 ~~(1) A copy of a revenue clearance certificate issued pursuant to~~
32 ~~RCW 82.32.260; and~~

33 ~~(2) Articles of dissolution that set forth:~~

34 ~~(a) The name of the corporation;~~

35 ~~(b) The date of its incorporation;~~

36 ~~(c) Either (i) that none of the corporation's shares have been~~
37 ~~issued or (ii) that the corporation has not commenced business;~~

1 ~~(d) That no debt of the corporation remains unpaid;~~

2 ~~(e) That the net assets of the corporation remaining after winding~~
3 ~~up have been distributed to the shareholders, if shares were issued;~~
4 ~~and~~

5 ~~(f) That a majority of the initial directors authorized the~~
6 ~~dissolution, or that initial directors were not named in the articles~~
7 ~~of incorporation and have not been elected and a majority of~~
8 ~~incorporators authorized the dissolution)).~~

9 (2) Unless prohibited by the articles of incorporation, a majority
10 of the board of directors may authorize dissolution of the corporation
11 without approval by the shareholders, upon a finding by the board of
12 directors that:

13 (a) The corporation is not able to pay its liabilities as they
14 become due in the usual course of business, or the corporation's assets
15 are less than the sum of its total liabilities; and

16 (b) Ten or more days have elapsed since the corporation gave notice
17 to all shareholders, whether or not they would otherwise be entitled to
18 vote under RCW 23B.14.020, of the intent of the board of directors to
19 authorize dissolution under this subsection.

20 **Sec. 6.** RCW 23B.14.020 and 2003 c 35 s 10 are each amended to read
21 as follows:

22 (1) A corporation's board of directors may propose dissolution for
23 submission to the shareholders.

24 (2) For a proposal to dissolve to be adopted:

25 (a) The board of directors must recommend dissolution to the
26 shareholders unless the board of directors determines that because of
27 conflict of interest or other special circumstances it should make no
28 recommendation and communicates the basis for its determination to the
29 shareholders; and

30 (b) The shareholders entitled to vote must approve the proposal to
31 dissolve as provided in subsection (5) of this section.

32 (3) The board of directors may condition its submission of the
33 proposal for dissolution on any basis, including the affirmative vote
34 of holders of a specified percentage of shares held by any group of
35 shareholders not otherwise entitled under this title or the articles of
36 incorporation to vote as a separate voting group on the proposed
37 dissolution.

1 (4) The corporation shall notify each shareholder, whether or not
2 entitled to vote, of the proposed dissolution either (a) by giving
3 notice of a shareholders' meeting in accordance with RCW 23B.07.050((
4 ~~The notice must also state~~) and stating that the purpose(~~(~~) or one
5 of the purposes(~~(~~) of the meeting is to consider dissolving the
6 corporation, or (b) in accordance with the requirements of RCW
7 23B.07.040 for taking action on the proposal without a meeting.

8 (5) In addition to any other voting conditions imposed by the board
9 of directors under subsection (3) of this section, the proposal to
10 dissolve must be approved by two-thirds of the voting group comprising
11 all the votes entitled to be cast on the proposal, and of each other
12 voting group entitled under the articles of incorporation to vote
13 separately on the proposal. The articles of incorporation may require
14 a greater or lesser vote than provided in this subsection, or a greater
15 or lesser vote by any separate voting groups provided for in the
16 articles of incorporation, so long as the required vote is not less
17 than a majority of all the votes entitled to be cast on the proposal
18 and of each other voting group entitled to vote separately on the
19 proposal.

20 **Sec. 7.** RCW 23B.14.030 and 1989 c 165 s 156 are each amended to
21 read as follows:

22 (1) At any time after dissolution is authorized under RCW
23 23B.14.010 or 23B.14.020, the corporation may dissolve by delivering to
24 the secretary of state for filing:

25 (a) A copy of a revenue clearance certificate issued pursuant to
26 RCW 82.32.260; and

27 (b) Articles of dissolution setting forth:

28 (i) The name of the corporation;

29 (ii) The date dissolution was authorized; and

30 (iii) ~~((If shareholder approval was required for dissolution,~~) A
31 statement that dissolution was duly authorized by the initial
32 directors, the incorporators, or the board of directors in accordance
33 with RCW 23B.14.010, or was duly proposed by the board of directors and
34 approved by the shareholders in accordance with RCW 23B.14.020.

