

CERTIFICATION OF ENROLLMENT

SENATE BILL 6463

59th Legislature
2006 Regular Session

Passed by the Senate February 13, 2006
YEAS 45 NAYS 0

President of the Senate

Passed by the House February 28, 2006
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6463** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 6463

Passed Legislature - 2006 Regular Session

State of Washington

59th Legislature

2006 Regular Session

By Senators Fairley and Benton

Read first time 01/12/2006. Referred to Committee on Financial Institutions, Housing & Consumer Protection.

1 AN ACT Relating to banks and savings banks; amending RCW 25.15.030
2 and 25.15.270; adding a new section to chapter 30.08 RCW; and adding a
3 new section to chapter 32.08 RCW.

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

5 **Sec. 1.** RCW 25.15.030 and 1994 c 211 s 106 are each amended to
6 read as follows:

7 (1) Every limited liability company formed under this chapter may
8 carry on any lawful business or activity unless a more limited purpose
9 is set forth in the certificate of formation. A limited liability
10 company may not be formed under this chapter for the purposes of
11 (~~banking or~~) engaging in business as an insurer.

12 (2) Unless this chapter, its certificate of formation, or its
13 limited liability company agreement provides otherwise, a limited
14 liability company has the same powers as an individual to do all things
15 necessary or convenient to carry out its business and affairs.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 30.08 RCW
17 to read as follows:

18 (1) Notwithstanding any other provision of this title, if the

1 conditions of this section are met, a bank, or a holding company of a
2 bank, may be organized as, or convert to, a limited liability company
3 under the Washington limited liability company act, chapter 25.15 RCW.
4 As used in this section, "bank" includes an applicant to become a bank
5 or holding company of a bank, and "holding company" means a holding
6 company of a bank.

7 (2)(a) Before a bank or holding company may organize as, or convert
8 to, a limited liability company, the bank or holding company must
9 obtain approval of the director.

10 (b)(i) To obtain approval under this section from the director, the
11 bank or holding company must file a request for approval with the
12 director at least ninety days before the day on which the bank or
13 holding company becomes a limited liability company.

14 (ii) If the director does not disapprove the request for approval
15 within ninety days from the day on which the director receives the
16 request, the request is considered approved.

17 (iii) When taking action on a request for approval filed under this
18 section, the director may:

19 (A) Approve the request;

20 (B) Approve the request subject to terms and conditions the
21 director considers necessary; or

22 (C) Disapprove the request.

23 (3) To approve a request for approval, the director must find that
24 the bank or holding company:

25 (a) Will operate in a safe and sound manner; and

26 (b) Has the following characteristics:

27 (i) The certificate of formation and limited liability company
28 require or set forth that the duration of the limited liability company
29 is perpetual;

30 (ii) The bank or holding company is not otherwise subject to
31 automatic termination, dissolution, or suspension upon the happening of
32 some event other than the passage of time;

33 (iii) The exclusive authority to manage the bank or holding company
34 is vested in a board of managers or directors that:

35 (A) Is elected or appointed by the owners;

36 (B) Is not required to have owners of the bank or holding company
37 included on the board;

1 (C) Possesses adequate independence and authority to supervise the
2 operation of the bank or holding company; and

3 (D) Operates with substantially the same rights, powers,
4 privileges, duties, and responsibilities as the board of directors of
5 a corporation;

6 (iv) Neither state law, nor the bank's or holding company's
7 operating agreement, bylaws, or other organizational documents provide
8 that an owner of the bank or holding company is liable for the debts,
9 liabilities, and obligations of the bank or holding company in excess
10 of the amount of the owner's investment;

11 (v) Neither state law, nor the bank's or holding company's
12 operating agreement, bylaws, or other organizational documents require
13 the consent of any other owner of the bank or holding company in order
14 for any owner to transfer an ownership interest in the bank or holding
15 company, including voting rights;

16 (vi) The bank or holding company is able to obtain new investment
17 funding if needed to maintain adequate capital;

18 (vii) The bank or holding company is able to comply with all legal
19 and regulatory requirements for a federally insured depository bank, or
20 holding company of a federally insured depository bank, under
21 applicable federal and state law; and

22 (viii) A bank or holding company that is organized as a limited
23 liability company shall maintain the characteristics listed in this
24 subsection (3)(b) during such time as it is authorized to conduct
25 business under this title as a limited liability company.

