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**SUBSTITUTE HOUSE BILL 3046**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Driscoll, Rodne, Kretz, Ormsby, Wood, Johnson, and Parker)

READ FIRST TIME 02/03/10.

1            AN ACT Relating to dissolving the assets and affairs of a nonprofit  
2 corporation; amending RCW 24.03.265, 24.03.270, and 24.03.290; and  
3 creating a new section.

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

5            **Sec. 1.** RCW 24.03.265 and 1986 c 240 s 39 are each amended to read  
6 as follows:

7            Superior courts (~~shall have full power to liquidate the assets and~~  
8 ~~affairs of~~) may dissolve a corporation:

9            (1) (~~In an action by a member, director, or the attorney general~~  
10 ~~when it is made to appear~~) In a proceeding by the attorney general, if  
11 it is established that the corporation:

12            (a) Obtained its articles of incorporation through fraud; or

13            (b) Has exceeded or abused, and is continuing to exceed or abuse  
14 the authority conferred upon it by law.

15            (2) Except as provided in the articles of incorporation or bylaws,  
16 in a proceeding by fifty members or members holding at least five  
17 percent of the voting power, whichever is less, or by a director or  
18 member of a designated body, if it is established that:

1           (a) ~~((That))~~ The directors are deadlocked in the management of the  
2 corporate affairs, the members, if any, are unable to break the  
3 deadlock, and ((that)) irreparable injury to the corporation or its  
4 mission is ((being suffered or is)) threatened ((by reason thereof, and  
5 either that the members are unable to break the deadlock or there are  
6 no members having voting rights; or)) or being suffered because of the  
7 deadlock;

8           (b) ~~((That the acts of))~~ The directors or those in control of the  
9 corporation ((are)) have acted, are acting, or will act in a manner  
10 that is illegal, oppressive, or fraudulent; ((or))

11           (c) ~~((That))~~ The members are deadlocked in voting power and have  
12 failed, for a period that includes at least two consecutive annual  
13 meeting dates, to elect successors to directors whose terms have, or  
14 otherwise would have, expired;

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

16           ~~((d) That))~~ (e) The corporation ((is unable to carry out its  
17 purposes)) has insufficient assets to continue its activities and it is  
18 no longer able to assemble a quorum of directors or members.

19           ~~((2))~~ (3) In ((an action)) a proceeding by a creditor, if it is  
20 established that:

21           (a) ~~((When the claim of the creditor))~~ The creditor's claim has  
22 been reduced to judgment ((and an)), the execution ((thereon has been))  
23 on the judgment returned unsatisfied, and ((it is established that))  
24 the corporation is insolvent; or

25           (b) ~~((When))~~ The corporation has admitted in ((writing)) a record  
26 that the creditor's claim ((of the creditor)) is due and owing and ((it  
27 is established that)) the corporation is insolvent.

28           ~~((3) Upon application by a))~~ (4) In a proceeding by the  
29 corporation to have its voluntary dissolution continued under ((the  
30 supervision of the)) court supervision.

31           ~~((4) When an action has been filed by the attorney general to~~  
32 dissolve a corporation under the provisions of this chapter and it is  
33 established that liquidation of its affairs should precede the entry of  
34 a decree of dissolution.

35           ~~Proceedings under subsections (1), (2), or (3) of this section~~  
36 shall be brought in the county in which the registered office or the  
37 principal office of the corporation is situated.

1       ~~It shall not be necessary to make directors or members parties to~~  
2 ~~any such action or proceedings unless relief is sought against them~~  
3 ~~personally.)~~)

4       **Sec. 2.** RCW 24.03.270 and 1967 c 235 s 55 are each amended to read  
5 as follows:

6       ~~((In proceedings to liquidate the assets and affairs of a~~  
7 ~~corporation the court shall have the power to))~~ (1) Venue for a  
8 proceeding brought by the attorney general to dissolve a corporation  
9 lies in the court specified in RCW 24.03.260. Venue for a proceeding  
10 brought by any other party named in RCW 24.03.265 lies in the county  
11 where a corporation's principal office or, if none in this state, its  
12 registered office is or was last located.

13       (2) It is not necessary to make directors or members parties to a  
14 proceeding to dissolve a corporation unless relief is sought against  
15 them individually.

16       (3) A court in a proceeding brought to dissolve a corporation may  
17 issue injunctions, ~~((to))~~ appoint a receiver or ~~((receivers))~~ custodian

18 pendente lite~~((r))~~ with ~~((such))~~ all powers and duties as the court~~((r~~  
19 ~~from time to time, may direct, and to take such other proceedings as~~  
20 ~~may be requisite))~~ directs, take other action required to preserve the  
21 corporate assets wherever ~~((situated))~~ located, and carry on the  
22 affairs of the corporation until a full hearing can be ~~((had))~~ held.

23       ~~((After a hearing had upon such notice as the court may direct to~~  
24 ~~be given to all parties to the proceedings and to any other parties in~~  
25 ~~interest designated by the court, the court may appoint a liquidating~~  
26 ~~receiver or receivers with authority to collect the assets of the~~  
27 ~~corporation. Such liquidating receiver or receivers shall have~~  
28 ~~authority, subject to the order of the court, to sell, convey and~~  
29 ~~dispose of all or any part of the assets of the corporation wherever~~  
30 ~~situated, either at public or private sale. The order appointing such~~  
31 ~~liquidating receiver or receivers shall state their powers and duties.~~  
32 ~~Such powers and duties may be increased or diminished at any time~~  
33 ~~during the proceedings.))~~)

34       (4) A court in a judicial proceeding brought to dissolve a  
35 corporation may appoint one or more receivers to wind up and liquidate,  
36 or one or more custodians to manage, the affairs of the corporation.  
37 The court shall hold a hearing, after giving notice to all parties to

1 the proceeding and any interested persons designated by the court,  
2 before appointing a receiver or custodian. The court appointing a  
3 receiver or custodian has exclusive jurisdiction over the corporation  
4 and all of its property wherever located.