35 (2) A corporation is dissolved upon the effective date of its
36 articles of dissolution.

1 (3) A dissolved corporation shall, within thirty days after the
2 effective date of its articles of dissolution, publish notice of its
3 dissolution and request that persons with claims against the dissolved
4 corporation present them in accordance with the notice. The notice
5 must be published once a week for three consecutive weeks in a
6 newspaper of general circulation in the county where the dissolved
7 corporation's principal office (or, if none in this state, its
8 registered office) is or was last located. The notice must also
9 describe the information that must be included in a claim, provide a
10 mailing address where a claim may be sent, and state that claims
11 against the dissolved corporation may be barred in accordance with the
12 provisions of this chapter if not timely asserted. A dissolved
13 corporation's failure to publish notice in accordance with this
14 subsection does not affect the validity or the effective date of its
15 dissolution.

16 (4) For purposes of this chapter, "dissolved corporation" means a
17 corporation whose dissolution has been authorized in accordance with
18 RCW 23B.14.010 or 23B.14.020 and whose articles of dissolution have
19 become effective, and includes any trust or other successor entity to
20 which the remaining assets of such a corporation are transferred
21 subject to its liabilities for purposes of liquidation in accordance
22 with RCW 23B.14.050.

23 **Sec. 8.** RCW 23B.14.050 and 1989 c 165 s 158 are each amended to
24 read as follows:

25 (1) A dissolved corporation continues its corporate existence but
26 may not carry on any business except that appropriate to wind up and
27 liquidate its business and affairs, including:

28 (a) Collecting its assets;

29 (b) Disposing of its properties that will be applied toward
30 satisfaction or making reasonable provision for satisfaction of its
31 liabilities or will otherwise not be distributed in kind to its
32 shareholders, but in any case subject to applicable liens and security
33 interests as well as any applicable contractual restrictions on the
34 disposition of its properties;

35 (c) ~~((Discharging))~~ Satisfying or making reasonable provision for
36 ~~((discharging))~~ satisfying its liabilities, in accordance with their

1 priorities as established by law, and on a pro rata basis within each
2 class of liabilities;

3 (d) Subject to the limitations imposed by RCW 23B.06.400,
4 distributing its remaining property among its shareholders according to
5 their interests; and

6 (e) Doing every other act necessary to wind up and liquidate its
7 business and affairs.

8 (2) Except as otherwise provided in this chapter, dissolution of a
9 corporation does not:

10 (a) Transfer title to the corporation's property;

11 (b) Prevent transfer of its shares or securities, although the
12 authorization to dissolve may provide for closing the corporation's
13 share transfer records;

14 (c) Subject its directors or officers to standards of conduct
15 different from those prescribed in chapter 23B.08 RCW;

16 (d) Change quorum or voting requirements for its board of directors
17 or shareholders; change provisions for selection, resignation, or
18 removal of its directors or officers or both; or change provisions for
19 amending its bylaws;

20 (e) Prevent commencement of a proceeding by or against the
21 corporation in its corporate name;

22 (f) Abate or suspend a proceeding pending by or against the
23 corporation on the effective date of dissolution; or

24 (g) Terminate the authority of the registered agent of the
25 corporation.