26 (4)(a) All rights, privileges, powers, duties, and obligations of
27 a bank or holding company, that is organized as a limited liability
28 company, and its members and managers are governed by the Washington
29 limited liability company act, chapter 25.15 RCW, except:

30 (i) To the extent chapter 25.15 RCW is in conflict with federal law
31 or regulation respecting the organization of a federally insured
32 depository institution as a limited liability company, such federal law
33 or regulation supersedes the conflicting provisions contained in
34 chapter 25.15 RCW in relation to a bank or holding company organized as
35 a limited liability company pursuant to this section; and

36 (ii) Without limitation, the following are inapplicable to a bank
37 or holding company organized as a limited liability company:

1 (A) Permitting automatic dissolution or suspension of a limited
2 liability company as set forth in RCW 25.15.270(1), pursuant to a
3 statement of limited duration which, though impermissible under
4 subsection (3)(b)(i) of this section, has been provided for in a
5 certificate of formation;

6 (B) Permitting automatic dissolution or suspension of a limited
7 liability company, pursuant to the limited liability company agreement,
8 as set forth in RCW 25.15.270(2);

9 (C) Permitting dissolution of the limited liability company
10 agreement based upon agreement of all the members, as set forth in RCW
11 25.15.270(3);

12 (D) Permitting dissociation of all the members of the limited
13 liability company, as set forth in RCW 25.15.270(4); and

14 (E) Permitting automatic dissolution or suspension of a limited
15 liability company, pursuant to operation of law, as otherwise set forth
16 in chapter 25.15 RCW.

17 (b) Notwithstanding (a) of this subsection:

18 (i) For purposes of transferring a member's interests in the bank
19 or holding company, a member's interest in the bank or holding company
20 is treated like a share of stock in a corporation; and

21 (ii) If a member's interest in the bank or holding company is
22 transferred voluntarily or involuntarily to another person, the person
23 who receives the member's interest obtains the member's entire rights
24 associated with the member's interest in the bank or holding company
25 including, all economic rights and all voting rights.

26 (c) A bank or holding company may not by agreement or otherwise
27 change the application of (a) of this subsection to the bank or holding
28 company.

29 (5)(a) Notwithstanding any provision of chapter 25.15 RCW or this
30 section to the contrary, all voting members remain liable and
31 responsible as fiduciaries of a bank or holding company organized as a
32 limited liability company, regardless of resignation, dissociation, or
33 disqualification, to the same extent that directors of a bank or
34 holding company organized as a corporation would be or remain liable or
35 responsible to the department and applicable federal banking
36 regulators; and

37 (b) If death, incapacity, or disqualification of all members of the
38 limited liability company would result in a complete dissociation of

1 all members, then the bank or holding company, or both, as applicable
2 is deemed nonetheless to remain in existence for purposes of the
3 department or an applicable federal regulator, or both, having standing
4 under RCW 30.44.270 or applicable federal law, or both, to exercise the
5 powers and authorities of a receiver for the bank or holding company.

6 (6) For the purposes of this section, and unless the context
7 clearly requires otherwise, for the purpose of applying chapter 25.15
8 RCW to a bank or holding company organized as a limited liability
9 company:

10 (a) "Articles of incorporation" includes a limited liability
11 company's certificate of formation, as that term is used in RCW
12 25.15.005(1) and 25.15.070, and a limited liability company agreement
13 as that term is used in RCW 25.15.005(5);

14 (b) "Board of directors" includes one or more persons who have,
15 with respect to a bank or holding company described in subsection (1)
16 of this section, authority that is substantially similar to that of a
17 board of directors of a corporation;

18 (c) "Bylaws" includes a limited liability company agreement as that
19 term is defined in RCW 25.15.005(5);

20 (d) "Corporation" includes a limited liability company organized
21 under chapter 25.15 RCW;

22 (e) "Director" includes any of the following of a limited liability
23 company:

24 (i) A manager;

25 (ii) A director; or

26 (iii) Other person who has, with respect to the bank or holding
27 company described in subsection (1) of this section, authority
28 substantially similar to that of a director of a corporation;

29 (f) "Dividend" includes distributions made by a limited liability
30 company under RCW 25.15.215;

31 (g) "Incorporator" includes the person or persons executing the
32 certificate of formation as provided in RCW 25.15.085(1);

33 (h) "Officer" includes any of the following of a bank or holding
34 company:

35 (i) An officer; or

36 (ii) Other person who has, with respect to the bank or holding
37 company, authority substantially similar to that of an officer of a
38 corporation;

1 (i) "Security," "shares," or "stock" of a corporation includes a
2 membership interest in a limited liability company and any certificate
3 or other evidence of an ownership interest in a limited liability
4 company; and

5 (j) "Stockholder" or "shareholder" includes an owner of an equity
6 interest in a bank or holding company, including a member as defined in
7 RCW 25.15.005(8) and 25.15.115.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 32.08 RCW
9 to read as follows:

10 (1) Notwithstanding any other provision of this title, if the
11 conditions of this section are met, a savings bank, or a holding
12 company of a savings bank, may be organized as, or convert to, a
13 limited liability company under the Washington limited liability
14 company act, chapter 25.15 RCW. As used in this section, "savings
15 bank" includes an applicant to become a savings bank or holding company
16 of a savings bank, and "holding company" means a holding company of a
17 savings bank.

