

WASHINGTON STATE BAR ASSOCIATION

WSBA Legislative Review Committee

October 7, 2021

2:00 – 4:00 p.m.

Online via Zoom

2:00 – 2:10 p.m.: **Welcome & Introductions**

Brian Considine, Committee Chair

2:10 – 2:20 p.m.: **Committee Overview; Overview of Meeting Materials; Questions**

Brian Considine and Sanjay Walvekar, WSBA Legislative Affairs Manager

2:20 – 3:15 p.m.: **Business Law Section's Corporate Act Revision Committee (CARC)
Proposal – Revisions to RCW 23B**

Eric DeJong, CARC Co-Chair

3:15 – 4:00 p.m.: **Business Law Section's Partnership & LLC Law Committee Proposal –
Revisions to RCW 25.10 and 25.15**

Elisabeth McNeil, Partnership & LLC Law Committee Co-Chair

4:00 p.m.: **Adjournment**

Brian Considine, Committee Chair

NEXT MEETING: TBD

WSBA Legislative Review Committee

Proposed Bar-Request Legislation Cover Sheet

PURPOSE: Completion of the information in this cover sheet will help expedite the WSBA Legislative Review Committee’s review and approval process of potential Bar-request legislation. Of particular importance is information related to draft development and stakeholder work.

Short title of proposal: Proposed Amendments to Provisions of Washington Business Corporation Act regarding record dates, merger and share exchanges, and miscellaneous provisions

Submitted by (Section¹): Corporate Act Revision Committee of Business Law Section (“CARC”)

Designated Section representative and contact information (phone and email):
Michael Hutchings (Co-Chair) - phone: 206-839-4824; email: michael.hutchings@us.dlapiper.com
Eric DeJong (Co-Chair) - phone: 206-359-3793; email: edejong@perkinscoie.com

Brief summary of bill and anticipated fiscal impact:

The proposed amendments would:

- Amend 23B.07.070 to clarify rules for fixing record dates, to remove the subsections governing records dates for share dividends and distributions to shareholders, moving those provisions to 23B.06.230 and 06.400 (the provisions governing share dividends and distributions generally), and to make correlative changes in other sections;
- Amend Chapter 11 of the WBCA to add a “medium form” merger provision and make correlative changes in other sections;
- Amend 23B.11.010 expressly to (1) permit the “amendment and restatement” of the surviving corporation’s articles of incorporation through the plan of merger, and (2) authorize the cancellation of some shares in connection with a plan of merger;
- Amend 23B.11.050 and 11.090 to eliminate the plan of merger or share exchange as a required element of the articles of merger or share exchange;
- Amend 23B.07.020 to add a deadline for delivery of sufficient demands for special meetings that corresponds with deadlines for delivery of shareholder consents generally; and
- Amend 23B.07.200 expressly to permit a corporation to make the shareholder list required in connection with shareholder meetings available on an electronic network.

More detail on the proposed changes is included in CARC’s memo to the Committee.

CARC believes there will be no fiscal impact will result from the proposed changes.

¹ For purposes of this document, “Section” means any WSBA Section, Committee, Division, or Council.
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WSBA Legislative Review Committee

Proposed Bar-Request Legislation Cover Sheet

Brief statement of need:

CARC continues to review the WBCA and propose changes designed to both modernize the WBCA where appropriate and to align the WBCA with the Model Business Corporation Act (2016 Revision) and desirable changes to the Delaware General Corporation Law. CARC believes the proposed changes would (1) help achieve this objective, (2) clarify ambiguous or eliminate unnecessary provisions, and (3) help Washington business practitioners in advising Washington corporations.

Description of draft development: (please provide detail)

The changes were originally drafted by CARC members and presented to the committee for its consideration in early 2021. Draft development took into consideration recently adopted changes to the Delaware General Corporation Law and the latest version of the Model Business Corporation Act. After deliberations and multiple revisions, CARC approved the proposed changes in the summer of 2021. The Executive Committee of the Business Law Section approved the proposed changes in its meeting held on August 19, 2021.

How does the proposal meet requirements under GR 12.2? (please explain)

CARC believes the proposal contributes to the WSBA's objective of promoting an effective legal system and allows the bar to maintain a legislative presence to ensure that the Washington Business Corporation Act continues to effectively serve the needs of the state's business community.

Submittal Status:

1. Has this proposal been submitted to the Committee before? Yes No

(If no, skip the remainder of this section, and move to the Stakeholder Work on the next page.)

2. If yes, when was this proposal initially submitted to the Committee?

3. Briefly, please provide the following:

(a) What concerns or questions were raised (including requests for additional information) by the Committee previously?

(b) How this proposal addresses those concerns, questions, or additional information requests made by the Committee?

(d) Is there additional information relevant to the status of the proposal?

Summary of Stakeholder Work

*Please describe completed and ongoing activity with internal and external partners

Referred to:**Feedback:**

Please include stakeholder positions on the proposal (e.g. support; oppose; concerns; neutral; or no response) and explain.

WSBA Legislative Review Committee Proposed Bar-Request Legislation Cover Sheet

Association of Washington Business (AWB)	No response
WA Secretary of State's Office	No response
WA Department of Financial Institutions	No response
All 29 WSBA Sections	No response
Senator Jamie Pedersen, Chair, Senate Law & Justice Committee	Support

Summary of Additional Stakeholder Input

*Please describe other anticipated stakeholder feedback regarding the proposal.

TO: WSBA Legislative Review Committee

FROM: Corporate Act Revision Committee

DATE: September 1, 2021

RE: Proposed Changes to Washington Business Corporation Act for 2022 Legislative Session (Record Dates; Merger/Share Exchange)

This memorandum summarizes CARC's proposed changes to the Washington Business Corporation Act, Title 23B of the Revised Code of Washington (WBCA), relating to two general topics:

- Record dates (summarized in Section A of this memorandum); and
- Mergers and share exchanges (summarized in Section B of this memorandum).

CARC is also proposing some additional changes to the WBCA that are unrelated to these topics (summarized in Section C of this memorandum).

The changes were approved by the Executive Committee of the Business Law Section at its meeting on August 19, 2021. ***CARC requests that the Legislative Review Committee consider the proposed changes described in this memorandum and recommend these changes to the WSBA's Board of Governors as WSBA-request legislation.***

The specific changes proposed are shown in Appendix A and are marked against the current version of the relevant sections of the WBCA.

A. Record Dates.

Record dates for purposes of determining shareholders of record entitled to notice of meetings, to approve corporate actions by written consent in lieu of meetings, and for other purposes are currently governed by Section 23B.07.070. Chapter 7 of the WBCA generally governs shareholder meetings, shareholder approval by written consent and other matters relating to shareholder voting. Somewhat awkwardly, Section 23B.07.070 includes rules governing the fixing of record dates for corporate actions that are generally governed by sections in other chapters of the WBCA (e.g., share dividends and distributions, which are governed by Sections 23B.06.230 and 06.400, respectively). In contrast, the Model Business Corporation Act (2016 Revision) (MBCA) locates provisions for establishing record dates for those matters within the sections that substantively govern those corporate actions (i.e., Sections 6.23 and 6.40).

Consistent with the approach taken in the MBCA, CARC proposes that (1) Section 23B.07.070 be amended to remove the subsections governing record dates for share dividends and distributions, and (2) Sections 23B.06.230 and 06.400 (governing share dividends and distributions to shareholders, respectively) be amended to include the rules governing the fixing of record dates for those corporate actions within those chapters. This would also require a minor related change to the definition of "record date" in Section 23B.01.400(33).

Section 23B.07.070 also includes the requirement that a record date must be a “future date.” This phrase introduces some ambiguity about whether a record date can be fixed as of the date the board adopts the resolution fixing the record date (although CARC believes most practitioners are comfortable setting a record date as of the date the board resolution is adopted). In contrast, the operative provisions of the MBCA state that a record date “*may not be retroactive*” and Section 213 of the Delaware General Corporation Law (DGCL) states that a record date “*shall not precede the date on which the resolution fixing the record date is adopted by the board of directors,*” each of which eliminates that ambiguity. CARC recommends that we follow Delaware’s approach and amend Section 23B.07.070 to clarify this ambiguity.

B. Mergers and Share Exchanges.

CARC is proposing a number of changes to Chapter 11 of the WBCA, which governs mergers and share exchanges, and some related changes to Chapter 13 of the WBCA, which governs dissenters’ rights.

The most significant change to Chapter 11 would be to add a so-called “medium-form” merger provision similar to Section 251(h) of the DGCL. Currently, the WBCA generally requires that shareholders of a Washington corporation that is a party to a merger approve the plan of merger. A “medium-form” merger provision dispenses with the requirement of shareholder approval of a merger in the case of two-step transactions that involve a front-end tender offer followed by a back-end merger to squeeze out shareholders who do not tender their shares in the tender offer. The MBCA also includes a medium-form merger provision in Section 11.04(j) (which also applies to share exchanges). Although there are few significant substantive variations between Section 251(h) of the DGCL and Section 11.04(j) of the MBCA, CARC believes the MBCA approach feathers seamlessly into Section 23B.11.030 (the WBCA provision that is analogous to Section 11.04 of the MBCA). Accordingly, CARC is proposing to add a new subsection (9) to Section 23B.11.030 that authorizes medium-form mergers (as well as a new subsection (10) that includes associated definitions).

As proposed, to avoid the requirement of shareholder approval of a plan of merger under subsection (9) of Section 23B.11.030:

- the plan of merger must permit or require the merger to be effected under the new subsection;
- the offeror must make an offer (which must remain open at least 10 days) to purchase all of the target corporation’s outstanding shares (other than shares owned by the target or the offeror) on the terms and conditions stated in the plan of merger;
- the plan of merger must provide, and the offer information must disclose, that the merger will be effected as soon as practicable after the offer is consummated;
- the offeror must purchase all shares properly tendered in the offer;
- on consummation of the offer, the offeror must own enough shares to approve the merger (through shares already owned, shares purchased in the offer, and shares owned by third parties who have agreed to contribute their shares to the offeror¹);
- the offeror (or a subsidiary) must merge with or into the target after the offer is consummated; and
- the merger consideration payable in respect of shares not tendered in the offer must be the same (in amount and type) that is paid or exchanged for shares tendered in the offer.

¹ The latter facilitates transactions by private equity funds and other financial buyers in which management or other key shareholders agree to roll over their equity in the target.

The MBCA provision applies both to mergers and statutory share exchanges. However, CARC has limited proposed subsection (9) of Section 23B.11.030 to mergers on the basis that share exchanges are rarely if ever used in M&A transactions. The MBCA provision does not limit the medium-form provision to public companies. However, Section 251(h) of the DGCL does, and CARC believes it is appropriate to include that limitation in Washington's statute. As a practical matter, CARC felt it would be very unlikely that a two-step structure would make much sense for an acquisition of a non-public company. CARC concluded that the best course of action is to limit medium-form mergers to public companies and not to apply the medium-form provisions to share exchanges.

As the medium-form merger would be an entirely new type of merger transaction under the WBCA, changes to various sections of Chapter 13 of the WBCA (governing dissenters' rights) are also needed. Accordingly, CARC has proposed changes to Sections 23B.13.020, .200, .210, .220 and .230 to layer medium-form mergers into the dissenters' rights chapter. These are largely based on analogous provisions in the MBCA chapter governing appraisal rights.

In addition to the proposed amendments described above, CARC has proposed changes to Section 23B.11.010 that expressly permits the "amendment and restatement" of the surviving corporation's articles of incorporation through the plan of merger. Currently, that section only contemplates "amendments." In the past, this has led the Secretary of State to reject merger filings when the post-closing articles of incorporation attached to the filing are styled as "amended and restated." CARC believes that Washington practitioners have routinely used awkward means to work around this limitation (e.g., by including a full set of new articles as an exhibit to the filing but referring to them as "amended articles of incorporation" rather than "amended and restated"). To avoid that technically awkward designation, CARC is proposing that Section 23B.11.010 be revised to expressly permit restatements that include amendments. This change would also require certain corresponding changes to Sections 23B.11.060, .11.050 and .11.090.

CARC is also proposing revisions to address one problem with the WBCA that Washington practitioners occasionally confront - that is, when the amount of consideration that an acquirer is willing to pay is less than needed to satisfy liquidation preferences on preferred stock, leaving nothing remaining for common shareholders or junior preferred stock (which is not unusual in distressed sales of VC-backed companies). Practitioners currently are left to wonder whether a plan of merger for such a transaction can validly provide for the cancellation the junior stock of the target corporation. In contrast, there is explicit authorization in DGCL § 251(b)(5) for the cancellation of shares in an agreement of merger governed by Delaware law. To eliminate any ambiguity that a plan of merger governed by the WBCA can provide for the cancellation of some shares, CARC has proposed a modest but important modification to Section 23B.11.010(2)(c) that would expressly authorize cancellation of some shares in connection with a plan of merger.

