

# FINAL BILL REPORT

## SB 5031

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Synopsis as Enacted

**Brief Description:** Permitting advance action regarding business opportunities under the business corporation act.

**Sponsors:** Senators Pedersen and O'Ban; by request of Washington State Bar Association.

**Senate Committee on Law & Justice**  
**House Committee on Judiciary**

**Background:** Corporate directors and officers must always act in the corporation's best interests because they are bound by their fiduciary duty of loyalty. Under the duty of loyalty, a director or officer must not take advantage of a business opportunity for personal gain when the business opportunity rightfully belongs to the corporation. A fiduciary who violates this duty is held responsible under the common law corporate opportunity doctrine.

Some states protect corporate officers and directors from potential liability under the corporate opportunity doctrine with statutory safe harbor provisions allowing the fiduciary to seek the corporation's approval and obtain the corporation's disclaimer of all rights to the business opportunity. Currently Washington's Business Corporations Act (WBCA) does not provide this safe harbor.

Other states allow a corporation to include a provision in its articles of incorporation relieving directors and officers of their duty to offer a business opportunity to the corporation before pursuing the opportunity for personal interests. The corporation may limit the provision to specific circumstances. Currently WBCA does not authorize a corporation to include this provision in its articles of incorporation.

**Summary:** Articles of incorporation may limit or eliminate a director's or officer's duty to offer a business opportunity to the corporation before pursuing it for personal interests.

A corporation or its shareholders cannot sue a director or officer for breach of duty under the corporate opportunity doctrine if:

- the director or officer offers the business opportunity to the corporation before acting on it; and
- the corporation disclaims its interests by following specific statutory disclaimer procedures.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The fact that a director or officer failed to offer a business opportunity to the corporation, and failed to obtain a corporate disclaimer before acting, is not enough evidence to prove a breach of duty in a lawsuit.

**Votes on Final Passage:**

Senate 47 0

House 96 1

**Effective:** July 24, 2015.