18 (2)(a) Before a savings bank or holding company may organize as, or
19 convert to, a limited liability company, the savings bank or holding
20 company must obtain approval of the director.

21 (b)(i) To obtain approval under this section from the director, the
22 savings bank or holding company must file a request for approval with
23 the director at least ninety days before the day on which the savings
24 bank or holding company becomes a limited liability company.

25 (ii) If the director does not disapprove the request for approval
26 within ninety days from the day on which the director receives the
27 request, the request is considered approved.

28 (iii) When taking action on a request for approval filed under this
29 section, the director may:

30 (A) Approve the request;

31 (B) Approve the request subject to terms and conditions the
32 director considers necessary; or

33 (C) Disapprove the request.

34 (3) To approve a request for approval, the director must find that
35 the savings bank or holding company:

36 (a) Will operate in a safe and sound manner; and

37 (b) Has the following characteristics:

1 (i) The certificate of formation and limited liability company
2 require or set forth that the duration of the limited liability company
3 is perpetual;

4 (ii) The savings bank or holding company is not otherwise subject
5 to automatic termination, dissolution, or suspension upon the happening
6 of some event other than the passage of time;

7 (iii) The exclusive authority to manage the savings bank or holding
8 company is vested in a board of managers or directors that:

9 (A) Is elected or appointed by the owners;

10 (B) Is not required to have owners of the savings bank or holding
11 company included on the board;

12 (C) Possesses adequate independence and authority to supervise the
13 operation of the savings bank or holding company; and

14 (D) Operates with substantially the same rights, powers,
15 privileges, duties, and responsibilities as the board of directors of
16 a corporation;

17 (iv) Neither state law, nor the savings bank's or holding company's
18 operating agreement, bylaws, or other organizational documents provide
19 that an owner of the savings bank or holding company is liable for the
20 debts, liabilities, and obligations of the savings bank or holding
21 company in excess of the amount of the owner's investment;

22 (v) Neither state law, nor the savings bank's or holding company's
23 operating agreement, bylaws, or other organizational documents require
24 the consent of any other owner of the savings bank or holding company
25 in order for any owner to transfer an ownership interest in the savings
26 bank or holding company, including voting rights;

27 (vi) The savings bank or holding company is able to obtain new
28 investment funding if needed to maintain adequate capital;

29 (vii) The savings bank or holding company is able to comply with
30 all legal and regulatory requirements for a federally insured
31 depository bank, or holding company of a federally insured depository
32 bank, under applicable federal and state law; and

33 (viii) A savings bank or holding company that is organized as a
34 limited liability company shall maintain the characteristics listed in
35 this subsection (3)(b) during such time as it is authorized to conduct
36 business under this title as a limited liability company.

37 (4)(a) All rights, privileges, powers, duties, and obligations of

1 a savings bank or holding company, that is organized as a limited
2 liability company, and its members and managers are governed by the
3 Washington limited liability company act, chapter 25.15 RCW, except:

4 (i) To the extent chapter 25.15 RCW is in conflict with federal law
5 or regulation respecting the organization of a federally insured
6 depository institution as a limited liability company, such federal law
7 or regulation supersedes the conflicting provisions contained in
8 chapter 25.15 RCW in relation to a savings bank or holding company
9 organized as a limited liability company pursuant to this section; and

10 (ii) Without limitation, the following are inapplicable to a
11 savings bank or holding company organized as a limited liability
12 company:

13 (A) Permitting automatic dissolution or suspension of a limited
14 liability company as set forth in RCW 25.15.270(1), pursuant to a
15 statement of limited duration which, though impermissible under
16 subsection (3)(b)(i) of this section, has been provided for in a
17 certificate of formation;

18 (B) Permitting automatic dissolution or suspension of a limited
19 liability company, pursuant to the limited liability company agreement,
20 as set forth in RCW 25.15.270(2);

21 (C) Permitting dissolution of the limited liability company
22 agreement based upon agreement of all the members, as set forth in RCW
23 25.15.270(3);

24 (D) Permitting dissociation of all the members of the limited
25 liability company, as set forth in RCW 25.15.270(4); and

26 (E) Permitting automatic dissolution or suspension of a limited
27 liability company, pursuant to operation of law, as otherwise set forth
28 in chapter 25.15 RCW.

29 (b) Notwithstanding (a) of this subsection:

30 (i) For purposes of transferring a member's interests in the
31 savings bank or holding company, a member's interest in the savings
32 bank or holding company is treated like a share of stock in a
33 corporation; and

34 (ii) If a member's interest in the savings bank or holding company
35 is transferred voluntarily or involuntarily to another person, the
36 person who receives the member's interest obtains the member's entire
37 rights associated with the member's interest in the savings bank or
38 holding company including, all economic rights and all voting rights.