26 (3) A dissolved corporation's board of directors may make a
27 determination that reasonable provision for the satisfaction of any
28 liability, whether arising in tort or by contract, statute, or
29 otherwise, and whether matured or unmatured, contingent, or
30 conditional, has been made by means of a purchase of insurance
31 coverage, provision of security therefor, contractual assumption
32 thereof by a solvent person, or any other means, that the board of
33 directors determines is reasonably calculated to provide for
34 satisfaction of the reasonably estimated amount of such liability.
35 Upon making such a determination, the board of directors shall, for
36 purposes of determining whether a subsequent distribution to
37 shareholders is prohibited under RCW 23B.06.400(2), be entitled to
38 treat such liability as fully satisfied by the assets used or committed

1 in order to make such provision. In making determinations under RCW
2 23B.06.400(2), the board of directors of a dissolved corporation may
3 also disregard, and make no provision for the satisfaction of, any
4 liabilities that are barred in accordance with RCW 23B.14.060(2), or
5 that may exceed any provision for their satisfaction ordered by a
6 superior court pursuant to section 10 of this act, or that the board of
7 directors does not consider, based on the facts known to it, reasonably
8 likely to arise prior to expiration of the survival period specified in
9 RCW 23B.14.340.

10 (4) The board of directors of a dissolved corporation may at any
11 time petition to have the dissolution continued under court supervision
12 in accordance with RCW 23B.14.300, or, upon a finding that the
13 corporation is not able to pay its liabilities as they become due in
14 the usual course of business or that its assets are less than the sum
15 of its total liabilities, may dedicate the corporation's assets to the
16 repayment of its creditors by making an assignment for the benefit of
17 creditors in accordance with chapter 7.08 RCW or obtaining the
18 appointment of a general receiver in accordance with chapter 7.60 RCW.
19 The assumption of control over the corporation's assets by a court, an
20 assignee for the benefit of creditors, or a general receiver relieves
21 the directors of any further duties with respect to the liquidation of
22 the corporation's assets or the application of any assets or proceeds
23 toward satisfaction of its liabilities.

24 (5) Actions and decisions to be taken by a corporation that has
25 been dissolved under RCW 23B.14.030 or 23B.14.210, which are within the
26 scope of activities permitted in this chapter, may be taken by the
27 corporation's board of directors and, if required, by its shareholders,
28 membership in both groups determined as of the effective date of the
29 dissolution. If vacancies in the board of directors occur after the
30 effective date of dissolution, the shareholders, or the remaining
31 directors, even if less than a quorum of the board, may fill the
32 vacancies. A special meeting of the shareholders for purposes of
33 authorizing any action required or permitted to be authorized by
34 shareholders, or for purposes of electing directors, may be called by
35 any person who was an officer, director, or shareholder of the
36 corporation at the effective date of the dissolution.

1 **Sec. 9.** RCW 23B.14.060 and 1989 c 165 s 159 are each amended to
2 read as follows:

3 (1) A dissolved corporation that has published notice of its
4 dissolution in accordance with RCW 23B.14.030(3) may dispose of any or
5 all of the known claims against it by ~~((following the procedure~~
6 ~~described in this section.~~

7 ~~(2) The dissolved corporation shall notify its known claimants in~~
8 ~~writing of the dissolution))~~ giving written notice of its dissolution
9 to the holders of the known claims at any time after ~~((its))~~ the
10 effective date of dissolution. The written notice of dissolution must:

11 (a) ~~((Describe information that must be included in a claim))~~
12 Provide, for each known claim of the holder to whom the notice is
13 addressed that is sought to be disposed of under this section, either
14 (i) a general description of the known facts specified in subsection
15 (3)(b)(i) or (ii) of this section relating to a matured and legally
16 assertable claim or liability, or (ii) an identification of the
17 executory contract with respect to which unmatured, conditional, or
18 contingent claims or liabilities are sought to be disposed of under
19 this section;

20 (b) Provide a mailing address where a notice of claim may be sent;

21 (c) State the deadline, which may not be fewer than one hundred
22 twenty days from the effective date of the written notice of
23 dissolution, by which a written notice of claim must be delivered to
24 the dissolved corporation ~~((must receive the claim))~~; ~~((and))~~

25 (d) State that the known claim will be barred if a written notice
26 of claim describing the known claim with reasonable particularity is
27 not ~~((received))~~ delivered to the dissolved corporation by the
28 deadline; and

29 (e) State that the known claim or any executory contract on which
30 the known claim is based may be rejected by the dissolved corporation,
31 in which case the holder of the known claim will have a limited period
32 of ninety days from the effective date of the rejection notice in which
33 to commence a proceeding to enforce the known claim.

