
HOUSE BILL 2192

State of Washington 56th Legislature 1999 Regular Session

By Representative Clements

Read first time 02/17/1999. Referred to Committee on State Government.

1 AN ACT Relating to limiting a nonprofit corporation's right to
2 contract with the state when certain acts of misfeasance, malfeasance,
3 or nonfeasance have occurred; amending RCW 24.03.005; adding new
4 sections to chapter 24.03 RCW; adding a new section to chapter 43.24
5 RCW; adding a new section to chapter 43.41 RCW; adding new sections to
6 chapter 43.17 RCW; and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 24.03 RCW
9 to read as follows:

10 (1) Any department or agency of the state may apply to the
11 secretary of state for the administrative suspension of a corporation
12 or foreign corporation's certificate of incorporation if the agency
13 establishes that the corporation or foreign corporation meets any of
14 the criteria established under section 7 of this act. The application
15 must state the legal name of the corporation or foreign corporation, a
16 description of the reasons for the request, and the names of other
17 agencies the applicant is aware of which have contracted with, or have
18 a contract with, the corporation or foreign corporation.

1 (2) Upon receiving an application under subsection (1) of this
2 section, the secretary of state shall issue a certificate of suspension
3 which will be filed in the secretary of state's office, mailed to the
4 corporation or foreign corporation according to subsection (3) of this
5 section, and mailed to any agencies the secretary of state knows the
6 corporation or foreign corporation has contracted with.

7 (3) If the secretary of state suspends a corporation or foreign
8 corporation's certificate of incorporation under subsection (1) of this
9 section, the secretary shall provide written notice by certified mail
10 addressed to the corporation or foreign corporation's registered agent.
11 If, according to the records of the secretary of state, the corporation
12 or foreign corporation does not have a registered agent, the notice may
13 be given by first class mail addressed to the corporation or foreign
14 corporation's last known address or at the address of any corporation
15 or foreign corporation officer or director. Notice is deemed to have
16 been given five days after the date the notice is deposited in the
17 mail, correctly addressed, and with correct postage affixed. The
18 notice shall inform the corporation or foreign corporation that its
19 certificate is suspended, the reasons for the suspension, the
20 corporation or foreign corporation's right to request an adjudicative
21 proceeding to contest the suspension within twenty days of the date of
22 notice, and the procedures for appealing the suspension under section
23 2 of this act. Included with the notice shall be the certificate of
24 suspension.

25 (4) Upon the filing of a certificate of suspension under subsection
26 (2) of this section, the authority of the corporation or foreign
27 corporation to enter into personal service or client service contracts
28 with the state shall cease. The filing of a certificate of suspension
29 shall not otherwise affect the corporation or foreign corporation's
30 authority to conduct affairs in the state, or to defend any action,
31 suit, or proceeding in any court of this state. The filing of a
32 certificate of suspension shall not impair any remedy available to or
33 against such corporation or foreign corporation, its directors,
34 officers, members, or shareholders, for any right or claim, or
35 liability incurred. The filing of a certificate of suspension shall
36 not relieve the corporation or foreign corporation of complying with
37 any applicable requirements, obligations, or fees established under
38 this chapter.

1 (5) Upon the filing of a certificate of suspension under subsection
2 (2) of this section, the secretary shall notify the department of
3 licensing of the suspension. The notice shall include the corporation
4 or foreign corporation's unified business identifier number.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 24.03 RCW
6 to read as follows:

7 (1) A corporation or foreign corporation may request an
8 adjudicative proceeding upon service of the notice described in section
9 1 of this act. The request for an adjudicative proceeding must be
10 received by the secretary within twenty days of service.

11 (2) The request must be in writing and indicate the current mailing
12 address and daytime phone number, if available, of the corporation or
13 foreign corporation. The proceedings under this subsection shall be
14 conducted in accordance with the requirements of chapter 34.05 RCW.
15 The secretary may enter into an agreement with another public entity to
16 provide the adjudicative proceeding.

17 (3) If a corporation or foreign corporation timely requests an
18 adjudicative proceeding pursuant to subsection (1) of this section, the
19 secretary may not suspend the certificate of incorporation of the
20 corporation or foreign corporation unless the adjudicative proceeding
21 results in a finding that the corporation or foreign corporation meets
22 any of the criteria developed by the office of financial management
23 pursuant to section 7 of this act.