CARC is also proposing changes to sections of Chapter 11 that govern requirements for articles of merger and share exchange (Sections 23B.11.050 and .11.090). These sections currently require that the articles of merger or share exchange filed with the Secretary of State to effect a merger or share exchange include the plan of merger or share exchange itself. This requirement has been a frequent source of concern for Washington practitioners when the parties to a merger do not want the plan of merger to be a matter of public record.² The concern arises mostly in the context of private

² The same concern would apply to share exchanges, but in CARC's experience that structure is rarely used in M&A transactions.

company M&A transactions, particularly for financial buyers, private strategic buyers and public strategic buyers for whom the transaction is not material enough to require the merger agreement to be filed with the SEC. These parties are typically reluctant to file the long-form merger agreement as part of the articles of merger. The customary work around has been to prepare a “short-form” plan of merger that incorporates only the bare minimum of statutory requirements from the long-form merger agreement for purposes of the filing.

In contrast to the WBCA provisions, the MBCA provisions governing the required content of articles of merger and share exchange do not require the plan of merger or share exchange to be included in the filing that effects the transaction.³ Instead, these provisions require only the identification of the parties to the merger or share exchange (and the surviving corporation in the case of a merger), certain other information relating to satisfaction of shareholder approval requirements and, in the case of mergers, amendments to the surviving corporation’s articles of incorporation. CARC is proposing changes to Sections 23B.11.050 and .11.090 that would largely align these provisions to the analogous provisions in the MBCA. This would eliminate the plan of merger or share exchange as a required element of the articles of merger or share exchange.

C. Miscellaneous.

CARC is proposing that some other changes to sections of Chapter 7 of the WBCA that it believes should be made at this time.

The first proposed change would amend Section 23B.07.020 to add a requirement that, when multiple shareholders aggregate their holdings to satisfy the ownership threshold required to call a special meeting, demands for a special meeting must be received within 60 days of the first demand delivered to the corporation. This would align this section with the corresponding section of the MBCA.

The second proposed change would amend Section 23B.07.200 to expressly permit a corporation to maintain the shareholders list required to be prepared and made available to shareholders before and during shareholders meeting on an electronic network. The WBCA is currently ambiguous whether an electronic shareholders list is permissible. A related proposed change would affirmatively require the list to be made available on an electronic network in the case of virtual meetings. These changes are not reflected in the MBCA⁴ but are similar to provisions included in the DGCL.

* * * *

³ This is also the case under Sections 251(c) and 252(c) of the DGCL.

⁴ However, the language in the MBCA provision is more general and the MBCA commentary specifically states that an electronic list is permissible.

APPENDIX A

Proposed changes to the WBCA related to record dates, merger and share exchanges, and related provisions and miscellaneous changes.

The specific amendments proposed by CARC are shown below, marked to show changes compared to the WBCA provisions as currently in effect.

[Proposed new language is indicated by underscoring and proposed deletions are shown by ~~strikeout~~]

RCW 23B.01.400 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(33) "Record date" means the date fixed for determining ~~established under chapter 23B.07 RCW on which a corporation determines~~ the identity of ~~its~~ a corporation's shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

RCW 23B.06.230 Share dividends.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

RCW 23B.06.400 Distributions to shareholders.

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors. If the board of directors does not fix a record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's shares), the record date is the date the board of directors authorizes the distribution.

~~(23)~~ No distribution may be made if, after giving it effect:

(34) For purposes of determinations under subsection (23) of this section:

(a) The board of directors may base a determination that a distribution is not prohibited under subsection (23) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and

(45) The effect of a distribution under subsection (23) of this section is measured:

(b) In the case of any other distribution:

(ii) If the distribution is of indebtedness other than that described in subsection (45) (a) and (b)(i) of this section, the effect of the distribution is measured as of the date the indebtedness is distributed; and

(56) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise by agreement.

(67) In circumstances to which this section and related sections of this title are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions.

(78) A transfer of the assets of a dissolved corporation to a trust or other successor entity of the type described in RCW 23B.14.030(4) constitutes a distribution subject to subsection (23) of this section only when and to the extent that the trust or successor entity distributes assets to shareholders.

RCW 23B.07.020 Special meeting.

(4) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to demand a special meeting is the first date on which an executed shareholder demand is delivered to the corporation. No written demand for a special meeting will be effective unless, within sixty days after the earliest date on which a demand delivered to the corporation as required by this section was executed, written demands executed by shareholders holding at least the percentage of votes specified in subsection (1)(b) of this section or, if applicable, fixed in accordance with subsection (2) or (3) of this section, have been delivered to the corporation.

RCW 23B.07.070 Record date.

(1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to approve any other corporate action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix ~~a future date as~~ the record date, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors.

~~(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.~~

~~(4) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.~~

~~(5)~~ (3) A record date fixed under this section may not be more than seventy days before the meeting of shareholders or more than ten days prior to the date on which the first shareholder consent is executed under RCW 23B.07.040(1)(b).

~~(6)~~ (4) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

~~(7)~~ (5) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

RCW 23B.07.200 Shareholders' list for meeting.

(2) The shareholders' list must be available for inspection by any shareholder, beginning ten days prior to the meeting and continuing through the meeting, (a) on a reasonably accessible electronic network, on condition that the information necessary to gain access to the list is provided in or accompanies the notice of the meeting, or (b) at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. If the corporation elects to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to shareholders or their agents or attorneys. A shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation ~~must shall~~ make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list at any time during the meeting or any adjournment. If the meeting is held solely by means of remote

communication in accordance with RCW 23B.07.010(4) or RCW 23B.07.020(6), then the list must be available for inspection by any shareholder, the shareholder's agent, or the shareholder's attorney during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided with the notice of the meeting.

RCW 23B.11.010 Merger.

(2) The plan of merger must include:

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part, or of cancelling some or all of such shares.

(3) The plan of merger may include:

(a) Amendments to the articles of incorporation of the surviving corporation, or a restatement that includes one or more amendments to the surviving corporation's articles of incorporation; and

RCW 23B.11.030 Approval of plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy ~~or summary~~ of the plan or a summary of the material terms and conditions of the proposed merger or share exchange and the consideration to be received by shareholders.

(9) Unless the articles of incorporation provide otherwise, approval by the shareholders of a public company is not required for a plan of merger if:

(a) The plan of merger expressly (i) permits or requires the merger to be effected under this subsection and (ii) provides that, if the merger is to be effected under this subsection, the merger will be effected as soon as practicable following the satisfaction of the requirements of subsection (9)(f) of this section;

(b) Another party to the merger or a parent of another party to the merger makes an offer to purchase, on the terms stated in the plan of merger, any and all of the outstanding shares of the

corporation that, absent this subsection, would be entitled to vote on the plan of merger, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(c) The offer discloses that the plan of merger states that the merger will be effected as soon as practicable following the satisfaction of the requirements of subsection (9)(f) of this section and that the shares of the corporation that are not tendered in response to the offer will be treated as provided in subsection (9)(h) of this section;

(d) The offer remains open for at least ten days;

(e) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) The (i) shares purchased by the offeror in accordance with the offer, (ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing, and (iii) shares subject to an agreement that they are to be transferred, contributed or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or other interests in that offeror, parent or subsidiary, are collectively entitled to cast at least the minimum number of votes on the merger that, absent this subsection, would be required by chapter 23B.11 RCW for the approval of the merger by the shareholders entitled to vote on the merger at a meeting at which all shares entitled to vote on the approval were present and voted;

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into the corporation; and

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and which is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in clause (ii) or (iii) of subsection (9)(f) of this section need not be converted into or exchanged for the consideration described in this subsection (9)(h).

(10) As used in subsection (9) of this section:

(a) "Offer" means the offer referred to in subsection (9)(b) of this section;

(b) "Offeror" means the person making the offer;

(c) "Parent" of an entity means a person that owns, directly or indirectly (through one or more wholly owned subsidiaries), all of the outstanding shares of or other interests in that entity;

(d) Shares tendered in response to the offer will be deemed to have been "purchased" in accordance with the offer at the earlier time as of which (i) the offeror has irrevocably accepted those shares for payment, and (ii) either (A) in the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing

those shares, or (B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent; and

(e) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly (through one or more wholly owned subsidiaries), all of the outstanding shares or other interests.

(911) After a merger or share exchange is approved, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder approval, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

RCW 23B.11.050 Articles of merger or share exchange.

(1) After a plan of merger ~~or share exchange~~ is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving ~~or acquiring corporation~~ entity shall deliver to the secretary of state for filing articles of merger ~~stating or share exchange setting forth:~~

~~(1a)~~ The ~~plan of merger or share exchange~~ name and jurisdiction of organization of each party to the merger;

(b) The name and jurisdiction of organization of the surviving entity;

(c) If the surviving entity of the merger is a domestic corporation and its articles of incorporation are amended or amended and restated, the amendments to the surviving entity's articles of incorporation or the amended and restated articles of incorporation of the surviving entity;

~~(2d)~~ If shareholder approval of any domestic corporation party to the merger was not required, a statement to that effect; ~~or~~

~~(3e)~~ If approval of the shareholders of one or more domestic corporations party to the merger ~~or share exchange~~ was required, a statement that the merger ~~or share exchange~~ was duly approved by the shareholders of such domestic corporation pursuant to RCW 23B.11.030; and

(f) If approval of the shareholders of one or more other entities party to the merger was required, a statement that the merger was duly approved by the interest holders of such other entity in accordance with the organic law of such other entity.

(2) After a plan of share exchange has been approved by the shareholders of the corporation whose shares will be acquired in the share exchange, the acquiring corporation shall deliver to the secretary of state for filing articles of share exchange, executed by the acquiring corporation and the corporation whose shares will be acquired in the share exchange, stating:

(a) The name of the corporation whose shares will be acquired in the share exchange;

(b) The name of the acquiring corporation; and

(c) A statement that the plan of share exchange was duly approved by the shareholders of the corporation whose shares will be acquired in the share exchange pursuant to RCW 23B.11.030.

(3) The definitions in RCW 23B.09.005 apply in this section unless the context clearly requires otherwise.

RCW 23B.11.060 Effect of merger or share exchange.

(1) When a merger takes effect:

(e) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the ~~plan of merger~~ articles of merger; and

RCW 23B.11.090 Articles of merger.

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The ~~plan of merger~~ name and jurisdiction of organization of each party to the merger;

(b) The name of the surviving corporation;

(c) If the surviving corporation's articles of incorporation are amended or amended and restated, the amendments to the surviving corporation's articles of incorporation or the amended and restated articles of incorporation of the surviving corporation;

(bd) A statement that the merger was duly approved by the shareholders of each corporation that is a party to the merger pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(ee) A statement that the merger was duly approved as required by the organic law of each other party that is a party to the merger ~~by the partners of each limited partnership pursuant to RCW 25.10.781.~~

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.786.

(3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.

(4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.426.

(5) The definitions in RCW 23B.09.005 apply in this section unless the context clearly requires otherwise.

RCW 23B.11.100 Merger—Corporation is surviving entity.

When a merger of one or more corporations, or one or more other entities ~~limited partnerships, one or more partnerships, or one or more limited liability companies~~ takes effect, and a corporation is the surviving entity:

(1) Every other corporation and, every other entity ~~limited partnership, every partnership, and every limited liability company~~ party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation, and every other entity ~~limited partnership, partnership, and limited liability company~~, ceases;

(2) The title to all real estate and other property owned by each entity ~~corporation, limited partnership, partnership, and limited liability company~~ party to the merger is vested in the surviving corporation without reversion or impairment;

(3) The surviving corporation has all the liabilities of each entity ~~corporation, limited partnership, partnership, and limited liability company~~ party to the merger;

(4) A proceeding pending against any entity ~~corporation, limited partnership, partnership, or limited liability company~~ party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the entity ~~corporation, limited partnership, partnership, or limited liability company~~ whose existence ceased;

(5) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the ~~plan of merger~~ articles of merger;

(6) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 23B.13 RCW; and

(7) The former interest holders of ~~partnership interests~~ of every other entity ~~limited partnership or partnership party to the merger and the former holders of member interests of every limited liability company~~ party to the merger are entitled only to the rights provided in the plan of merger or to their rights under the organic law of that other entity ~~chapter 25.10 RCW~~.

(8) The definitions in RCW 23B.09.005 apply in this section unless the context clearly requires otherwise.

