
HOUSE BILL 2657

State of Washington 61st Legislature 2010 Regular Session

By Representative Pedersen

Read first time 01/12/10. Referred to Committee on Judiciary.

1 AN ACT Relating to the dissolution of limited liability companies;
2 amending RCW 25.15.070, 25.15.085, 25.15.293, 25.15.295, and 25.15.303;
3 and adding a new section to chapter 25.15 RCW.

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

5 **Sec. 1.** RCW 25.15.070 and 1994 c 211 s 201 are each amended to
6 read as follows:

7 (1) In order to form a limited liability company, one or more
8 persons must execute a certificate of formation. The certificate of
9 formation shall be filed in the office of the secretary of state and
10 set forth:

11 (a) The name of the limited liability company;

12 (b) The address of the registered office and the name and address
13 of the registered agent for service of process required to be
14 maintained by RCW 25.15.020;

15 (c) The address of the principal place of business of the limited
16 liability company;

17 (d) If the limited liability company is to have a specific date of
18 dissolution, the latest date on which the limited liability company is
19 to dissolve;

1 (e) If management of the limited liability company is vested in a
2 manager or managers, a statement to that effect;

3 (f) Any other matters the members decide to include therein; and

4 (g) The name and address of each person executing the certificate
5 of formation.

6 (2) Effect of filing:

7 (a) Unless a delayed effective date is specified, a limited
8 liability company is formed when its certificate of formation is filed
9 by the secretary of state. A delayed effective date for a certificate
10 of formation may be no later than the ninetieth day after the date it
11 is filed.

12 (b) The secretary of state's filing of the certificate of formation
13 is conclusive proof that the persons executing the certificate
14 satisfied all conditions precedent to the formation (~~(except in a~~
15 ~~proceeding by the state to cancel the certificate)).~~

16 (c) A limited liability company formed under this chapter shall be
17 a separate legal entity(~~(, the existence of which as a separate legal~~
18 ~~entity shall continue until cancellation of the limited liability~~
19 ~~company's certificate of formation)).~~

20 **Sec. 2.** RCW 25.15.085 and 2002 c 74 s 17 are each amended to read
21 as follows:

22 (1) Each document required by this chapter to be filed in the
23 office of the secretary of state shall be executed in the following
24 manner, or in compliance with the rules established to facilitate
25 electronic filing under RCW 25.15.007, except as set forth in RCW
26 25.15.105(4)(b):

27 (a) Each original certificate of formation must be signed by the
28 person or persons forming the limited liability company;

29 (b) A reservation of name may be signed by any person;

30 (c) A transfer of reservation of name must be signed by, or on
31 behalf of, the applicant for the reserved name;

32 (d) A registration of name must be signed by any member or manager
33 of the foreign limited liability company;

34 (e) A certificate of amendment or restatement must be signed by at
35 least one manager, or by a member if management of the limited
36 liability company is reserved to the members;

1 (f) A certificate of dissolution or certificate of cancellation
2 must be signed by the person or persons authorized to wind up the
3 limited liability company's affairs pursuant to RCW 25.15.295(~~(+1)~~)
4 (3);

5 (g) If a surviving domestic limited liability company is filing
6 articles of merger, the articles of merger must be signed by at least
7 one manager, or by a member if management of the limited liability
8 company is reserved to the members, or if the articles of merger are
9 being filed by a surviving foreign limited liability company, limited
10 partnership, or corporation, the articles of merger must be signed by
11 a person authorized by such foreign limited liability company, limited
12 partnership, or corporation; and

13 (h) A foreign limited liability company's application for
14 registration as a foreign limited liability company doing business
15 within the state must be signed by any member or manager of the foreign
16 limited liability company.

17 (2) Any person may sign a certificate, articles of merger, limited
18 liability company agreement, or other document by an attorney-in-fact
19 or other person acting in a valid representative capacity, so long as
20 each document signed in such manner identifies the capacity in which
21 the signator signed.