34 ~~((+3))~~ (2) A known claim against the dissolved corporation is
35 barred:

36 (a) If ~~((a claimant))~~ the holder of the known claim who was given
37 written notice of dissolution under subsection ~~((+2))~~ (1) of this

1 section does not deliver the written notice of claim to the dissolved
2 corporation by the deadline; or

3 (b) If a ~~((claimant whose))~~ holder of a known claim that was
4 rejected by the dissolved corporation does not commence a proceeding to
5 enforce the known claim within ninety days from the effective date of
6 the rejection notice.

7 ~~((4) For purposes of this section, "claim" does not include a
8 contingent liability or a claim based on an event occurring after the
9 effective date of dissolution.))~~

10 (3) For purposes of this section, "known claim" means any claim or
11 liability:

12 (a) That either: (i) Has matured sufficiently, before or after the
13 effective date of the dissolution, to be legally capable of assertion
14 against the dissolved corporation, whether or not the amount of the
15 claim or liability is known or determinable; or (ii) is unmatured,
16 conditional, or otherwise contingent but may subsequently arise under
17 any executory contract to which the dissolved corporation is a party,
18 other than under an implied or statutory warranty as to any product
19 manufactured, sold, distributed, or handled by the dissolved
20 corporation; and

21 (b) As to which the dissolved corporation has knowledge of the
22 identity and the mailing address of the holder of the claim or
23 liability and, in the case of a matured and legally assertable claim or
24 liability, actual knowledge of existing facts that either (i) could be
25 asserted to give rise to, or (ii) indicate an intention by the holder
26 to assert, such a matured claim or liability.

27 NEW SECTION. Sec. 10. A new section is added to chapter 23B.14
28 RCW to read as follows:

29 (1) A dissolved corporation that has published notice of its
30 dissolution in accordance with RCW 23B.14.030(3) may file an
31 application, with the superior court of the county where its principal
32 office or, if none in this state, its registered office is located, for
33 a determination of:

34 (a) The amount and form of reasonable provision to be made for the
35 satisfaction of any one or more claims or liabilities, known or
36 unknown, arising in tort or by contract, statute or otherwise, matured

1 or unmatured, contingent or conditional, that have arisen or are
2 reasonably likely to arise prior to expiration of the survival period
3 specified in RCW 23B.14.340; or

4 (b) Whether the provision made or proposed to be made by the board
5 of directors for the satisfaction of any one or more claims or
6 liabilities is reasonable.

7 Any determination under this subsection is conclusive for purposes
8 of determining the legality of any subsequent distributions under RCW
9 23B.06.400 and 23B.14.050(3).

10 (2) Within ten days after filing the application, the dissolved
11 corporation shall give written notice of the judicial proceeding to
12 each person to whom written notice has been given pursuant to RCW
13 23B.14.060 and each other person whose claim or potential claim,
14 identity, and mailing address are known to the dissolved corporation.
15 However, written notice of the judicial proceeding need not be given to
16 any person whose claim or potential claim is not sought to be
17 determined under the application filed by the dissolved corporation.

18 (3) The superior court may appoint a guardian ad litem to represent
19 all persons whose claims or potential claims are sought to be
20 determined in the judicial proceeding but whose identities or mailing
21 addresses are not known to the dissolved corporation. The reasonable
22 fees and expenses of the guardian, including all reasonable expert
23 witness fees, shall be paid by the dissolved corporation.

24 (4) Provision by the dissolved corporation for satisfaction of
25 claims or potential claims in the amount and form ordered by the
26 superior court shall satisfy the dissolved corporation's obligations
27 with respect to those claims or potential claims, and any further or
28 greater claims based on the same facts, dealings, or contract shall be
29 barred.