24 (4) The decision resulting from the adjudicative proceeding must be
25 in writing and inform the corporation or foreign corporation of its
26 right to review. The corporation or foreign corporation's copy of the
27 decision may be sent by regular mail to the corporation or foreign
28 corporation's most recent address of record.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 24.03 RCW
30 to read as follows:

31 (1) The secretary of state shall cancel the certificate of
32 suspension and reinstate the articles of incorporation to unrestricted
33 status of a corporation or foreign corporation who has had its
34 certificate of incorporation suspended pursuant to section 1 of this
35 act, if either the secretary of state has determined that the
36 corporation or foreign corporation has remedied the misfeasance,
37 malfeasance, or nonfeasance that led to the suspension and taken

1 sufficient corrective action to prevent a reoccurrence of the
2 misfeasance, malfeasance, or nonfeasance, or a court of competent
3 jurisdiction or an administrative law judge has ordered the secretary
4 to reinstate the certificate of incorporation. The secretary shall
5 make a determination regarding reinstatement after considering
6 recommendations made by the agency that applied to the secretary for
7 suspension of the corporation or foreign corporation's certificate of
8 incorporation.

9 (2) To reinstate the articles of incorporation of a corporation or
10 foreign corporation, the secretary of state shall cancel the
11 certificate of suspension, prepare and file a certificate of
12 reinstatement, and mail a copy of both certificates to the corporation
13 or foreign corporation. The certificates shall be sent by certified
14 mail addressed to the corporation or foreign corporation's registered
15 agent. If, according to the records of the secretary of state, the
16 corporation or foreign corporation does not have a registered agent,
17 the certificates may be sent by first class mail addressed to the
18 corporation or foreign corporation's last known address or at the
19 address of any corporation or foreign corporation officer or director.
20 Notice is deemed to have been given five days after the date the notice
21 is deposited in the mail, correctly addressed, and with correct postage
22 affixed.

23 (3) Upon the filing of a certificate of reinstatement, the
24 secretary of state shall notify the department of licensing of the
25 reinstatement. The notice shall include the corporation or foreign
26 corporation's unified business identifier number.

27 (4) Reinstatement under this section relates back to and takes
28 effect as of the date of suspension. The corporate authority shall be
29 deemed to have continued without interruption from that date.

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 24.03 RCW
31 to read as follows:

32 (1) A corporation or foreign corporation that has had its
33 certificate of incorporation suspended for the purpose of contracting
34 with the state may not enter into any contract for personal services or
35 client services with the state until the secretary of state reinstates
36 the corporation or foreign corporation's articles of incorporation to
37 unrestricted status.

1 (2) A corporation or foreign corporation whose certificate of
2 incorporation has been suspended by the secretary of state pursuant to
3 section 1 of this act may not maintain any action, suit, or proceeding
4 in any court of this state arising out of a contract entered into with
5 a state agency in violation of subsection (1) of this section until
6 such corporation or foreign corporation shall have obtained a
7 certificate of reinstatement under section 3 of this act.

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 24.03 RCW
9 to read as follows:

10 (1) A corporation or foreign corporation whose certificate of
11 incorporation has been suspended under section 1 of this act may
12 petition the secretary of state for reinstatement after an interval
13 determined by the secretary.

14 (2) Upon a petition by a corporation or foreign corporation, the
15 secretary of state shall request a recommendation by the applying
16 agency under section 9 of this act. Within five working days of
17 receiving the recommendation, the secretary shall determine whether the
18 corporation or foreign corporation has remedied the misfeasance,
19 malfeasance, or nonfeasance that was the subject of the original
20 application and taken sufficient corrective action to prevent a
21 reoccurrence of the misfeasance, malfeasance, or nonfeasance. If the
22 secretary determines that reinstatement is appropriate, he or she shall
23 reinstate the corporation or foreign corporation's articles of
24 incorporation consistent with section 3 of this act. If the secretary
25 determines that reinstatement is not appropriate, he or she shall
26 notify the corporation or foreign corporation of the decision, the
27 corporation or foreign corporation's right to appeal, and the
28 procedures for filing an appeal. The notice shall be sent by regular
29 mail addressed to the corporation or foreign corporation's registered
30 agent. If, according to the records of the secretary of state, the
31 corporation or foreign corporation does not have a registered agent,
32 the notice may be sent by first class mail addressed to the corporation
33 or foreign corporation's last known address or at the address of any
34 corporation or foreign corporation officer or director. Notice is
35 deemed to have been given five days after the date the notice is
36 deposited in the mail, correctly addressed, and with correct postage
37 affixed.