1 (c) A savings bank or holding company may not by agreement or
2 otherwise change the application of (a) of this subsection to the
3 savings bank or holding company.

4 (5)(a) Notwithstanding any provision of chapter 25.15 RCW or this
5 section to the contrary, all voting members remain liable and
6 responsible as fiduciaries of a savings bank or holding company
7 organized as a limited liability company, regardless of resignation,
8 dissociation, or disqualification, to the same extent that directors of
9 a savings bank or holding company organized as a corporation would be
10 or remain liable or responsible to the department and applicable
11 federal banking regulators; and

12 (b) If death, incapacity, or disqualification of all members of the
13 limited liability company would result in a complete dissociation of
14 all members, then the savings bank or holding company, or both, as
15 applicable is deemed nonetheless to remain in existence for purposes of
16 the department or an applicable federal regulator, or both, having
17 standing under RCW 32.24.090 or applicable federal law, or both, to
18 exercise the powers and authorities of a receiver for the savings bank
19 or holding company.

20 (6) For the purposes of this section, and unless the context
21 clearly requires otherwise, for the purpose of applying chapter 25.15
22 RCW to a savings bank or holding company organized as a limited
23 liability company:

24 (a) "Articles of incorporation" includes a limited liability
25 company's certificate of formation, as that term is used in RCW
26 25.15.005(1) and 25.15.070, and a limited liability company agreement
27 as that term is used in RCW 25.15.005(5);

28 (b) "Board of directors" includes one or more persons who have,
29 with respect to a savings bank or holding company described in
30 subsection (1) of this section, authority that is substantially similar
31 to that of a board of directors of a corporation;

32 (c) "Bylaws" includes a limited liability company agreement as that
33 term is defined in RCW 25.15.005(5);

34 (d) "Corporation" includes a limited liability company organized
35 under chapter 25.15 RCW;

36 (e) "Director" includes any of the following of a limited liability
37 company:

38 (i) A manager;

- 1 (ii) A director; or
- 2 (iii) Other person who has, with respect to the savings bank or
- 3 holding company described in subsection (1) of this section, authority
- 4 substantially similar to that of a director of a corporation;
- 5 (f) "Dividend" includes distributions made by a limited liability
- 6 company under RCW 25.15.215;
- 7 (g) "Incorporator" includes the person or persons executing the
- 8 certificate of formation as provided in RCW 25.15.085(1);
- 9 (h) "Officer" includes any of the following of a savings bank or
- 10 holding company:
 - 11 (i) An officer; or
 - 12 (ii) Other person who has, with respect to the savings bank or
 - 13 holding company, authority substantially similar to that of an officer
 - 14 of a corporation;
 - 15 (i) "Security," "shares," or "stock" of a corporation includes a
 - 16 membership interest in a limited liability company and any certificate
 - 17 or other evidence of an ownership interest in a limited liability
 - 18 company; and
 - 19 (j) "Stockholder" or "shareholder" includes an owner of an equity
 - 20 interest in a savings bank or holding company, including a member as
 - 21 defined in RCW 25.15.005(8) and 25.15.115.

22 **Sec. 4.** RCW 25.15.270 and 2000 c 169 s 4 are each amended to read
23 as follows:

24 A limited liability company is dissolved and its affairs shall be
25 wound up upon the first to occur of the following:

26 (1)(a) The dissolution date, if any, specified in the certificate
27 of formation. If a dissolution date is not specified in the
28 certificate of formation, the limited liability company's existence
29 will continue until the first to occur of the events described in
30 subsections (2) through (6) of this section. If a dissolution date is
31 specified in the certificate of formation, the certificate of formation
32 may be amended and the existence of the limited liability company may
33 be extended by vote of all the members;

34 (b) This subsection does not apply to a limited liability company
35 formed under section 2 or 3 of this act.

36 (2) The happening of events specified in a limited liability
37 company agreement;

- 1 (3) The written consent of all members;
- 2 (4) Unless the limited liability company agreement provides
3 otherwise, ninety days following an event of dissociation of the last
4 remaining member, unless those having the rights of assignees in the
5 limited liability company under RCW 25.15.130(1) have, by the ninetieth
6 day, voted to admit one or more members, voting as though they were
7 members, and in the manner set forth in RCW 25.15.120(1);
- 8 (5) The entry of a decree of judicial dissolution under RCW
9 25.15.275; or
- 10 (6) The expiration of two years after the effective date of
11 dissolution under RCW 25.15.285 without the reinstatement of the
12 limited liability company.

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