RCW 23B.13.020 Right to dissent.

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, or would have been required but for the provisions of RCW 23B.11.030(9), and the shareholder was, or but for the provisions of RCW 23B.11.030(9) would have been, entitled to vote on

the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;

RCW 23B.13.200 Notice of dissenters' rights.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 would be submitted for approval by a vote at a shareholders' meeting but for the provisions of RCW 23B.11.030(9), the offer made pursuant to RCW 23B.11.030(9) must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

~~(23)~~ If corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, the shareholder consent described in RCW 23B.07.040(1)(b) and the notice described in RCW 23B.07.040(3)(a) must include a statement that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

RCW 23B.13.210 Notice of intent to demand payment.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 does not require shareholder approval pursuant to RCW 23B.11.030(9), a shareholder who wishes to assert dissenters' rights with respect to any class or series of shares (a) shall deliver to the corporation before the shares are purchased pursuant to the offer under RCW 23B.11.030(9) written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected, and (ii) shall not tender, or cause to be tendered, any shares of such class or series in response to such offer.

~~(23)~~ If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, a shareholder who wishes to assert dissenters' rights must not execute the consent or otherwise vote such shares in favor of the proposed corporate action.

~~(34)~~ A shareholder who does not satisfy the requirements of subsection (1), ~~or~~ (2), or (3) of this section is not entitled to payment for the shareholder's shares under this chapter.

RCW 23B.13.220 Dissenters' rights—Notice.

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection ~~(56)~~ of this section.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.11.030(9), the corporation shall within ten

days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(2) a notice in compliance with subsection (6) of this section.

(~~23~~) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(~~23~~) shall comply with subsection (~~56~~) of this section.

(~~34~~) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders of the subsidiary other than the parent a notice in compliance with subsection (~~56~~) of this section.

(~~45~~) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW 23B.10.020(4)(b), is not required to be approved by the shareholders of the corporation, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance with subsection (~~56~~) of this section.

(~~56~~) Any notice under subsection (1), (2), (3), ~~or~~ (4), or (5) of this section must:

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1), (2), (3), ~~or~~ (4), or (5) of this section is delivered; and

RCW 23B.13.230 Duty to demand payment.

(1) A shareholder sent a notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to RCW 23B.13.220(~~56~~)(c), and deposit the shareholder's certificates, all in accordance with the terms of the notice.

WSBA Legislative Review Committee

Proposed Bar-Request Legislation Cover Sheet

PURPOSE: Completion of the information in this cover sheet will help expedite the WSBA Legislative Review Committee’s review and approval process of potential Bar-request legislation. Of particular importance is information related to draft development and stakeholder work.

Short title of proposal: Concerning Business Entities
Submitted by (Section¹): Partnership and LLC Law Committee (the “Committee”)
Designated Section representative and contact information (phone and email): Elizabeth Yandell McNeil 206.370.7824 elizabethmcneil@klgates.com Matt LeMaster 206.757.8077 matthewlemaster@dwt.com
Brief summary of bill and anticipated fiscal impact: The proposed amendments would: <ul style="list-style-type: none">• Amend 25.15.441: action on a plan of conversion must be unanimously approved or in accordance with the operating agreement.• RCW 25.15.116: addition to cause admission of new member is automatic upon transfer if sole transferor is sole owner.• RCW 25.15.006: revision adds a definition of withdrawal making withdrawal effective upon notice from a member that the transferee is surrendering all of its rights in the LLC.• RCW 25.15.121(2)(h) removes duplicative provision.• RCW 25.15.131(1)(a) removes the concept of a voluntary act to withdraw.• RCW 25.15.131(2) provides that a member may withdraw at any time, but does not entitle withdrawing member to return of capital.• RCW 25.15.006: adds definition of “Foreign professional limited liability company”.• RCW 25.15.046(6): allows a foreign professional LLC to be a member of a professional LLC.• RCW 25.15.116: allows for the admission of a member without acquiring certain interests.• RCW 25.15.456: makes approval requirement applicable to mergers.• RCW 25.15.121: references approval to a plan of conversion.
Brief statement of need: The Committee believes the proposed changes creates clarity in the statute, removes ambiguity and further clarify the statute after the major revisions from 2016.
Description of draft development: (please provide detail) The changes were originally drafted by Committee members and developed for consideration between 2018 to 2020. After deliberations and multiple revisions, the Committee approved the proposed changes in the summer of 2020. The Business Law Section approved the proposed changes in its meeting held in November 2019.
How does the proposal meet requirements under GR 12.2? (please explain)

¹ For purposes of this document, “Section” means any WSBA Section, Committee, Division, or Council.
4836-8922-3933v.2 -

WSBA Legislative Review Committee Proposed Bar-Request Legislation Cover Sheet

The Committee believes the proposal contributes to the WSBA’s objective of promoting an effective legal system and allows the bar to maintain a legislative presence to ensure the Limited Liability Company Act serves the needs of the state’s business community.

Submittal Status:

1. Has this proposal been submitted to the Committee before? Yes No
(If no, skip the remainder of this section, and move to the Stakeholder Work on the next page.)

2. If yes, when was this proposal initially submitted to the Committee?

3. Briefly, please provide the following:

(a) What concerns or questions were raised (including requests for additional information) by the Committee previously?

(b) How this proposal addresses those concerns, questions, or additional information requests made by the Committee?

(d) Is there additional information relevant to the status of the proposal?

Summary of Stakeholder Work

*Please describe completed and ongoing activity with internal and external partners

Referred to:	Feedback:
WA Secretary of State’s Office	Please include stakeholder positions on the proposal (e.g. support; oppose; concerns; neutral; or no response) and explain. Support - Patrick Reed from the SOS office is a member of the Committee and participated in the drafting.
Business Law Executive Committee	Support – Approved by Business Law Executive Committee October, 2020.
Senator Jamie Pedersen, Chair, Senate Law & Justice Committee	Support – Approved by Senator Pederson September 23, 2021.
Association of Washington Business (AWB)	No response
WA Department of Financial Institutions	No response
All 29 WSBA Sections	No response

**WSBA Legislative Review Committee
Proposed Bar-Request Legislation Cover Sheet**

Summary of Additional Stakeholder Input

*Please describe other anticipated stakeholder feedback regarding the proposal.

MEMORANDUM

To: Executive Committee, Business Law Section, Washington State Bar Association
From: Partnership and LLC Law Committee
Date: October 13, 2020
Re: Revisions to Limited Liability Company Act

This Memorandum describes a set of proposed amendments to Washington’s Limited Liability Company Act, RCW ch. 25.15 (the “Act”). The amendments are recommended by the Partnership and LLC Law Committee. The texts of the proposed amendments are attached to this Memorandum.

The reasoning behind each of the amendments is as follows.

1. Conversion Approval. The Act currently requires unanimous member approval of conversions as its default rule. Conversions can implement material changes to the rights of an LLC member, but dissenters’ rights are not available to the members of a converting LLC because of the unanimous-member approval requirement. However, like almost all of the Act’s default rules, the requirement for unanimous member approval of conversions can be modified by the LLC agreement. RCW 25.15.018.

An LLC agreement can be oral or written. RCW 25.15.006(7). Thus, an oral LLC agreement could authorize a less-than-unanimous threshold for member approval of a conversion. Because dissenters’ rights are available only to members who dissent from the consummation of a merger, dissenters’ rights would not be available for minority dissenting members in the event of a conversion. The proposed amendment to RCW 25.15.441 therefore states that an LLC conversion must be approved by all the members or as otherwise specified by a *written* LLC agreement. This change would prevent situations in which an oral LLC agreement could function to authorize approval of a conversion without providing for the remedy of dissenters’ rights for a minority member, which would be available to such a member in the case of a merger.

2. Admission of Transferee Upon Death of Single LLC Member. The Act’s default rule is that a person acquiring the interest of an LLC member (transferee) will hold all the economic rights of the transferor, and will be admitted as a member (and therefore hold management and voting rights) upon the consent of all members. RCW 25.15.116(2)(b).

When a single individual member dies, there are no members to approve the admission of the transferee as a member. If fewer than 90 days have passed since the death of the sole member, under RCW 25.15.265, the transferee could vote to admit itself as a member. In practice, however, it is often the case that the 90-day grace period elapses before any action is taken under this section. Under RCW 25.15.265, the expiration of this period without admission of transferee as a member could lead to the inadvertent dissolution and winding down of an operating entity, with the potential for breach of existing contracts and other unintended consequences.

The amendment to RCW 25.116 therefore provides that if a transferee acquires all of the transferor's LLC interest, when the transferor is the only member of the LLC, the transferee is admitted as a member of LLC.

3. Member Withdrawal. The Act's default rule is that a member may not "withdraw" from an LLC without the written consent of all other members. RCW 25.15.131(2). The withdrawal of a member is an event of dissociation, and the withdrawn member loses the right to participate as a member but retains its economic rights as a transferee. RCW 25.15.131(1)(a).

The Committee is aware of three problems with the Act's current withdrawal provisions: (1) the lack of a definition of "withdrawal," (2) an internal conflict between separate provisions of the Act, and (3) the policy behind the bar on a member's withdrawal from an LLC.

Definition. There is no definition in the Act of "withdraw," and the Act does not indicate which acts of a member would constitute withdrawal from an LLC. The Washington courts have not provided clarity as to which acts constitute an LLC member's withdrawal. Can a member withdraw by resigning as a manager? What result if a member simply stops providing services to the LLC? Decisions on this issue from courts of other states have varied widely.

Conflicting Provisions. A member may transfer its transferable interest (economic rights), including its entire transferable interest, without member consent. RCW 25.15.251(1). Unless admitted as a member by unanimous member consent, the transferee is not a member and has no management rights. RCW 25.15.116(2)(b). By transferring its entire transferable interest, the transferring member is dissociated from the LLC and has no management rights. In effect, the transferring member has paradoxically withdrawn from the LLC in compliance with the Act, but without member consent, in violation of the Act.

Policy: Reversing the Bar on Withdrawal. The Committee is aware that circumstances not infrequently arise when an LLC member has determined that it should withdraw from the LLC, but member consent is not available. For example, other members may be mismanaging the LLC or failing to remit withheld income taxes to the government. Many small, closely held businesses formed as LLCs have no LLC agreement, and the default rule disallowing withdrawal without member consent applies.

The Committee has determined that the better policy would be to allow member withdrawals as the default rule, provided the withdrawing member cannot demand any return of its capital and is not released from any contractual commitments it has made to the LLC. An LLC agreement that bars member withdrawal would override a permissive default rule.

Amendment. The proposed amendment addresses these three issues by adding a definition of withdrawal and by changing the default rule to allow withdrawal.

The amendment modifies RCW 25.15.006 by adding a definition of withdrawal: "withdrawal" is effective upon notice from a member or from the holder of a transferable interest that the member or transferee is surrendering to the LLC all of its economic rights and all of its management and other rights as a member.

The amendment to RCW 25.15.131(2) states that a member may withdraw from a limited liability company at any time, and that the member's withdrawal does not entitle it to a return of its capital from the LLC. The Act currently states at RCW 25.15.131(4) that a member's dissociation does not, of itself, discharge the member from any liability to the LLC or other members that the member incurred while a member of the LLC, and no amendment is proposed to that section.

4. Foreign Professional LLCs. The Act defines a "professional limited liability company" as a Washington LLC that is formed under RCW 25.15.046 for the purpose of rendering professional services. "Foreign professional limited liability company" is not defined, but RCW 25.15.051 authorizes a foreign professional limited liability company to render professional services in this state if it complies with the Act and each individual rendering professional services in Washington is legally authorized to do so. There is a conflict, because a professional LLC, which is by definition a Washington LLC, cannot at the same time be a foreign professional LLC.

The amendment resolves the conflict by adding a definition of "foreign professional limited liability company" to RCW 25.15.006.

The amendment also eliminates a gap in the types of LLCs authorized to be members of a professional LLC. The Act allows a professional LLC to be a member of another professional LLC, so long as the members and managers of both professional LLCs are licensed or legally authorized to render the same professional services. RCW 25.15.046(6)(b). The amendment would similarly allow a foreign professional LLC to be a member of a professional LLC, so long as the members and managers of the foreign professional LLC are licensed or legally authorized to render the same professional services in any jurisdiction other than Washington as the members and managers of the professional LLC.

This is similar to the approach used for limited liability partnerships. Foreign entities may become members of a Washington limited liability partnership organized for the purpose of rendering professional services, so long as the foreign entity is duly licensed to render the same professional services in any other jurisdiction. RCW 25.05.510(1).