22 (3) The person executing the document shall sign it and state
23 beneath or opposite the signature the name of the person and capacity
24 in which the person signs. The document must be typewritten or
25 printed, and must meet such legibility or other standards as may be
26 prescribed by the secretary of state.

27 (4) The execution of a certificate or articles of merger by any
28 person constitutes an affirmation under the penalties of perjury that
29 the facts stated therein are true.

30 **Sec. 3.** RCW 25.15.293 and 2009 c 437 s 3 are each amended to read
31 as follows:

32 (1) A limited liability company (~~(voluntarily dissolved under RCW~~
33 ~~25.15.270 may apply to the secretary of state for reinstatement within~~
34 ~~one hundred twenty days after the effective date of dissolution. The~~
35 ~~application must:~~

36 ~~(a) Recite the name of the limited liability company and the~~
37 ~~effective date of its voluntary dissolution;~~

1 ~~(b) State that the ground or grounds for voluntary dissolution have~~
2 ~~been eliminated; and~~

3 ~~(c) State that the limited liability company's name satisfies the~~
4 ~~requirements of RCW 25.15.010.~~

5 ~~(2) If the secretary of state determines that the application~~
6 ~~contains the information required by subsection (1) of this section and~~
7 ~~that the name is available, the secretary of state shall reinstate the~~
8 ~~limited liability company and give the limited liability company~~
9 ~~written notice of the reinstatement that recites the effective date of~~
10 ~~reinstatement. If the name is not available, the limited liability~~
11 ~~company must file with its application for reinstatement an amendment~~
12 ~~to its certificate of formation reflecting a change of name.~~

13 ~~(3) When the reinstatement is)) that has dissolved pursuant to RCW~~
14 ~~25.15.270 (2) or (3) and filed a certificate of dissolution under RCW~~
15 ~~25.15.295 may revoke its dissolution and certificate of dissolution~~
16 ~~within one hundred twenty days of the filing of the certificate of~~
17 ~~dissolution.~~

18 ~~(2) Revocation of dissolution must be approved in the same manner~~
19 ~~as the dissolution was approved unless that approval permitted~~
20 ~~revocation in some other manner, in which event the dissolution may be~~
21 ~~revoked in the manner permitted.~~

22 ~~(3) After the revocation of dissolution is approved, the limited~~
23 ~~liability company may revoke the dissolution and certificate of~~
24 ~~dissolution by delivering to the secretary of state for filing a~~
25 ~~certificate of revocation of dissolution, together with a copy of its~~
26 ~~certificate of dissolution, that sets forth:~~

27 ~~(a) The name of the limited liability company and a statement that~~
28 ~~such name satisfies the requirements of RCW 25.15.010; if the name is~~
29 ~~not available, the limited liability company must file a certificate of~~
30 ~~amendment changing its name with the certificate of revocation of~~
31 ~~dissolution;~~

32 ~~(b) The effective date of the dissolution that was revoked;~~

33 ~~(c) The date that the revocation of dissolution was approved;~~

34 ~~(d) If the limited liability company's managers revoked the~~
35 ~~dissolution, a statement to that effect;~~

36 ~~(e) If the limited liability company's managers revoked a~~
37 ~~dissolution approved by the company's members, a statement that~~

1 revocation was permitted by action by the managers alone pursuant to
2 that approval; and

3 (f) If member approval was required to revoke the dissolution, a
4 statement that revocation of the dissolution was duly approved by the
5 members in accordance with subsection (2) of this section.

6 (4) Revocation of dissolution and the certificate of dissolution is
7 effective upon filing of the certificate of revocation of dissolution.

8 (5) When the revocation of dissolution and the certificate of
9 dissolution is effective, it relates back to and takes effect as of the
10 effective date of the ((voluntary)) dissolution and the limited
11 liability company ((may)) resumes carrying on its business as if ((the
12 voluntary)) dissolution had never occurred.

