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SENATE BILL 6596

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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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