5. Members With No Economic Interests. There are certain types of financing transactions where it is desirable to have an LLC member with no economic interests, but which nonetheless has other member rights, such as voting under certain conditions. The Act is presently unclear as to whether a Washington LLC can have such a member. The Delaware LLC Act has for a number of years authorized non-economic members, which in some cases results in Delaware being chosen as the state of formation for LLCs in such transactions.

The Committee has determined, consistent with the principle of maximizing freedom of contract, that the Washington Act should be amended to authorize LLC members without an economic interest in the LLC. The amendment states that a person may be admitted as a member of an LLC without acquiring a transferable interest and without making or being obligated to make a capital contribution.

HOUSEKEEPING CHANGES. The following amendments correct minor, nonsubstantive defects in the Act.

6. Heading Change. RCW 25.15.456 sets forth an approval requirement that applies to both mergers and conversions. The heading incorrectly refers only to conversions; the correction includes mergers in the heading.

7. List of Unanimous Voting Requirements. RCW 25.15.121(2) lists the LLC actions that require unanimous member approval, and cross-references each to the applicable statutory section. A reference to approval of a plan of conversion is added.

Proposed Revisions to Washington Limited Liability Company Act

Approved by Partnership and LLC Law Committee, WSBA Business Law Section
2018 – 2020

No.	Revisions
1.	<p>Approved at Committee meeting, November 14, 2018.</p> <p>25.15.441 Action on plan of conversion by converting limited liability company. (1) Subject to RCW <u>25.15.456</u>, a plan of conversion must be consented to <u>approved either</u> by all the members of a converting limited liability company <u>or as provided in a written limited liability company agreement</u>. (2) Subject to RCW <u>25.15.456</u> and any contractual rights, after a conversion is approved, and at any time before a filing is made under RCW <u>25.15.446</u>, a converting limited liability company may amend the plan or abandon the planned conversion: (a) As provided in the plan; and (b) Except as prohibited by the plan, by the same approval as was required to approve the plan.</p>
2.	<p>Approved at Committee meeting, April 9, 2019.</p> <p>RCW 25.15.116 Admission of members. (1) In connection with the admission of the initial member or members of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of: (a) The formation of the limited liability company; or (b) The time provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when the person's admission is reflected in the records of the limited liability company. (2) After the admission of the initial member or members of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company: (a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; (b) In the case of a transferee of a limited liability company interest, upon compliance with any procedure for admission provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company agreement; or</p>

	<p>(c) In the case of a person being admitted as a member of a surviving or resulting limited liability company pursuant to a merger or conversion approved in accordance with this chapter, as provided in the limited liability company agreement of the surviving or resulting limited liability company or in the agreement of merger or plan of merger or conversion, and in the event of any inconsistency, the terms of the agreement of merger or plan of merger or conversion control; and in the case of a person being admitted as a member of a limited liability company pursuant to a merger or conversion in which such limited liability company is not the surviving or resulting limited liability company in the merger or conversion, as provided in the limited liability company agreement of such limited liability company-; or</p> <p><u>(d) In the case of a transferee acquiring all of the transferor’s limited liability company interest from a transferor that is the only member of the limited liability company, upon the effectiveness of the transfer.</u></p>
<p>3.</p>	<p>Approved at Committee meetings, February 11, March 10, and April 14, 2020.</p> <p>Revisions relating to member withdrawal.</p> <p>1. Add the following definition to RCW 25.15.006:</p> <p><u>(21) “Withdraw” or “withdrawal” means, with respect to a member of a limited liability company or a holder of a transferable interest in a limited liability company, that the member or holder of the transferable interest provides written notice to the limited liability company of its intent to surrender all of its transferable interest and rights as a member to the limited liability company. A withdrawal is effective as of the later of the date the limited liability company receives the written notice of withdrawal or the date specified in such notice.</u></p> <p>2. Delete the following from RCW 25.15.121(2)(h):</p> <p>(h) Authorize the withdrawal of a member from the limited liability company as provided in RCW 25.15.131(2);</p> <p>3. Change RCW 25.15.131(1)(a) as follows:</p> <p>(a) The member dies or withdraws by voluntary act from the limited liability company as provided in subsection (2) of this section;</p> <p>4. Change RCW 25.15.131(2) to read as follows:</p> <p>(2) A member may withdraw from a limited liability company at any time. The withdrawn member or transferee shall have no right to payment from the limited liability company as a consequence of its withdrawal. the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw from the limited liability company without the written</p>

	consent of all other members.
4.	<p>Approved at Committee meeting, July 14, 2020.</p> <p>1. Add the following definition to RCW 25.15.006:</p> <p><u>“Foreign professional limited liability company” means a foreign limited liability company formed for the purpose of rendering professional services.</u></p> <p>2. Modify RCW 25.15.046(6) by adding new subparagraph (c):</p> <p><u>(c) A foreign professional limited liability company, if the managers and members of the foreign professional limited liability company are duly licensed or otherwise legally authorized to render the same specific professional services in any jurisdiction other than this state as the managers and members of the professional limited liability company.</u></p>
5.	<p>Approved at Committee meeting, July 14, 2020.</p> <p>Add the following new paragraph (3) to RCW 25.15.116:</p> <p><u>(3) A person may be admitted as a member of a limited liability company without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.</u></p>
6.	<p>Approved at Committee meeting, January 8, 2019</p> <p>RCW 25.15.456 Restrictions on approval of <u>mergers and conversions</u>.</p> <p>If a member of a converting limited liability company or constituent limited liability company will have personal liability with respect to a converted organization or surviving organization, then, in addition to the applicable approval requirements in RCW 25.15.441(1) or 25.15.421(1)(a), approval of a plan of conversion or plan of merger must also require the execution, by each such member, of a separate written consent to become subject to such personal liability.</p>
7.	<p>Approved at Committee meeting, January 8, 2019.</p> <p>RCW 25.15.121 Voting and classes of membership.</p> <p>(1) Except as otherwise provided by this chapter, the affirmative vote, approval, or consent of a majority of the members is necessary for actions requiring member approval.</p>

(2) The affirmative vote, approval, or consent of all members is required to:

- (a) Amend the certificate of formation, except as provided in RCW 25.15.076(2);
- (b) Amend the limited liability company agreement;
- (c) Authorize a manager, member, or other person to do any act on behalf of the limited liability company that contravenes the limited liability company agreement, including any provision that expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof;
- (d) Admit as a member of the limited liability company a person acquiring a limited liability company interest directly from the limited liability company as provided in RCW 25.15.116(2)(a);
- (e) Admit as a member of the limited liability company a transferee of a limited liability company interest as provided in RCW 25.15.116(2)(b);
- (f) Authorize a member's removal as a member of the limited liability company as provided in RCW 25.15.131(1)(e);
- (g) Waive a member's dissociation as a member of the limited liability company as provided in RCW 25.15.131(1) (f), (g), or (h);
- (h) Authorize the withdrawal of a member from the limited liability company as provided in RCW 25.15.131(2);
- (i) Compromise any member's obligation to make a contribution or return cash or other property paid or distributed to the member in violation of this chapter as provided in RCW 25.15.196(2);
- (j) Amend the certificate of formation and extend the date of dissolution, if a dissolution date is specified in the certificate of formation, as provided in RCW 25.15.265(1);
- (k) Dissolve the limited liability company as provided in RCW 25.15.265(3);
- (l) Approve a plan of conversion as provided in RCW 25.15.441(1);
- ~~(m)~~ Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited liability company's property, other than in the ordinary course of the limited liability company's activities or activities of the kind carried on by the limited liability company; or
- ~~(n)~~ Undertake any other act outside the ordinary course of the limited liability company's activities.

(3) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members do not have voting rights.

(4) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with

all or any class or group of the members or managers, on any matter. If the limited liability company agreement so provides, voting by members may be on a per capita, profit share, class, group, or any other basis.

(5) A limited liability company agreement may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

MEMORANDUM

To: Executive Committee, Business Law Section, Washington State Bar Association
From: Partnership and LLC Law Committee
Date: October 15, 2020
Re: Revisions to Uniform Limited Partnership Act

This Memorandum describes a set of proposed amendments to Washington’s Uniform Limited Partnership Act, RCW ch. 25.10 (the “Act”). The amendments are recommended by the Partnership and LLC Law Committee. The texts of the proposed amendments are attached to this Memorandum.

The reasoning behind each of the amendments is as follows.

1. Definition of “Partnership Agreement.” The Act currently defines a partnership agreement to include the agreement “as amended.” Restatements of partnership agreements are in fact treated as partnership agreements. This change makes the definition more accurate and complete by adding “or restated”. It also makes the language consistent with the definition of “limited liability company agreement” in Washington’s Limited Liability Company Act (the “LLC Act”).

2. Definition of “Person.” The Act’s definition of “Person” currently includes both a “corporation” and a “public corporation.” “Corporation” is normally understood to include all corporations, whether publicly or privately owned. The inclusion of a separate reference to a “public corporation” is therefore redundant and therefore does not add anything to the definition. The proposed amendment would remove that redundancy and make the language consistent with the definition of “Person” in the LLC Act.

3. Partner Transactions with Partnership. The Act currently provides that a partner has the same rights and obligations with respect to transactions with the partnership as a person not a partner. A partner, however, is or may be subject to other applicable law that would limit his or her rights and obligations in comparison with those of an unrelated party. The proposed amendment therefore adds the clause “subject to other applicable law” to make clear that a partner’s rights may not, in all circumstances, be as clear as those of a non-partner. It also makes the language consistent with the corresponding provision of the LLC Act.

4. Right to Distribution. The Act currently provides that a partnership’s obligation to make distributions is subject to offset for any amount owed to the partnership by the partner or dissociated partner on whose account the distribution is made. Because the “amount owed” may be greater than the “amount due and payable” on the date of any distribution, the “amount due and payable” is more appropriate as the amount to be offset. In addition, “any amount due and payable” makes the language consistent with the corresponding provision of the LLC Act.

5. Limitation on Distribution at time of Distribution. The Act imposes limits on a partnership's ability to make distributions, based on the partnership's ability to pay its debts and the relation of its total assets to total liabilities *after* a distribution. RCW 25.10.496. The proposed amendment to RCW 25.10.496(2) replaces the word "after" with the phrases "to the extent that at the time of" the distribution, and "after giving effect to the distribution." The proposed amendment clarifies the limitation and makes the language consistent with the corresponding provision of the LLC Act.

6. Limitation on Distribution of Indebtedness. The Act limits the ability of a partnership to make distributions, based on the partnership's solvency and its ability to pay its debts in the ordinary course. RCW 25.10.496. The current language of RCW 25.10.496(7) requires that when a partnership's indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made. The corresponding provision in the LLC Act, however, distinguishes between two types of LLC indebtedness: (i) indebtedness whose terms provide that payments can be made only to the extent that a distribution could then be made, and (ii) all other indebtedness. The effect of the LLC's indebtedness in the first category (payments are limited) is measured when payments are made. But the effect of all other LLC indebtedness is measured when the indebtedness is distributed, rather than later when payments on the indebtedness are made.

The proposed amendment to subsection (7) adopts the LLC Act's two-tiered approach to distributions of partnership debt. Paragraph 7(a) of the amendment provides that a distribution of partnership indebtedness for which payments are limited to the extent that a distribution could then be made, is treated as a distribution whose effect is measured on the date payment is actually made. Paragraph 7(b) provides that, with respect to distributions of any other partnership indebtedness, the effect is to be measured as of the date the indebtedness is distributed.

The Committee believes that the approach of the LLC Act, i.e. to determine the legality of a distribution of partnership indebtedness when distributed rather than when payments on the debt are made, unless the terms of the indebtedness limit payment to the extent a distribution could then be made, is better policy. This policy is also reflected in the Business Corporation Act, RCW 23B.06.400. The proposed amendment will also make the language of this section consistent with the LLC Act.

7. Partner's Transferable Interest. The current provision of the Act makes no statement concerning whether a partner's transferable interest includes an interest in specific partnership property. The addition of a statement that it does not is good public policy and underscores the modern view that the entity is the owner of partnership property, and not the partners. The change is consistent with the corresponding provision in the LLC Act.

8. Effect of Conversion. The Act currently states that "[a]ll property owned by the converting organization remains vested in the converted organization". Attorneys in real estate practice are more comfortable with language that refers specifically to title in real estate and all other property. Such language is also consistent with the expectations of corporate lawyers. Finally, it is consistent with the language in the corresponding provision of the LLC Act.