30 NEW SECTION. **Sec. 11.** A new section is added to chapter 23B.14
31 RCW to read as follows:

32 (1) The holder of an unpaid claim against a dissolved corporation
33 that is not barred under RCW 23B.14.060(2) or section 10(4) of this act
34 or by expiration of the survival period specified in RCW 23B.14.340
35 may, within the statute of limitations applicable to the claim,
36 commence a proceeding against the dissolved corporation to collect the
37 amount of the claim from any remaining undistributed assets of the

1 corporation. If the undistributed assets of the corporation are not or
2 may not be sufficient to satisfy the amount of the unpaid claim, and
3 there have been distributions to shareholders as to which the
4 limitations period specified in RCW 23B.08.310(5) has not expired at
5 the time the proceeding is commenced, the holder of the unpaid claim
6 may include as a part of the relief claimed against the dissolved
7 corporation a petition to compel the dissolved corporation to collect
8 any amounts owing to it by directors or shareholders under RCW
9 23B.08.310 and to apply the collections toward payment of the claim.
10 The filing of such a petition to compel the corporation to collect
11 unlawfully distributed amounts from directors or shareholders tolls the
12 limitations periods specified in RCW 23B.08.310(5) and 23B.14.340 with
13 respect to the unpaid claim, as to directors and shareholders who may
14 be liable under RCW 23B.08.310. If the dissolved corporation fails,
15 within a reasonable period of time after the filing of such a petition
16 to compel it to collect amounts owing under RCW 23B.08.310, to join
17 those directors and shareholders who may be liable for the amounts, the
18 holder of the unpaid claim may join those directors and shareholders as
19 additional defendants in the proceeding. The holder of the unpaid
20 claim may also join all directors and shareholders who may be liable
21 under RCW 23B.08.310 as additional defendants in the proceeding, at any
22 time upon establishing to the satisfaction of the court that any of
23 such shareholders, with intent to delay or defraud or place property
24 beyond the reach of the corporation's creditors, has removed or is
25 about to remove from this state, or has assigned, secreted, or disposed
26 of, or is about to assign, secrete, or dispose of, any of the property
27 distributed by the corporation as to which the shareholder may be
28 liable under RCW 23B.08.310(3). Except as permitted by this section,
29 the holder of the unpaid claim may not, by means of any proceeding or
30 otherwise, seek to enforce the claim directly against any of the
31 dissolved corporation's officers or directors in those capacities, or
32 against any of its shareholders on account of their receipt of
33 distributions after the effective date of dissolution.

34 (2) Claims against a dissolved corporation that are barred under
35 RCW 23B.14.060(2) or section 10(4) of this act or by expiration of the
36 survival period specified in RCW 23B.14.340 may not be enforced against
37 the dissolved corporation, any of its officers or directors in those

1 capacities, or any of its shareholders on account of their receipt of
2 distributions after the effective date of dissolution.

3 **Sec. 12.** RCW 23B.14.210 and 1989 c 165 s 161 are each amended to
4 read as follows:

5 (1) If the secretary of state determines that one or more grounds
6 exist under RCW 23B.14.200 or 23B.14.203 for dissolving a corporation,
7 the secretary of state shall give the corporation written notice of the
8 determination by first-class mail, postage prepaid.

9 (2) If the corporation does not correct each ground for dissolution
10 or demonstrate to the reasonable satisfaction of the secretary of state
11 that each ground determined by the secretary of state does not exist
12 within sixty days after notice is effective, the secretary of state
13 shall administratively dissolve the corporation and give the
14 corporation written notice of the dissolution that recites the ground
15 or grounds therefor and its effective date.

16 (3) A corporation administratively dissolved continues its
17 corporate existence but may not carry on any business except that
18 necessary to wind up and liquidate its business and affairs (~~under~~)
19 in a manner consistent with RCW 23B.14.050 (~~and notify claimants under~~
20 ~~RCW 23B.14.060~~)).

21 (4) The administrative dissolution of a corporation does not
22 terminate the authority of its registered agent.