13 ~~((4) If an application for reinstatement is not made within the~~
14 ~~one hundred twenty day period set forth in subsection (1) of this~~
15 ~~section, or if the application made within this period is not granted,~~
16 ~~the secretary of state shall cancel the limited liability company's~~
17 ~~certificate of formation.))~~

18 **Sec. 4.** RCW 25.15.295 and 1994 c 211 s 806 are each amended to
19 read as follows:

20 ~~(1) ((Unless otherwise provided in a limited liability company~~
21 ~~agreement, a manager who has not wrongfully dissolved a limited~~
22 ~~liability company or, if none, the members or a person approved by the~~
23 ~~members or, if there is more than one class or group of members, then~~
24 ~~by each class or group of members, in either case, by members~~
25 ~~contributing, or required to contribute, more than fifty percent of the~~
26 ~~agreed value (as stated in the records of the limited liability company~~
27 ~~required to be kept pursuant to RCW 25.15.135) of the contributions~~
28 ~~made, or required to be made, by all members, or by the members in each~~
29 ~~class or group, as appropriate, may wind up the limited liability~~
30 ~~company's affairs. The superior courts, upon cause shown, may wind up~~
31 ~~the limited liability company's affairs upon application of any member~~
32 ~~or manager, his or her legal representative or assignee, and in~~
33 ~~connection therewith, may appoint a receiver.~~

34 ~~(2) Upon dissolution of a limited liability company and until the~~
35 ~~filing of a certificate of cancellation as provided in RCW 25.15.080,~~
36 ~~the persons winding up the limited liability company's affairs may, in~~
37 ~~the name of, and for and on behalf of, the limited liability company,~~

1 ~~prosecute and defend suits, whether civil, criminal, or administrative,~~
2 ~~gradually settle and close the limited liability company's business,~~
3 ~~dispose of and convey the limited liability company's property,~~
4 ~~discharge or make reasonable provision for the limited liability~~
5 ~~company's liabilities, and distribute to the members any remaining~~
6 ~~assets of the limited liability company.)) A dissolved limited
7 liability company shall wind up its activities, and the company
8 continues after dissolution only for the purpose of winding up.~~

9 (2) In winding up its activities, a limited liability company may:

10 (a) Deliver to the secretary of state for filing a certificate of
11 dissolution stating the name of the company and that the company is
12 dissolved;

13 (b) Preserve the company's activities and property as a going
14 concern for a reasonable time;

15 (c) Prosecute and defend actions and proceedings, whether civil,
16 criminal, or administrative;

17 (d) Transfer the company's property;

18 (e) Settle disputes; and

19 (f) Perform other acts necessary or appropriate to the winding up.

20 (3) The persons responsible for managing the business and affairs
21 of a limited liability company under RCW 25.15.150 are responsible for
22 winding up the activities of a dissolved limited liability company. If
23 the limited liability company has no managers or members, the legal
24 representative of the last person to have been a member may wind up the
25 activities of the limited liability company. If the person does so,
26 the person is deemed to be a manager for the purposes of RCW 25.15.155.

27 (4) If the persons responsible for winding up the activities of a
28 dissolved limited liability company under subsection (3) of this
29 section decline or fail to wind up the limited liability company's
30 activities, a person may be appointed to do so by the consent of such
31 person and transferees owning a majority of the rights to receive
32 distributions as transferees at the time consent is to be effective.
33 A person appointed under this subsection:

34 (a) Is deemed to be a manager for the purposes of RCW 25.15.155;
35 and

36 (b) Shall promptly deliver to the secretary of state for filing an
37 amendment to the limited liability company's certificate of formation
38 to:

1 (i) State that the person has been appointed pursuant to this
2 subsection to wind up the limited liability company; and

3 (ii) Provide the street and mailing address of the person.