9. Effect of Merger. The current provision of the Act states that "[a]ll property owned by each constituent organization that ceases to exist vests in the surviving organization". As is the

case with respect to the effect of conversions, attorneys in real estate practice are more comfortable with language that refers specifically to title in real estate and all other property. Such language is also consistent with the expectations of corporate lawyers. Finally, it is consistent with the language in the corresponding provision of the LLC Act.

Proposed Revisions to Washington Uniform Limited Partnership Act

Approved by Partnership and LLC Law Committee, WSBA Business Law Section
November 2019

No.	Revisions
1.	<p>RCW 25.10.011 Definitions – Partnership Agreement</p> <p>(13) “Partnership agreement” means the partners’ agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. “Partnership agreement” includes the agreement as amended <u>or restated</u>.</p>
2.	<p>RCW 25.10.011 Definitions - Person</p> <p>(14) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.</p>
3.	<p>RCW 25.10.101 Partner Transactions with Partnership</p> <p>A partner may lend money to and transact other business with the limited partnership and, <u>subject to other applicable law</u>, has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.</p>
4.	<p>RCW 25.10.491 Right to Distribution</p> <p>When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership’s obligation to make a distribution is subject to offset for any amount owed <u>due and payable</u> to the limited partnership by the partner or dissociated partner on whose account the distribution is made.</p>

5.	<p>RCW 25.10.496(2): Limitation on Distribution at time of Distribution</p> <p>(2) A limited partnership may not make a distribution if after <u>to the extent that at the time of the distribution, after giving effect to the distribution:</u></p> <p>(a) The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or</p> <p>(b) The limited partnership's total assets would be less than the sum of its total liabilities other than liabilities to partners on account of their partnership interests and liabilities for which recourse of creditors is limited to specified property of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.</p>
6.	<p>RCW 25.10.496(7) Limitation on Distribution of Indebtedness</p> <p>(7) If indebtedness is issued as <u>The effect of</u> a distribution <u>of indebtedness under subsection (2) of this section is measured:</u></p> <p>(a) <u>In the case of a distribution of indebtedness described in subsection (6) of this section,</u> each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is <u>actually made;</u> <u>and</u></p> <p>(b) <u>In the case of a distribution of any other indebtedness, the effect of the distribution is measured as of the date the indebtedness is distributed.</u></p>
7.	<p>RCW 25.10.546 Partner's Transferable Interest</p> <p>The only interest of a partner that is transferable is the partner's transferable interest. A transferable interest is personal property. <u>A partner has no interest in specific partnership property.</u></p>
8.	<p>RCW 25.10.771 Effect of Conversion</p> <p>(2) When a conversion takes effect:</p> <p>(a) All <u>The title to all real estate and other</u> property owned by the converting</p>

	organization remains vested in the converted organization <u>without reversion or impairment</u> ;
9.	RCW 25.10.791 Effect of Merger (1) When a merger becomes effective: ... (c) All <u>The title to all real estate and other</u> property owned by each constituent organization that ceases to exist vests in the surviving organization <u>without reversion or impairment</u> ;

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0351.2/22 2nd draft

ATTY/TYPIST: KS:jlb

BRIEF DESCRIPTION: Concerning business entities.

1 AN ACT Relating to business entities; and amending RCW
2 23B.01.400, 23B.06.230, 23B.06.400, 23B.07.020, 23B.07.070,
3 23B.07.200, 23B.11.010, 23B.11.030, 23B.11.050, 23B.11.060,
4 23B.11.090, 23B.11.100, 23B.13.020, 23B.13.200, 23B.13.210,
5 23B.13.220, 23B.13.230, 25.10.011, 25.10.101, 25.10.491, 25.10.496,
6 25.10.546, 25.10.771, 25.10.791, 25.15.006, 25.15.046, 25.15.116,
7 25.15.121, 25.15.131, and 25.15.441.

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

9 **PART I**

10 **BUSINESS CORPORATIONS**

11 **Sec. 101.** RCW 23B.01.400 and 2021 c 84 s 1 are each amended to
12 read as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this title.

15 (1) "Articles of incorporation" include amended and restated
16 articles of incorporation and articles of merger.

17 (2) "Authorized shares" means the shares of all classes a
18 domestic or foreign corporation is authorized to issue.

19 (3) "Conspicuous" means so prepared that a reasonable person
20 against whom the writing is to operate should have noticed it. For

1 example, text in italics, boldface, contrasting color, capitals, or
2 underlined is conspicuous.

3 (4) "Controlling interest" means ownership of an entity's
4 outstanding shares or interests in such number as to entitle the
5 holder at the time to elect a majority of the entity's directors or
6 other governors without regard to voting power which may thereafter
7 exist upon a default, failure, or other contingency.

8 (5) "Corporate action" means any resolution, act, policy,
9 contract, transaction, plan, adoption or amendment of articles of
10 incorporation or bylaws, or other matter approved by or submitted for
11 approval to a corporation's incorporators, board of directors or a
12 committee thereof, or shareholders.

13 (6) "Corporation" or "domestic corporation" means a corporation
14 for profit, including a social purpose corporation, which is not a
15 foreign corporation, incorporated under or subject to the provisions
16 of this title.

17 (7) "Deliver" or "delivery" means any method of delivery used in
18 conventional commercial practice, including delivery by hand, mail,
19 commercial delivery, and, if authorized in accordance with RCW
20 23B.01.410, by electronic transmission.

21 (8) "Distribution" means a direct or indirect transfer of money
22 or other property, except its own shares, or incurrence of
23 indebtedness by a corporation to or for the benefit of its
24 shareholders in respect to any of its shares. A distribution may be
25 in the form of a declaration or payment of a dividend; a distribution
26 in partial or complete liquidation, or upon voluntary or involuntary
27 dissolution; a purchase, redemption, or other acquisition of shares;
28 a distribution of indebtedness; or otherwise.

29 (9) "Document" means:

30 (a) Any tangible medium on which information is inscribed, and
31 includes handwritten, typed, printed, or similar instruments or
32 copies of such instruments; and

33 (b) An electronic record.

34 (10) "Electronic" means relating to technology having electrical,
35 digital, magnetic, wireless, optical, electromagnetic, or similar
36 capabilities.

37 (11) "Electronic mail" means an electronic transmission directed
38 to a unique electronic mail address, which electronic mail will be
39 deemed to include any files attached thereto and any information
40 hyperlinked to a website if the electronic mail includes the contact

1 information of an officer or agent of the corporation who is
2 available to assist with accessing such files and information.

3 (12) "Electronic mail address" means a destination, commonly
4 expressed as a string of characters, consisting of a unique user name
5 or mailbox, commonly referred to as the "local part" of the address,
6 and a reference to an internet domain, commonly referred to as the
7 "domain part" of the address, whether or not displayed, to which
8 electronic mail can be sent or delivered.

9 (13) "Electronic record" means information that is stored in an
10 electronic or other nontangible medium and: (a) Is retrievable in
11 paper form by the recipient through an automated process used in
12 conventional commercial practice; or (b) if not retrievable in paper
13 form by the recipient through an automated process used in
14 conventional commercial practice, is otherwise authorized in
15 accordance with RCW 23B.01.410(10).

16 (14) "Electronic transmission" or "electronically transmitted"
17 means internet transmission, telephonic transmission, electronic mail
18 transmission, transmission of a telegram, cablegram, or datagram, the
19 use of, or participation in, one or more electronic networks or
20 databases including one or more distributed electronic networks or
21 databases, or any other form or process of communication, not
22 directly involving the physical transfer of paper or another tangible
23 medium, which:

24 (a) Is suitable for the retention, retrieval, and reproduction of
25 information by the recipient; and

26 (b) Is retrievable in paper form by the recipient through an
27 automated process used in conventional commercial practice, or, if
28 not retrievable in paper form by the recipient through an automated
29 process used in conventional commercial practice, is otherwise
30 authorized in accordance with RCW 23B.01.410(10).

31 (15) "Employee" includes an officer but not a director. A
32 director may accept duties that make the director also an employee.

33 (16) "Entity" includes a corporation and foreign corporation,
34 not-for-profit corporation, business trust, estate, trust,
35 partnership, limited liability company, association, joint venture,
36 two or more persons having a joint or common economic interest, the
37 state, United States, and a foreign governmental subdivision, agency,
38 or instrumentality, or any other legal or commercial entity.

39 (17) "Execute," "executes," or "executed" means, with present
40 intent to authenticate or adopt a document:

1 (a) To sign or adopt a tangible symbol to the document, and
2 includes any manual, facsimile, or conformed signature;

3 (b) To attach or logically associate with an electronic
4 transmission an electronic sound, symbol, or process, and includes an
5 electronic signature; or

6 (c) With respect to a document to be filed with the secretary of
7 state, in compliance with the standards for filing with the office of
8 the secretary of state as prescribed by the secretary of state.

9 (18) "Foreign corporation" means a corporation for profit
10 incorporated under a law other than the law of this state.

11 (19) "Foreign limited partnership" means a partnership formed
12 under laws other than of this state and having as partners one or
13 more general partners and one or more limited partners.

14 (20) "General social purpose" means the general social purpose
15 for which a social purpose corporation is organized as set forth in
16 the articles of incorporation of the corporation in accordance with
17 RCW 23B.25.040(1)(c).

18 (21) "Governmental subdivision" includes authority, county,
19 district, and municipality.

20 (22) "Governor" has the meaning given that term in RCW 23.95.105.

21 (23) "Includes" denotes a partial definition.

22 (24) "Individual" includes the estate of an incompetent or
23 deceased individual.

24 (25) "Limited partnership" or "domestic limited partnership"
25 means a partnership formed by two or more persons under the laws of
26 this state and having one or more general partners and one or more
27 limited partners.

28 (26) "Means" denotes an exhaustive definition.

29 (27) "Notice" has the meaning provided in RCW 23B.01.410.

30 (28) "Person" means an individual, corporation, business trust,
31 estate, trust, partnership, limited liability company, association,
32 joint venture, government, governmental subdivision, agency, or
33 instrumentality, or any other legal or commercial entity.

34 (29) "Principal office" means the office, in or out of this
35 state, so designated in the annual report where the principal
36 executive offices of a domestic or foreign corporation are located.

37 (30) "Proceeding" includes civil suit and criminal,
38 administrative, and investigatory action.

39 (31) "Public company" means a corporation that has a class of
40 shares registered with the federal securities and exchange commission

1 pursuant to section 12 or 15 of the securities exchange act of 1934,
2 or section 8 of the investment company act of 1940, or any successor
3 statute.

4 (32) "Qualified director" means (a) with respect to a director's
5 conflicting interest transaction as defined in RCW 23B.08.700, any
6 director who does not have either (i) a conflicting interest
7 respecting the transaction, or (ii) a familial, financial,
8 professional, or employment relationship with a second director who
9 does have a conflicting interest respecting the transaction, which
10 relationship would, in the circumstances, reasonably be expected to
11 exert an influence on the first director's judgment when voting on
12 the transaction; (b) with respect to RCW 23B.08.735, a qualified
13 director under (a) of this subsection if the business opportunity
14 were a director's conflicting interest transaction; and (c) with
15 respect to RCW 23B.02.020(2)(g), a director who is not a director (i)
16 to whom the limitation or elimination of the duty of an officer to
17 offer potential business opportunities to the corporation would
18 apply, or (ii) who has a familial, financial, professional, or
19 employment relationship with another officer to whom the limitation
20 or elimination would apply, which relationship would, in the
21 circumstances, reasonably be expected to exert an influence on the
22 director's judgment when voting on the limitation or elimination.

23 (33) "Record date" means the date (~~established under chapter~~
24 ~~23B.07 RCW on which a corporation determines~~) fixed for determining
25 the identity of (~~its~~) a corporation's shareholders and their
26 shareholdings for purposes of this title. The determinations shall be
27 made as of the close of business on the record date unless another
28 time for doing so is specified when the record date is fixed.

29 (34) "Registered office" means the address of the corporation's
30 registered agent.

31 (35) "Secretary" means the corporate officer to whom the board of
32 directors has delegated responsibility under RCW 23B.08.400(3) for
33 custody of the minutes of the meetings of the board of directors and
34 of the shareholders and for authenticating records of the
35 corporation.

36 (36) "Shareholder" means the person in whose name shares are
37 registered in the records of a corporation or the beneficial owner of
38 shares to the extent of the rights granted by a nominee certificate
39 on file with a corporation.

1 (37) "Shares" means the units into which the proprietary
2 interests in a corporation are divided.

3 (38) "Social purpose" includes any general social purpose and any
4 specific social purpose.

5 (39) "Social purpose corporation" means a corporation that has
6 elected to be governed as a social purpose corporation under chapter
7 23B.25 RCW.