23 **Sec. 13.** RCW 23B.14.220 and 1995 c 47 s 2 are each amended to read
24 as follows:

25 (1) A corporation administratively dissolved under RCW 23B.14.210
26 may apply to the secretary of state for reinstatement within five years
27 after the effective date of dissolution. The application must:

28 (a) Recite the name of the corporation and the effective date of
29 its administrative dissolution;

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

32 (c) State that the corporation's name satisfies the requirements of
33 RCW 23B.04.010.

34 (2) If the secretary of state determines that the application
35 contains the information required by subsection (1) of this section and
36 that the name is available, the secretary of state shall reinstate the

1 corporation and give the corporation written notice of the
2 reinstatement that recites the effective date of reinstatement. If the
3 name is not available, the corporation must file articles of amendment
4 changing its name with its application for reinstatement.

5 (3) When the reinstatement is effective, it relates back to and
6 takes effect as of the effective date of the administrative dissolution
7 and the corporation resumes carrying on its business as if the
8 administrative dissolution had never occurred.

9 ~~((4) The application must be authorized either by action of the
10 shareholders, or of the corporation's board of directors, membership in
11 both groups determined as of the date of administrative dissolution.
12 If vacancies in the board of directors occur after the date of
13 dissolution, the shareholders, or the remaining directors, even if less
14 than a quorum of the board, may fill the vacancies. A special meeting
15 of the shareholders for purposes of authorizing the application for
16 reinstatement, or for purposes of electing directors, may be called by
17 any person who was an officer, director, or shareholder of the
18 corporation at the time of administrative dissolution.))~~

19 **Sec. 14.** RCW 23B.14.300 and 1995 c 47 s 3 are each amended to read
20 as follows:

21 The superior courts may dissolve a corporation:

22 (1) In a proceeding by the attorney general if it is established
23 that:

24 (a) The corporation obtained its articles of incorporation through
25 fraud; or

26 (b) The corporation has continued to exceed or abuse the authority
27 conferred upon it by law;

28 (2) In a proceeding by a shareholder if it is established that:

29 (a) The directors are deadlocked in the management of the corporate
30 affairs, the shareholders are unable to break the deadlock, and
31 irreparable injury to the corporation is threatened or being suffered,
32 or the business and affairs of the corporation can no longer be
33 conducted to the advantage of the shareholders generally, because of
34 the deadlock;

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

1 (c) The shareholders are deadlocked in voting power and have
2 failed, for a period that includes at least two consecutive annual
3 meeting dates, to elect successors to directors whose terms have
4 expired, and irreparable injury to the corporation is threatened or
5 being suffered, or the business and affairs of the corporation can no
6 longer be conducted to the advantage of the shareholders generally,
7 because of the deadlock;

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

9 (e) The corporation has ceased all business activity and has
10 failed, within a reasonable time, to dissolve, to liquidate its assets,
11 or to distribute its remaining assets among its shareholders;

12 (3) In a proceeding by a creditor if it is established that:

13 (a) The creditor's claim has been reduced to judgment, the
14 execution on the judgment was returned unsatisfied, and the corporation
15 is ~~((insolvent))~~ not able to pay its liabilities as they become due in
16 the usual course of business or its assets are less than the sum of its
17 total liabilities; or

18 (b) The corporation has admitted in writing that the creditor's
19 claim is due and owing and the corporation is ~~((insolvent; or))~~ not
20 able to pay its liabilities as they become due in the usual course of
21 business or its assets are less than the sum of its total liabilities.

22 ~~((+4))~~ The superior courts may also assume control over a
23 dissolved corporation's assets and the process for winding up and
24 liquidating its business and affairs, in a proceeding instituted by the
25 dissolved corporation to have its voluntary dissolution continued under
26 court supervision.

27 **Sec. 15.** RCW 23B.14.310 and 1989 c 165 s 164 are each amended to
28 read as follows:

29 (1) Venue for any proceeding to dissolve a corporation or to
30 supervise a voluntary dissolution brought by any party named in RCW
31 23B.14.300 lies in the county where a corporation's registered office
32 is or was last located.