1 (3) A corporation or foreign corporation may request an
2 adjudicative proceeding upon service of the notice described in
3 subsection (2) of this section. The request for an adjudicative
4 proceeding must be received by the secretary within twenty days of
5 service. The request must be in writing and indicate the current
6 mailing address and daytime phone number, if available, of the
7 corporation or foreign corporation. The proceedings under this
8 subsection shall be conducted in accordance with the requirements of
9 chapter 34.05 RCW. The secretary may enter into an agreement with
10 another public entity to provide the adjudicative proceeding.

11 (4) In any hearing under this section, the applying agency shall be
12 represented.

13 (5) The decision resulting from the adjudicative proceeding must be
14 in writing and inform the corporation or foreign corporation of its
15 right to review. The corporation or foreign corporation's copy of the
16 decision may be sent by regular mail to the corporation or foreign
17 corporation's most recent address of record.

18 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.24 RCW
19 to read as follows:

20 Upon receiving a notice from the secretary of state under section
21 1 of this act of the suspension of a corporation or foreign
22 corporation's articles of incorporation, or a notice under section 3 of
23 this act of the reinstatement of a corporation or foreign corporation's
24 article of incorporation to unrestricted status, the director shall so
25 indicate on electronic records containing unified business identifiers.

26 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.41 RCW
27 to read as follows:

28 (1) The director shall develop specific criteria to determine
29 whether a corporation or foreign corporation that contracts with the
30 state to provide personal services or client services should be
31 reported to the secretary of state under section 10 of this act. The
32 criteria shall describe misfeasance, malfeasance, or nonfeasance by a
33 corporation or foreign corporation related to performance of a personal
34 service or client service contract with a state agency that warrants
35 the suspension of its authority to contract with the state, and shall
36 include, but is not limited to the following criteria:

37 (a) Failure to meet reporting requirements;

- 1 (b) Fraud;
- 2 (c) Misuse of funds;
- 3 (d) Failure to comply, timely complete, or repeatedly violate a
- 4 corrective action plan;
- 5 (e) Material breach of contract;
- 6 (f) Default on performance of material terms of the contract;
- 7 (g) Gross nonperformance;
- 8 (h) Significant overpayments; and
- 9 (i) Significant double billing.

10 (2) The director shall develop general guidelines for when a state
11 agency should recommend to the secretary of state that a corporation or
12 foreign corporation's articles of incorporation should be reinstated to
13 unrestricted status. The guidelines shall correspond to the criteria
14 developed in subsection (1) of this section.

15 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.17 RCW
16 to read as follows:

17 (1) A state agency may not contract with a corporation or foreign
18 corporation for personal services or client services for as long as a
19 corporation or foreign corporation's certificate of incorporation is
20 suspended by the secretary of state pursuant to section 1 of this act.

21 (2) Within three months of being notified of the suspension of a
22 corporation or foreign corporation's certificate of incorporation
23 pursuant to section 1 of this act, a state agency shall terminate any
24 contracts for personal services or client services the agency has
25 entered into with the corporation or foreign corporation.

26 (3) State agencies shall place in all contracts with corporations
27 or foreign corporations for personal services or client services
28 clauses notifying the corporations or foreign corporations of the
29 provisions of this act.

30 (4) An agency shall competitively procure any contract for client
31 services when the prior contract was terminated because the corporation
32 or foreign corporation's certificate of incorporation was suspended by
33 the secretary of state under section 1 of this act. The competitive
34 procurement process shall conform to the requirements of chapter 39.29
35 RCW.

36 (5) Prior to entering into a contract for personal services or
37 client services with a corporation or foreign corporation, an agency
38 shall check the department of licensing's electronic records of unified

1 business identifiers to determine if the corporation or foreign
2 corporation has had its certificate of incorporation suspended under
3 section 1 of this act.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.17 RCW
5 to read as follows:

6 (1) An agency, which has applied to the secretary of state to
7 suspend the certificate of incorporation of a corporation or foreign
8 corporation under section 1 of this act, shall recommend that the
9 secretary of state reinstate the corporation or foreign corporation's
10 certificate of incorporation if the corporation or foreign corporation
11 has remedied the misfeasance, malfeasance, or nonfeasance that was the
12 subject of the application and the agency determines that the
13 corporation or foreign corporation has taken sufficient corrective
14 action to prevent a reoccurrence of the misfeasance, malfeasance, or
15 nonfeasance. In making this determination, the agency shall use the
16 guidelines developed by the office of financial management under
17 section 7 of this act.

18 (2) The recommendation will be in writing and shall include a copy
19 of the original application and a description of the reasons for the
20 recommendation.