8 (40) "Specific social purpose" means the specific social purpose
9 or purposes for which a social purpose corporation is organized as
10 set forth in the articles of incorporation of the corporation in
11 accordance with RCW 23B.25.040(2)(a).

12 (41) "State," when referring to a part of the United States,
13 includes a state and commonwealth, and their agencies and
14 governmental subdivisions, and a territory and insular possession,
15 and their agencies and governmental subdivisions, of the United
16 States.

17 (42) "Subscriber" means a person who subscribes for shares in a
18 corporation, whether before or after incorporation.

19 (43) "Subsidiary" means an entity in which the corporation has,
20 directly or indirectly, a controlling interest.

21 (44) "United States" includes a district, authority, bureau,
22 commission, department, and any other agency of the United States.

23 (45) "Voting group" means all shares of one or more classes or
24 series that under the articles of incorporation or this title are
25 entitled to vote and be counted together collectively on a matter at
26 a meeting of shareholders. All shares entitled by the articles of
27 incorporation or this title to vote generally on the matter are for
28 that purpose a single voting group.

29 (46) "Writing" or "written" means any information in the form of
30 a document.

31 **Sec. 102.** RCW 23B.06.230 and 1989 c 165 s 51 are each amended to
32 read as follows:

33 (1) Unless the articles of incorporation provide otherwise,
34 shares may be issued pro rata and without consideration to the
35 corporation's shareholders or to the shareholders of one or more
36 classes or series. An issuance of shares under this subsection is a
37 share dividend.

38 (2) Shares of one class or series may not be issued as a share
39 dividend in respect to shares of another class or series unless (a)

1 the articles of incorporation so authorize, (b) a majority of the
2 votes entitled to be cast by the class or series to be issued approve
3 the issue, or (c) there are no outstanding shares of the class or
4 series to be issued.

5 (3) The board of directors may fix the record date for
6 determining shareholders entitled to a share dividend, which date may
7 not precede the date on which the resolution fixing the record date
8 is approved by the board of directors. If the board of directors does
9 not fix the record date for determining shareholders entitled to a
10 share dividend, the record date is the date the board of directors
11 authorizes the share dividend.

12 **Sec. 103.** RCW 23B.06.400 and 2009 c 189 s 12 are each amended to
13 read as follows:

14 (1) A board of directors may approve and the corporation may make
15 distributions to its shareholders subject to restriction by the
16 articles of incorporation and the limitation in subsection ~~((2))~~
17 (3) of this section.

18 (2) The board of directors may fix the record date for
19 determining shareholders entitled to a distribution, which date may
20 not precede the date on which the resolution fixing the record date
21 is approved by the board of directors. If the board of directors does
22 not fix a record date for determining shareholders entitled to a
23 distribution, other than one involving a purchase, redemption, or
24 other acquisition of the corporation's shares, the record date is the
25 date the board of directors authorizes the distribution.

26 (3) No distribution may be made if, after giving it effect:

27 (a) The corporation would not be able to pay its liabilities as
28 they become due in the usual course of business; or

29 (b) The corporation's total assets would be less than the sum of
30 its total liabilities plus, unless the articles of incorporation
31 permit otherwise, the amount that would be needed, if the corporation
32 were to be dissolved at the time of the distribution, to satisfy the
33 preferential rights upon dissolution of shareholders whose
34 preferential rights are superior to those receiving the distribution.

35 ~~((3))~~ (4) For purposes of determinations under subsection
36 ~~((2))~~ (3) of this section:

37 (a) The board of directors may base a determination that a
38 distribution is not prohibited under subsection ~~((2))~~ (3) of this
39 section either on financial statements prepared on the basis of

1 accounting practices and principles that are reasonable in the
2 circumstances or on a fair valuation or other method that is
3 reasonable in the circumstances; and

4 (b) Indebtedness of a corporation, including indebtedness issued
5 as a distribution, is not considered a liability if its terms provide
6 that payment of principal and interest are made only if and to the
7 extent that payment of a distribution to shareholders could then be
8 made under this section.

9 ~~((4))~~ (5) The effect of a distribution under subsection ~~((2))~~
10 (3) of this section is measured:

11 (a) In the case of a distribution of indebtedness, the terms of
12 which provide that payment of principal and interest are made only if
13 and to the extent that payment of a distribution to shareholders
14 could then be made under this section, each payment of principal or
15 interest is treated as a distribution, the effect of which is
16 measured on the date the payment is actually made; or

17 (b) In the case of any other distribution:

18 (i) If the distribution is by purchase, redemption, or other
19 acquisition of the corporation's shares, the effect of the
20 distribution is measured as of the earlier of the date any money or
21 other property is transferred or debt incurred by the corporation, or
22 the date the shareholder ceases to be a shareholder with respect to
23 the acquired shares;

24 (ii) If the distribution is of indebtedness other than that
25 described in ~~((subsection—(4)))~~ (a) and (b)(i) of this subsection,
26 the effect of the distribution is measured as of the date the
27 indebtedness is distributed; and

28 (iii) In all other cases, the effect of the distribution is
29 measured as of the date the distribution is approved if payment
30 occurs within one hundred twenty days after the date of approval, or
31 the date the payment is made if it occurs more than one hundred
32 twenty days after the date of approval.

33 ~~((5))~~ (6) A corporation's indebtedness to a shareholder
34 incurred by reason of a distribution made in accordance with this
35 section is at parity with the corporation's indebtedness to its
36 general, unsecured creditors except to the extent provided otherwise
37 by agreement.

38 ~~((6))~~ (7) In circumstances to which this section and related
39 sections of this title are applicable, such provisions supersede the

1 applicability of any other statutes of this state with respect to the
2 legality of distributions.

3 ~~((7))~~ (8) A transfer of the assets of a dissolved corporation
4 to a trust or other successor entity of the type described in RCW
5 23B.14.030(4) constitutes a distribution subject to subsection
6 ~~((2))~~ (3) of this section only when and to the extent that the
7 trust or successor entity distributes assets to shareholders.

8 **Sec. 104.** RCW 23B.07.020 and 2020 c 57 s 48 are each amended to
9 read as follows:

10 (1) A corporation shall hold a special meeting of shareholders:

11 (a) On call of its board of directors or the person or persons
12 authorized to do so by the articles of incorporation or bylaws; or

13 (b) Except as set forth in subsections (2) and (3) of this
14 section, if shareholders holding at least ten percent of all the
15 votes entitled to be cast on any issue proposed to be considered at
16 the proposed special meeting execute, date, and deliver to the
17 corporation one or more written demands for the meeting describing
18 the purpose or purposes for which it is to be held.

19 (2) The right of shareholders of a public company to call a
20 special meeting may be limited or denied to the extent provided in
21 the articles of incorporation.

22 (3) If the corporation is other than a public company, the
23 articles of incorporation or bylaws may require the demand specified
24 in subsection (1)(b) of this section be made by a greater percentage,
25 not in excess of twenty-five percent, of all the votes entitled to be
26 cast on any issue proposed to be considered at the proposed special
27 meeting.

28 (4) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070,
29 the record date for determining shareholders entitled to demand a
30 special meeting is the first date on which an executed shareholder
31 demand is delivered to the corporation. No written demand for a
32 special meeting will be effective unless, within 60 days after the
33 earliest date on which a demand delivered to the corporation as
34 required by this section was executed, written demands executed by
35 shareholders holding at least the percentage of votes specified in
36 subsection (1)(b) of this section or, if applicable, fixed in
37 accordance with subsection (2) or (3) of this section, have been
38 delivered to the corporation.

39 (5) Subject to subsection (6) of this section:

1 (a) Special shareholders' meetings may be held in or out of this
2 state at the place stated in or fixed in accordance with the bylaws;
3 and

4 (b) If no place is stated or fixed in accordance with the bylaws,
5 special meetings shall be held at the corporation's principal office.

6 (6) Unless the articles of incorporation or bylaws provide
7 otherwise, if the board of directors or another person is authorized
8 in the bylaws to determine the place of special meetings, the board
9 of directors or such other person may, in the sole discretion of the
10 board of directors or such other person, determine that a special
11 meeting will not involve a physical assembly of shareholders at a
12 particular geographic location, but instead will be held solely by
13 means of remote communication, in accordance with RCW 23B.07.080.

14 (7) Only business within the purpose or purposes described in the
15 meeting notice required by RCW 23B.07.050(3) may be conducted at a
16 special shareholders' meeting.

17 **Sec. 105.** RCW 23B.07.070 and 2009 c 189 s 16 are each amended to
18 read as follows:

19 (1) The bylaws may fix or provide the manner of fixing the record
20 date for one or more voting groups in order to determine the
21 shareholders entitled to notice of a shareholders' meeting, to demand
22 a special meeting, to vote, or to approve any other corporate action.
23 If the bylaws do not fix or provide for fixing a record date, the
24 board of directors of the corporation may fix ~~((a future date as))~~
25 the record date, which date may not precede the date on which the
26 resolution fixing the record date is approved.

27 (2) If not otherwise fixed under subsection (1) of this section
28 or RCW 23B.07.030, the record date for determining shareholders
29 entitled to notice of and to vote at an annual or special
30 shareholders' meeting is the day before the first notice is delivered
31 to shareholders.

32 ~~((If the board of directors does not fix the record date for~~
33 ~~determining shareholders entitled to a share dividend, it is the date~~
34 ~~the board of directors authorizes the share dividend.~~

35 ~~(4) If the board of directors does not fix the record date for~~
36 ~~determining shareholders entitled to a distribution, other than one~~
37 ~~involving a purchase, redemption, or other acquisition of the~~
38 ~~corporation's shares, it is the date the board of directors~~
39 ~~authorizes the distribution.~~

1 ~~(5))~~) A record date fixed under this section may not be more than
2 seventy days before the meeting of shareholders or more than ten days
3 prior to the date on which the first shareholder consent is executed
4 under RCW 23B.07.040(1)(b).

5 ~~((6))~~) (4) A determination of shareholders entitled to notice of
6 or to vote at a shareholders' meeting is effective for any
7 adjournment of the meeting unless the board of directors fixes a new
8 record date, which it must do if the meeting is adjourned to a date
9 more than one hundred twenty days after the date fixed for the
10 original meeting.

11 ~~((7))~~) (5) If a court orders a meeting adjourned to a date more
12 than one hundred twenty days after the date fixed for the original
13 meeting, it may provide that the original record date continues in
14 effect or it may fix a new record date.

15 **Sec. 106.** RCW 23B.07.200 and 2020 c 57 s 52 are each amended to
16 read as follows:

17 (1) After fixing a record date for a meeting, a corporation shall
18 prepare an alphabetical list of the names of all its shareholders on
19 the record date who are entitled to notice of a shareholders'
20 meeting. The list must be arranged by voting group, and within each
21 voting group by class or series of shares, and show the address of
22 and number of shares held by each shareholder. Nothing contained in
23 this section requires the corporation to include on such list the
24 electronic mail address or other electronic contact information of a
25 shareholder.

26 (2) The shareholders' list must be available for inspection by
27 any shareholder, beginning ten days prior to the meeting and
28 continuing through the meeting~~((7))~~) either: (a) On a reasonably
29 accessible electronic network, on condition that the information
30 necessary to gain access to the list is provided in or accompanies
31 the notice of the meeting; or (b) at the corporation's principal
32 office or at a place identified in the meeting notice in the city
33 where the meeting will be held. If the corporation elects to make the
34 list available on an electronic network, the corporation may take
35 reasonable steps to ensure that such information is available only to
36 shareholders or their agents or attorneys. A shareholder, the
37 shareholder's agent, or the shareholder's attorney is entitled to
38 inspect the list, during regular business hours and at the

1 shareholder's expense, during the period it is available for
2 inspection.

3 (3) The corporation (~~shall~~) must make the shareholders' list
4 available at the meeting, and any shareholder, the shareholder's
5 agent, or the shareholder's attorney is entitled to inspect the list
6 at any time during the meeting or any adjournment. If the meeting is
7 held solely by means of remote communication in accordance with RCW
8 23B.07.010(4) or 23B.07.020(6), then the list must be available for
9 inspection by any shareholder, the shareholder's agent, or the
10 shareholder's attorney during the whole time of the meeting on a
11 reasonably accessible electronic network, and the information
12 required to access the list must be provided with the notice of the
13 meeting.

14 (4) If the corporation refuses to allow a shareholder, the
15 shareholder's agent, or the shareholder's attorney to inspect the
16 shareholders' list before or at the meeting, the superior court of
17 the county where a corporation's principal office, or, if none in
18 this state, its registered office, is located, on application of the
19 shareholder, may summarily order the inspection at the corporation's
20 expense and may postpone the meeting for which the list was prepared
21 until the inspection is complete.