33 (2) It is not necessary to make shareholders or directors parties
34 to a proceeding to dissolve a corporation or to supervise a voluntary
35 dissolution unless relief is sought against them individually.

36 (3) A court in a proceeding brought to dissolve a corporation or to
37 supervise a voluntary dissolution may issue injunctions, appoint a

1 general or custodial receiver (~~(or custodian pendente lite)~~) with all
2 powers and duties the court directs, and take other action required to
3 preserve the corporate assets wherever located(~~(, and)~~). A court in a
4 proceeding brought to dissolve a corporation may also carry on the
5 business of the corporation until a full hearing can be held.

6 **Sec. 16.** RCW 23B.14.320 and 2004 c 165 s 40 are each amended to
7 read as follows:

8 ~~((1))~~ A court in a judicial proceeding brought ~~((to dissolve a~~
9 ~~corporation))~~ under RCW 23B.14.300 may appoint one or more general
10 receivers to wind up and liquidate(~~(, or one or more custodians to~~
11 ~~manage,)~~) the business and affairs of the corporation, or, if the
12 corporation is not yet dissolved, may appoint one or more custodial
13 receivers to manage its business and affairs. The court shall hold a
14 hearing, after notifying all parties to the proceeding and any
15 interested persons designated by the court, before appointing a general
16 or custodial receiver (~~(or custodian)~~). The hearing, and any resulting
17 receivership, shall be conducted in accordance with chapter 7.60 RCW.

18 ~~((2) The court may appoint an individual or a domestic or foreign~~
19 ~~corporation, authorized to transact business in this state, as a~~
20 ~~receiver or custodian. The court may require the receiver or custodian~~
21 ~~to post bond, with or without sureties, in an amount the court directs.~~

22 ~~(3) The receiver or custodian may exercise all of the powers of the~~
23 ~~corporation, through or in place of its board of directors or officers,~~
24 ~~to the extent necessary to manage the affairs of the corporation in the~~
25 ~~best interests of its shareholders and creditors.~~

26 ~~(4) The court, during a receivership, may redesignate the receiver~~
27 ~~a custodian, and during a custodianship may redesignate the custodian~~
28 ~~a receiver, if doing so is in the best interests of the corporation,~~
29 ~~its shareholders, and creditors.~~

30 ~~(5) The court from time to time during the receivership or~~
31 ~~custodianship may order compensation paid and expense disbursements or~~
32 ~~reimbursements made to the receiver or custodian and counsel from the~~
33 ~~assets of the corporation or proceeds from the sale of the assets.))~~

34 **Sec. 17.** RCW 23B.14.340 and 1995 c 47 s 5 are each amended to read
35 as follows:

36 The dissolution of a corporation either(~~(+)~~) (1) by the filing

1 ((by)) with the secretary of state of its articles of dissolution, (2)
2 by administrative dissolution by the secretary of state, (3) by a
3 decree of court, or (4) by expiration of its period of duration shall
4 not take away or impair any remedy available against such corporation,
5 its directors, officers, or shareholders, for any right or claim
6 existing, or any liability incurred, prior to such dissolution ((if))
7 or arising thereafter, unless action or other proceeding thereon is not
8 commenced within two years after the effective date of ((such)) any
9 dissolution that was effective prior to the effective date of this
10 section or within three years after the effective date of any
11 dissolution that is effective on or after the effective date of this
12 section. Any such action or proceeding against the corporation may be
13 defended by the corporation in its corporate name.

14 **Sec. 18.** RCW 23B.14.400 and 1989 c 165 s 168 are each amended to
15 read as follows:

16 Following its dissolution, the assets of a ((dissolved))
17 corporation that should be transferred to a creditor, claimant, or
18 shareholder of the corporation who cannot be found or who is not
19 competent to receive them may be reduced to cash and deposited with the
20 state treasurer for safekeeping. If assets are transferred to the
21 state treasurer, and if the creditor, claimant, or shareholder
22 furnishes satisfactory proof of entitlement to the amount deposited,
23 the state treasurer or other appropriate state official shall pay such
24 person or such person's representative that amount.

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