5 (5) The court may require the receiver or custodian to post bond,  
6 with or without sureties, in an amount the court directs.

7 (6) The court shall describe the powers and duties of the receiver  
8 or custodian in its appointing order, which may be amended from time to  
9 time. Among other powers:

10 (a) The receiver may: (i) Dispose of all or any part of the assets  
11 of the nonprofit corporation wherever located, at a public or private  
12 sale, if authorized by the court; and (ii) sue and defend in his or her  
13 own name as receiver of the corporation in all courts of this state;

14 (b) The custodian may exercise all of the powers of the  
15 corporation, through or in place of its board of directors and any  
16 designated body, to the extent necessary to manage the affairs of the  
17 corporation consistent with its mission and in the best interests of  
18 its members, if any, and creditors.

19 (7) During a receivership, the court may redesignate the receiver  
20 a custodian, and during a custodianship may redesignate the custodian  
21 a receiver, if doing so is consistent with the mission of the nonprofit  
22 corporation and in the best interests of the corporation, its members,  
23 and creditors.

24 (8) The court from time to time during the receivership or  
25 custodianship may order compensation paid and expense disbursements or  
26 reimbursements made to the receiver or custodian and counsel from the  
27 assets of the nonprofit corporation or proceeds from the sale of the  
28 assets.

29 (9) The assets of the corporation or the proceeds resulting from  
30 the sale, conveyance, or other disposition thereof shall be applied and  
31 distributed as follows:

32 ((+1)) (a) All costs and expenses of the court proceedings and all  
33 liabilities and obligations of the corporation shall be paid, satisfied  
34 and discharged, or adequate provision shall be made therefor;

35 ((+2)) (b) Assets held by the corporation upon condition requiring  
36 return, transfer or conveyance, which condition occurs by reason of the  
37 dissolution or liquidation, shall be returned, transferred or conveyed  
38 in accordance with such requirements;

1        ~~((+3))~~ (c) Assets received and held by the corporation subject to  
2 limitations permitting their use only for charitable, religious,  
3 eleemosynary, benevolent, educational or similar purposes, but not held  
4 upon a condition requiring return, transfer or conveyance by reason of  
5 the dissolution or liquidation, shall be transferred or conveyed to one  
6 or more domestic or foreign corporations, societies or organizations  
7 engaged in activities substantially similar to those of the dissolving  
8 or liquidating corporation as the court may direct;

9        ~~((+4))~~ (d) Other assets, if any, shall be distributed in  
10 accordance with the provisions of the articles of incorporation or the  
11 bylaws to the extent that the articles of incorporation or bylaws  
12 determine the distributive rights of members, or any class or classes  
13 of members, or provide for distribution to others;

14        ~~((+5))~~ (e) Any remaining assets may be distributed to such  
15 persons, societies, organizations or domestic or foreign corporations,  
16 whether for profit or not for profit, specified in the plan of  
17 distribution adopted as provided in this chapter, or where no plan of  
18 distribution has been adopted, as the court may direct.

19        ~~((The court shall have power to allow, from time to time, as  
20 expenses of the liquidation compensation to the receiver or receivers  
21 and to attorneys in the proceeding, and to direct the payment thereof  
22 out of the assets of the corporation or the proceeds of any sale or  
23 disposition of such assets.~~

24        ~~A receiver of a corporation appointed under the provisions of this  
25 section shall have authority to sue and defend in all courts in his own  
26 name as receiver of such corporation. The court appointing such  
27 receiver shall have exclusive jurisdiction of the corporation and its  
28 property, wherever situated.))~~

29        (10) Subsections (4) through (8) of this section do not apply to a  
30 corporation that is a religious organization.

31        **Sec. 3.** RCW 24.03.290 and 1967 c 235 s 59 are each amended to read  
32 as follows:

33        ~~((In proceedings to liquidate the assets and affairs of a  
34 corporation, when the costs and expenses of such proceedings and all  
35 debts, obligations, and liabilities of the corporation shall have been  
36 paid and discharged and all of its remaining property and assets  
37 distributed in accordance with the provisions of this chapter, or in~~

1 ~~case its property and assets are not sufficient to satisfy and~~  
2 ~~discharge such costs, expenses, debts, and obligations, and all the~~  
3 ~~property and assets have been applied so far as they will go to their~~  
4 ~~payment, the court shall enter a decree dissolving the corporation,~~  
5 ~~whereupon the existence of the corporation shall cease.))~~

6 (1) If after a hearing the court determines that one or more  
7 grounds for judicial dissolution under RCW 24.03.265 exist, the court  
8 may enter a decree dissolving the corporation and specifying the  
9 effective date of the dissolution, and the clerk of the court shall  
10 deliver a certified copy of the decree to the secretary of state, who  
11 shall file it.

12 (2) After entering the decree of dissolution, the court shall  
13 direct the winding up and liquidation of the corporation's affairs in  
14 accordance with this chapter.

15 NEW SECTION. Sec. 4. This act is prospective and applies only to  
16 actions or proceedings commenced on or after the effective date of this  
17 section.

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