22 (5) A shareholder's right to copy the shareholders' list, and a
23 shareholder's right to otherwise inspect and copy the record of
24 shareholders, is governed by RCW 23B.16.020(3).

25 (6) Refusal or failure to prepare or make available the
26 shareholders' list does not affect the validity of corporate action
27 approved at the meeting.

28 **Sec. 107.** RCW 23B.11.010 and 2020 c 194 s 11 are each amended to
29 read as follows:

30 (1) One or more corporations may merge into another corporation
31 if the board of directors of each corporation adopts and its
32 shareholders, if required by RCW 23B.11.030, approve a plan of
33 merger.

34 (2) The plan of merger must include:

35 (a) The name of each corporation planning to merge and the name
36 of the surviving corporation into which each other corporation plans
37 to merge;

38 (b) The terms and conditions of the merger; and

1 (c) The manner and basis of converting the shares of each
2 corporation into shares, obligations, or other securities of the
3 surviving or any other corporation or into cash or other property in
4 whole or part, or of canceling some or all of such shares.

5 (3) The plan of merger may include:

6 (a) Amendments to the articles of incorporation of the surviving
7 corporation, or a restatement that includes one or more amendments to
8 the surviving corporation's articles of incorporation; and

9 (b) Other provisions relating to the merger.

10 (4) The terms of a plan of merger may be made dependent on facts
11 objectively ascertainable outside the plan in accordance with RCW
12 23B.01.200(3).

13 **Sec. 108.** RCW 23B.11.030 and 2011 c 328 s 6 are each amended to
14 read as follows:

15 (1) After adopting a plan of merger or share exchange, the board
16 of directors of each corporation party to the merger, and the board
17 of directors of the corporation whose shares will be acquired in the
18 share exchange, shall submit the plan of merger, except as provided
19 in subsection (7) of this section, or share exchange for approval by
20 its shareholders.

21 (2) For a plan of merger or share exchange to be approved:

22 (a) The board of directors must recommend the plan of merger or
23 share exchange to the shareholders unless (i) the board of directors
24 determines that because of conflict of interest or other special
25 circumstances it should make no recommendation or (ii) RCW 23B.08.245
26 applies, and in either case the board of directors communicates the
27 basis for so proceeding to the shareholders; and

28 (b) The shareholders entitled to vote must approve the plan,
29 except as provided in subsection (7) of this section.

30 (3) The board of directors may condition its submission of the
31 proposed plan of merger or share exchange on any basis, including the
32 affirmative vote of holders of a specified percentage of shares held
33 by any group of shareholders not otherwise entitled under this title
34 or the articles of incorporation to vote as a separate voting group
35 on the proposed plan of merger or share exchange.

36 (4) The corporation shall notify each shareholder, whether or not
37 entitled to vote, of the proposed shareholders' meeting in accordance
38 with RCW 23B.07.050. The notice must also state that the purpose, or
39 one of the purposes, of the meeting is to consider the plan of merger

1 or share exchange and must contain or be accompanied by a copy (~~or~~
2 ~~summary~~) of the plan or a summary of the material terms and
3 conditions of the proposed merger or share exchange and the
4 consideration to be received by shareholders.

5 (5) In addition to any other voting conditions imposed by the
6 board of directors under subsection (3) of this section, the plan of
7 merger must be approved by two-thirds of the voting group comprising
8 all the votes entitled to be cast on the plan, and of each other
9 voting group entitled under RCW 23B.11.035 or the articles of
10 incorporation to vote separately on the plan, unless shareholder
11 approval is not required under subsection (7) of this section. The
12 articles of incorporation may require a greater or lesser vote than
13 that provided in this subsection, or a greater or lesser vote by
14 separate voting groups, so long as the required vote is not less than
15 a majority of all the votes entitled to be cast on the plan of merger
16 and of each other voting group entitled to vote separately on the
17 plan. Separate voting by additional voting groups is required on a
18 plan of merger under the circumstances described in RCW 23B.11.035.

19 (6) In addition to any other voting conditions imposed by the
20 board of directors under subsection (3) of this section, the plan of
21 share exchange must be approved by two-thirds of the voting group
22 comprising all the votes entitled to be cast on the plan, and of each
23 other voting group entitled under RCW 23B.11.035 or the articles of
24 incorporation to vote separately on the plan. The articles of
25 incorporation may require a greater or lesser vote than that provided
26 in this subsection, or a greater or lesser vote by separate voting
27 groups, so long as the required vote is not less than a majority of
28 all the votes entitled to be cast on the plan of share exchange and
29 of each other voting group entitled to vote separately on the plan.
30 Separate voting by additional voting groups is required on a plan of
31 share exchange under the circumstances described in RCW 23B.11.035.

32 (7) Approval by the shareholders of the surviving corporation on
33 a plan of merger is not required if:

34 (a) The articles of incorporation of the surviving corporation
35 will not differ, except for amendments enumerated in RCW 23B.10.020,
36 from its articles of incorporation before the merger;

37 (b) Each shareholder of the surviving corporation whose shares
38 were outstanding immediately before the effective date of the merger
39 will hold the same number of shares, with identical designations,

1 preferences, limitations, and relative rights, immediately after the
2 merger;

3 (c) The number of voting shares outstanding immediately after the
4 merger, plus the number of voting shares issuable as a result of the
5 merger, either by the conversion of securities issued pursuant to the
6 merger or the exercise of rights and warrants issued pursuant to the
7 merger, will not exceed the total number of voting shares of the
8 surviving corporation authorized by its articles of incorporation
9 immediately before the merger; and

10 (d) The number of participating shares outstanding immediately
11 after the merger, plus the number of participating shares issuable as
12 a result of the merger, either by the conversion of securities issued
13 pursuant to the merger or the exercise of rights and warrants issued
14 pursuant to the merger, will not exceed the total number of
15 participating shares authorized by its articles of incorporation
16 immediately before the merger.

17 (8) As used in subsection (7) of this section:

18 (a) "Participating shares" means shares that entitle their
19 holders to participate without limitation in distributions.

20 (b) "Voting shares" means shares that entitle their holders to
21 vote unconditionally in elections of directors.

22 (9) Unless the articles of incorporation provide otherwise,
23 approval by the shareholders of a public company is not required for
24 a plan of merger if:

25 (a) The plan of merger expressly: (i) Permits or requires the
26 merger to be effected under this subsection; and (ii) provides that,
27 if the merger is to be effected under this subsection, the merger
28 will be effected as soon as practicable following the satisfaction of
29 the requirements of (f) of this subsection;

30 (b) Another party to the merger or a parent of another party to
31 the merger makes an offer to purchase, on the terms stated in the
32 plan of merger, any and all of the outstanding shares of the
33 corporation that, absent this subsection, would be entitled to vote
34 on the plan of merger, except that the offer may exclude shares of
35 the corporation that are owned at the commencement of the offer by
36 the corporation, the offeror, or any parent of the offeror, or by any
37 wholly owned subsidiary of any of the foregoing;

38 (c) The offer discloses that the plan of merger states that the
39 merger will be effected as soon as practicable following the
40 satisfaction of the requirements of (f) of this subsection and that

1 the shares of the corporation that are not tendered in response to
2 the offer will be treated as provided in (h) of this subsection;

3 (d) The offer remains open for at least 10 days;

4 (e) The offeror purchases all shares properly tendered in
5 response to the offer and not properly withdrawn;

6 (f) The: (i) Shares purchased by the offeror in accordance with
7 the offer; (ii) shares otherwise owned by the offeror or by any
8 parent of the offeror or any wholly owned subsidiary of any of the
9 foregoing; and (iii) shares subject to an agreement that they are to
10 be transferred, contributed, or delivered to the offeror, any parent
11 of the offeror, or any wholly owned subsidiary of any of the
12 foregoing in exchange for shares or other interests in that offeror,
13 parent, or subsidiary, are collectively entitled to cast at least the
14 minimum number of votes on the merger that, absent this subsection,
15 would be required by this chapter for the approval of the merger by
16 the shareholders entitled to vote on the merger at a meeting at which
17 all shares entitled to vote on the approval were present and voted;

18 (g) The offeror or a wholly owned subsidiary of the offeror
19 merges with or into the corporation; and

20 (h) Each outstanding share of each class or series of shares of
21 the corporation that the offeror is offering to purchase in
22 accordance with the offer, and which is not purchased in accordance
23 with the offer, is to be converted in the merger into, or into the
24 right to receive, the same amount and kind of securities, eligible
25 interests, obligations, rights, cash, or other property to be paid or
26 exchanged in accordance with the offer for each share of that class
27 or series of shares that is tendered in response to the offer, except
28 that shares of the corporation that are owned by the corporation or
29 that are described in (f)(ii) or (iii) of this subsection need not be
30 converted into or exchanged for the consideration described in this
31 subsection (9)(h).

32 (10) As used in subsection (9) of this section:

33 (a) "Offer" means the offer referred to in subsection (9)(b) of
34 this section.

35 (b) "Offeror" means the person making the offer.

36 (c) "Parent" of an entity means a person that owns, directly or
37 indirectly, through one or more wholly owned subsidiaries, all of the
38 outstanding shares of or other interests in that entity.

1 (d) Shares tendered in response to the offer will be deemed to
2 have been "purchased" in accordance with the offer at the earlier
3 time as of which:

4 (i) The offeror has irrevocably accepted those shares for
5 payment; and

6 (ii) Either: (A) In the case of shares represented by
7 certificates, the offeror, or the offeror's designated depository or
8 other agent, has physically received the certificates representing
9 those shares; or (B) in the case of shares without certificates,
10 those shares have been transferred into the account of the offeror or
11 its designated depository or other agent, or an agent's message
12 relating to those shares has been received by the offeror or its
13 designated depository or other agent.

14 (e) "Wholly owned subsidiary" of a person means an entity of or
15 in which that person owns, directly or indirectly, through one or
16 more wholly owned subsidiaries, all of the outstanding shares or
17 other interests.

18 (11) After a merger or share exchange is approved, and at any
19 time before articles of merger or share exchange are filed, the
20 planned merger or share exchange may be abandoned, subject to any
21 contractual rights, without further shareholder approval, in
22 accordance with the procedure set forth in the plan of merger or
23 share exchange or, if none is set forth, in the manner determined by
24 the board of directors.

25 **Sec. 109.** RCW 23B.11.050 and 1989 c 165 s 135 are each amended
26 to read as follows:

27 (1) After a plan of merger (~~or share exchange~~) is approved by
28 the shareholders, or adopted by the board of directors if shareholder
29 approval is not required, the surviving (~~or acquiring corporation~~)
30 entity shall deliver to the secretary of state for filing articles of
31 merger (~~or share exchange setting forth~~) stating:

32 (~~(1)~~) (a) The (~~plan of merger or share exchange~~) name and
33 jurisdiction of organization of each party to the merger;

34 (b) The name and jurisdiction of organization of the surviving
35 entity;

36 (c) If the surviving entity of the merger is a domestic
37 corporation and its articles of incorporation are amended or amended
38 and restated, the amendments to the surviving entity's articles of

1 incorporation or the amended and restated articles of incorporation
2 of the surviving entity;

3 ~~((2))~~ (d) If shareholder approval of any domestic corporation
4 party to the merger was not required, a statement to that effect;
5 ~~((or~~

6 ~~(3))~~ (e) If approval of the shareholders of one or more domestic
7 corporations party to the merger ((or share exchange)) was required,
8 a statement that the merger ((or share exchange)) was duly approved
9 by the shareholders of such domestic corporation pursuant to RCW
10 23B.11.030; and

11 (f) If approval of the shareholders of one or more other entities
12 party to the merger was required, a statement that the merger was
13 duly approved by the interest holders of such other entity in
14 accordance with the organic law of such other entity.

15 (2) After a plan of share exchange has been approved by the
16 shareholders of the corporation whose shares will be acquired in the
17 share exchange, the acquiring corporation shall deliver to the
18 secretary of state for filing articles of share exchange, executed by
19 the acquiring corporation and the corporation whose shares will be
20 acquired in the share exchange, stating:

21 (a) The name of the corporation whose shares will be acquired in
22 the share exchange;

23 (b) The name of the acquiring corporation; and

24 (c) A statement that the plan of share exchange was duly approved
25 by the shareholders of the corporation whose shares will be acquired
26 in the share exchange pursuant to RCW 23B.11.030.

27 (3) The definitions in RCW 23B.09.005 apply to this section
28 unless the context clearly requires otherwise.