21 (3) Upon the request of the secretary of state, an agency shall
22 provide the secretary with a recommendation regarding whether the
23 secretary should reinstate the corporation or foreign corporation's
24 articles of incorporation to unrestricted status. The recommendation
25 shall be in accordance with subsection (1) of this section. The agency
26 shall provide the recommendation to the secretary of state within ten
27 working days of the request.

28 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.17 RCW
29 to read as follows:

30 (1) If a nonprofit corporation or foreign corporation that is a
31 party to a contract for personal services or client services with a
32 state agency meets any of the criteria developed by the office of
33 financial management under section 2 of this act, the state agency
34 shall apply to the secretary of state for suspension of the corporation
35 or foreign corporation's certificate of incorporation pursuant to
36 section 1 of this act.

1 (2) A state agency that makes an application under subsection (1)
2 of this section shall notify the corporation or foreign corporation of
3 the application. Notice shall be by first class mail to the
4 corporation or foreign corporation's last known address.

5 **Sec. 11.** RCW 24.03.005 and 1989 c 291 s 3 are each amended to read
6 as follows:

7 As used in this chapter, unless the context otherwise requires, the
8 term:

9 (1) "Corporation" or "domestic corporation" means a corporation not
10 for profit subject to the provisions of this chapter, except a foreign
11 corporation.

12 (2) "Foreign corporation" means a corporation not for profit
13 organized under laws other than the laws of this state.

14 (3) "Not for profit corporation" or "nonprofit corporation" means
15 a corporation no part of the income of which is distributable to its
16 members, directors or officers.

17 (4) "Articles of incorporation" and "articles" mean the original
18 articles of incorporation and all amendments thereto, and includes
19 articles of merger and restated articles.

20 (5) "Bylaws" means the code or codes of rules adopted for the
21 regulation or management of the affairs of the corporation irrespective
22 of the name or names by which such rules are designated.

23 (6) "Member" means an individual or entity having membership rights
24 in a corporation in accordance with the provisions of its articles or
25 incorporation or bylaws.

26 (7) "Board of directors" means the group of persons vested with the
27 management of the affairs of the corporation irrespective of the name
28 by which such group is designated in the articles or bylaws.

29 (8) "Insolvent" means inability of a corporation to pay debts as
30 they become due in the usual course of its affairs.

31 (9) "Duplicate originals" means two copies, original or otherwise,
32 each with original signatures, or one original with original signatures
33 and one copy thereof.

34 (10) "Conforms to law" as used in connection with duties of the
35 secretary of state in reviewing documents for filing under this
36 chapter, means the secretary of state has determined that the document
37 complies as to form with the applicable requirements of this chapter.

1 (11) "Effective date" means, in connection with a document filing
2 made by the secretary of state, the date which is shown by affixing a
3 "filed" stamp on the documents. When a document is received for filing
4 by the secretary of state in a form which complies with the
5 requirements of this chapter and which would entitle the document to be
6 filed immediately upon receipt, but the secretary of state's approval
7 action occurs subsequent to the date of receipt, the secretary of
8 state's filing date shall relate back to the date on which the
9 secretary of state first received the document in acceptable form. An
10 applicant may request a specific effective date no more than thirty
11 days later than the receipt date which might otherwise be applied as
12 the effective date.

13 (12) "Executed by an officer of the corporation," or words of
14 similar import, means that any document signed by such person shall be
15 and is signed by that person under penalties of perjury and in an
16 official and authorized capacity on behalf of the corporation or person
17 making the document submission with the secretary of state.

18 (13) "An officer of the corporation" means, in connection with the
19 execution of documents submitted for filing with the secretary of
20 state, the president, a vice president, the secretary, or the treasurer
21 of the corporation.

22 (14) "Public benefit not for profit corporation" or "public benefit
23 nonprofit corporation" means a corporation no part of the income of
24 which is distributable to its members, directors, or officers and that
25 holds a current tax exempt status as provided under 26 U.S.C. Sec.
26 501(c)(3) or is specifically exempted from the requirement to apply for
27 its tax exempt status under 26 U.S.C. Sec. 501(c)(3).

28 (15) "Personal services and client services" have the meaning given
29 to them under chapter 39.29 RCW.

30 (16) "Suspended certificate of incorporation" means a certificate
31 of incorporation that is evidence that all conditions precedent
32 required to be performed by the incorporators have been complied with
33 and that the corporation may conduct affairs in this state, except for
34 entering into personal service or client service contracts with the
35 state.

36 NEW SECTION. Sec. 12. This act takes effect August 1, 1999.

--- END ---