4 (5) The superior courts may order judicial supervision of the
5 winding up of a dissolved limited liability company, including the
6 appointment of a person to wind up the limited liability company's
7 activities:

8 (a) On application of a member, if the applicant establishes good
9 cause;

10 (b) On the application of a transferee, if:

11 (i) The limited liability company does not have any managers or
12 members;

13 (ii) The legal representative of the last person to have been a
14 member declines or fails to wind up the limited liability company's
15 activities; and

16 (iii) Within a reasonable time following the dissolution a person
17 has not been appointed pursuant to subsection (4) of this section; or

18 (c) In connection with a proceeding under RCW 25.15.275.

19 NEW SECTION. Sec. 5. A new section is added to chapter 25.15 RCW
20 to read as follows:

21 (1) A dissolved limited liability company that has filed a
22 certificate of dissolution under RCW 25.15.295 may dispose of any or
23 all of the known claims against it by giving written notice of its
24 dissolution to the holders of the known claims at any time after the
25 effective date of dissolution. The written notice of dissolution must:

26 (a) Provide, for each known claim of the holder to whom the notice
27 is addressed that is sought to be disposed of under this section,
28 either (i) a general description of the known facts specified in
29 subsection (3)(b)(i) or (ii) of this section relating to a matured and
30 legally assertable claim or liability, or (ii) an identification of the
31 executory contract with respect to which unmatured, conditional, or
32 contingent claims or liabilities are sought to be disposed of under
33 this section;

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

35 (c) State the deadline, which may not be fewer than one hundred
36 twenty days from the effective date of the written notice of

1 dissolution, by which a written notice of claim must be delivered to
2 the dissolved limited liability company;

3 (d) State that the known claim will be barred if a written notice
4 of claim describing the known claim with reasonable particularity is
5 not delivered to the dissolved limited liability company by the
6 deadline; and

7 (e) State that the known claim or any executory contract on which
8 the known claim is based may be rejected by the dissolved limited
9 liability company, in which case the holder of the known claim will
10 have a limited period of ninety days from the effective date of the
11 rejection notice in which to commence a proceeding to enforce the known
12 claim.

13 (2) A known claim against the dissolved limited liability company
14 is barred and that claim is not a liability of the company:

15 (a) If the holder of the known claim who was given written notice
16 of dissolution under subsection (1) of this section does not deliver
17 the written notice of claim to the dissolved limited liability company
18 by the deadline; or

19 (b) If a holder of a known claim that was rejected by the dissolved
20 limited liability company does not commence a proceeding to enforce the
21 known claim within ninety days from the effective date of the rejection
22 notice.

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

25 (a) That either: (i) Has matured sufficiently, before or after the
26 effective date of the dissolution, to be legally capable of assertion
27 against the dissolved limited liability company, whether or not the
28 amount of the claim or liability is known or determinable; or (ii) is
29 unmatured, conditional, or otherwise contingent but may subsequently
30 arise under any executory contract to which the dissolved limited
31 liability company is a party, other than under an implied or statutory
32 warranty as to any product manufactured, sold, distributed, or handled
33 by the dissolved limited liability company; and

34 (b) As to which the dissolved limited liability company has
35 knowledge of the identity and the mailing address of the holder of the
36 claim or liability and, in the case of a matured and legally assertable
37 claim or liability, actual knowledge of existing facts that either (i)

1 could be asserted to give rise to, or (ii) indicate an intention by the
2 holder to assert, such a matured claim or liability.

3 **Sec. 6.** RCW 25.15.303 and 2006 c 325 s 1 are each amended to read
4 as follows:

5 Neither the dissolution of a limited liability company ((does not
6 take away or impair)) nor the filing of a certificate of dissolution or
7 certificate of cancellation in itself takes away or impairs any remedy
8 available to or against that limited liability company, its managers,
9 or its members for any right or claim existing, or any liability
10 incurred at any time, whether prior to or after dissolution, unless an
11 action or other proceeding thereon is not commenced within three years
12 after the ((effective date)) filing of the certificate of dissolution.
13 Such an action or proceeding by or against the limited liability
14 company may be prosecuted or defended by the limited liability company
15 in its own name.

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