29 **Sec. 110.** RCW 23B.11.060 and 1989 c 165 s 136 are each amended
30 to read as follows:

31 (1) When a merger takes effect:

32 (a) Every other corporation party to the merger merges into the
33 surviving corporation and the separate existence of every corporation
34 except the surviving corporation ceases;

35 (b) The title to all real estate and other property owned by each
36 corporation party to the merger is vested in the surviving
37 corporation without reversion or impairment;

38 (c) The surviving corporation has all liabilities of each
39 corporation party to the merger;

1 (d) A proceeding pending against any corporation party to the
2 merger may be continued as if the merger did not occur or the
3 surviving corporation may be substituted in the proceeding for the
4 corporation whose existence ceased;

5 (e) The articles of incorporation of the surviving corporation
6 are amended, or amended and restated, to the extent provided in the
7 (~~plan~~) articles of merger; and

8 (f) The former holders of the shares of every corporation party
9 to the merger are entitled only to the rights provided in the
10 articles of merger or to their rights under chapter 23B.13 RCW.

11 (2) When a share exchange takes effect, the shares of each
12 acquired corporation are exchanged as provided in the plan, and the
13 former holders of the shares are entitled only to the exchange rights
14 provided in the articles of share exchange or to their rights under
15 chapter 23B.13 RCW.

16 **Sec. 111.** RCW 23B.11.090 and 2015 c 188 s 111 are each amended
17 to read as follows:

18 After a plan of merger for one or more corporations and one or
19 more limited partnerships, one or more partnerships, or one or more
20 limited liability companies is approved by the shareholders of each
21 corporation (or adopted by the board of directors of any corporation
22 for which shareholder approval is not required), is approved by the
23 partners for each limited partnership as required by RCW 25.10.781,
24 is approved by the partners of each partnership as required by RCW
25 25.05.380, or is approved by the members of each limited liability
26 company as required by RCW 25.15.421, the surviving entity must:

27 (1) If the surviving entity is a corporation, file with the
28 secretary of state articles of merger setting forth:

29 (a) The (~~plan of merger~~) name and jurisdiction of organization
30 of each party to the merger;

31 (b) The name of the surviving corporation;

32 (c) If the surviving corporation's articles of incorporation are
33 amended or amended and restated, the amendments to the surviving
34 corporation's articles of incorporation or the amended and restated
35 articles of incorporation of the surviving corporation;

36 (~~(b)~~) (d) A statement that the merger was duly approved by the
37 shareholders of each corporation that is a party to the merger
38 pursuant to RCW 23B.11.030 (or a statement that shareholder approval
39 was not required for a merging corporation); and

1 ~~((e))~~ (e) A statement that the merger was duly approved ~~((by~~
2 ~~the partners of each limited partnership pursuant to RCW 25.10.781))~~
3 as required by the organic law of each other party that is a party to
4 the merger.

5 (2) If the surviving entity is a limited partnership, comply with
6 the requirements in RCW 25.10.786.

7 (3) If the surviving entity is a partnership, comply with the
8 requirements in RCW 25.05.380.

9 (4) If the surviving entity is a limited liability company,
10 comply with the requirements in RCW 25.15.426.

11 (5) The definitions in RCW 23B.09.005 apply to this section
12 unless the context clearly requires otherwise.

13 **Sec. 112.** RCW 23B.11.100 and 1998 c 103 s 1312 are each amended
14 to read as follows:

15 (1) When a merger of one or more corporations~~((~~r~~))~~ or one or more
16 ~~((limited partnerships, one or more partnerships, or one or more~~
17 ~~limited liability companies))~~ other entities takes effect, and a
18 corporation is the surviving entity:

19 ~~((1))~~ (a) Every other corporation~~((~~r~~))~~ and every ~~((limited~~
20 ~~partnership, every partnership, and every limited liability company))~~
21 other entity party to the merger merges into the surviving
22 corporation and the separate existence of every corporation except
23 the surviving corporation, and every ~~((limited partnership,~~
24 ~~partnership, and limited liability company))~~ other entity, ceases;

25 ~~((2))~~ (b) The title to all real estate and other property owned
26 by each ~~((corporation, limited partnership, partnership, and limited~~
27 ~~liability company))~~ entity party to the merger is vested in the
28 surviving corporation without reversion or impairment;

29 ~~((3))~~ (c) The surviving corporation has all the liabilities of
30 each ~~((corporation, limited partnership, partnership, and limited~~
31 ~~liability company))~~ entity party to the merger;

32 ~~((4))~~ (d) A proceeding pending against any ~~((corporation,~~
33 ~~limited partnership, partnership, or limited liability company))~~
34 entity party to the merger may be continued as if the merger did not
35 occur or the surviving corporation may be substituted in the
36 proceeding for the ~~((corporation, limited partnership, partnership,~~
37 ~~or limited liability company))~~ entity whose existence ceased;

1 ~~((5))~~ (e) The articles of incorporation of the surviving
2 corporation are amended, or amended and restated, to the extent
3 provided in the ~~((plan))~~ articles of merger;

4 ~~((6))~~ (f) The former holders of the shares of every corporation
5 party to the merger are entitled only to the rights provided in the
6 plan of merger or to their rights under chapter 23B.13 RCW; and

7 ~~((7))~~ (g) The former interest holders of ~~((partnership~~
8 ~~interests of))~~ every ~~((limited partnership or partnership party to~~
9 ~~the merger and the former holders of member interests of every~~
10 ~~limited liability company))~~ other entity party to the merger are
11 entitled only to the rights provided in the plan of merger or to
12 their rights under ~~((chapter 25.10 RCW))~~ the organic law of that
13 other entity.

14 (2) The definitions in RCW 23B.09.005 apply to this section
15 unless the context clearly requires otherwise.

16 **Sec. 113.** RCW 23B.13.020 and 2017 c 28 s 14 are each amended to
17 read as follows:

18 (1) A shareholder is entitled to dissent from, and obtain payment
19 of the fair value of the shareholder's shares in the event of, any of
20 the following corporate actions:

21 (a) A plan of merger, which has become effective, to which the
22 corporation is a party (i) if shareholder approval was required for
23 the merger by RCW 23B.11.030, 23B.11.080, or the articles of
24 incorporation, or would have been required but for the provisions of
25 RCW 23B.11.030(9), and the shareholder was, or but for the provisions
26 of RCW 23B.11.030(9) would have been, entitled to vote on the merger,
27 or (ii) if the corporation was a subsidiary and the plan of merger
28 provided for the merger of the subsidiary with its parent under RCW
29 23B.11.040;

30 (b) A plan of share exchange, which has become effective, to
31 which the corporation is a party as the corporation whose shares have
32 been acquired, if the shareholder was entitled to vote on the plan;

33 (c) A sale, lease, exchange, or other disposition, which has
34 become effective, of all, or substantially all, of the property and
35 assets of the corporation other than in the usual and regular course
36 of business, if the shareholder was entitled to vote on the sale,
37 lease, exchange, or other disposition, including a disposition in
38 dissolution, but not including a disposition pursuant to court order
39 or a disposition for cash pursuant to a plan by which all or

1 substantially all of the net proceeds of the disposition will be
2 distributed to the shareholders within one year after the date of the
3 disposition;

4 (d) An amendment of the articles of incorporation, whether or not
5 the shareholder was entitled to vote on the amendment, if the
6 amendment effects a redemption or cancellation of all of the
7 shareholder's shares in exchange for cash or other consideration
8 other than shares of the corporation;

9 (e) Any action described in RCW 23B.25.120;

10 (f) Any corporate action approved pursuant to a shareholder vote
11 to the extent the articles of incorporation, bylaws, or a resolution
12 of the board of directors provides that voting or nonvoting
13 shareholders are entitled to dissent and obtain payment for their
14 shares; or

15 (g) A plan of entity conversion in the case of a conversion of a
16 domestic corporation to a foreign corporation, which has become
17 effective, to which the domestic corporation is a party as the
18 converting entity, if: (i) The shareholder was entitled to vote on
19 the plan; and (ii) the shareholder does not receive shares in the
20 surviving entity that have terms as favorable to the shareholder in
21 all material respects and that represent at least the same percentage
22 interest of the total voting rights of the outstanding shares of the
23 surviving entity as the shares held by the shareholder before the
24 conversion.

25 (2) A shareholder entitled to dissent and obtain payment for the
26 shareholder's shares under this chapter may not challenge the
27 corporate action creating the shareholder's entitlement unless the
28 action fails to comply with the procedural requirements imposed by
29 this title, RCW 25.10.831 through 25.10.886, the articles of
30 incorporation, or the bylaws, or is fraudulent with respect to the
31 shareholder or the corporation.

32 (3) The right of a dissenting shareholder to obtain payment of
33 the fair value of the shareholder's shares shall terminate upon the
34 occurrence of any one of the following events:

35 (a) The proposed corporate action is abandoned or rescinded;

36 (b) A court having jurisdiction permanently enjoins or sets aside
37 the corporate action; or

38 (c) The shareholder's demand for payment is withdrawn with the
39 written consent of the corporation.

1 **Sec. 114.** RCW 23B.13.200 and 2009 c 189 s 42 are each amended to
2 read as follows:

3 (1) If proposed corporate action creating dissenters' rights
4 under RCW 23B.13.020 is submitted for approval by a vote at a
5 shareholders' meeting, the meeting notice must state that
6 shareholders are or may be entitled to assert dissenters' rights
7 under this chapter and be accompanied by a copy of this chapter.

8 (2) If proposed corporate action creating dissenters' rights
9 under RCW 23B.13.020 would be submitted for approval by a vote at a
10 shareholders' meeting but for the provisions of RCW 23B.11.030(9),
11 the offer made pursuant to RCW 23B.11.030(9) must state that
12 shareholders are or may be entitled to assert dissenters' rights
13 under this chapter and be accompanied by a copy of this chapter.

14 (3) If corporate action creating dissenters' rights under RCW
15 23B.13.020 is submitted for approval without a vote of shareholders
16 in accordance with RCW 23B.07.040, the shareholder consent described
17 in RCW 23B.07.040(1)(b) and the notice described in RCW
18 23B.07.040(3)(a) must include a statement that shareholders are or
19 may be entitled to assert dissenters' rights under this chapter and
20 be accompanied by a copy of this chapter.

21 **Sec. 115.** RCW 23B.13.210 and 2020 c 57 s 69 are each amended to
22 read as follows:

23 (1) If proposed corporate action creating dissenters' rights
24 under RCW 23B.13.020 is submitted to a vote at a shareholders'
25 meeting, a shareholder who wishes to assert dissenters' rights must
26 (a) deliver to the corporation before the vote is taken written
27 notice of the shareholder's intent to demand payment for the
28 shareholder's shares if the proposed corporate action is effected,
29 and (b) not vote such shares in favor of the proposed corporate
30 action.

31 (2) If proposed corporate action creating dissenters' rights
32 under RCW 23B.13.020 does not require shareholder approval pursuant
33 to RCW 23B.11.030(9), a shareholder who wishes to assert dissenters'
34 rights with respect to any class or series of shares:

35 (a) Shall deliver to the corporation before the shares are
36 purchased pursuant to the offer under RCW 23B.11.030(9) written
37 notice of the shareholder's intent to demand payment for the
38 shareholder's shares if the proposed corporate action is effected;
39 and

1 (b) Shall not tender, or cause to be tendered, any shares of such
2 class or series in response to such offer.

3 (3) If proposed corporate action creating dissenters' rights
4 under RCW 23B.13.020 is submitted for approval without a vote of
5 shareholders in accordance with RCW 23B.07.040, a shareholder who
6 wishes to assert dissenters' rights must not execute the consent or
7 otherwise vote such shares in favor of the proposed corporate action.

8 ~~((3))~~ (4) A shareholder who does not satisfy the requirements
9 of subsection (1) ~~((e))~~, (2), or (3) of this section is not entitled
10 to payment for the shareholder's shares under this chapter.

11 **Sec. 116.** RCW 23B.13.220 and 2013 c 97 s 2 are each amended to
12 read as follows:

13 (1) If proposed corporate action creating dissenters' rights
14 under RCW 23B.13.020 is approved at a shareholders' meeting, the
15 corporation shall within ten days after the effective date of the
16 corporate action deliver to all shareholders who satisfied the
17 requirements of RCW 23B.13.210(1) a notice in compliance with
18 subsection ~~((5))~~ (6) of this section.

19 (2) If proposed corporate action creating dissenters' rights
20 under RCW 23B.13.020 is approved without a vote of shareholders in
21 accordance with RCW 23B.11.030(9), the corporation shall within 10
22 days after the effective date of the corporate action deliver to all
23 shareholders who satisfied the requirements of RCW 23B.13.210(2) a
24 notice in compliance with subsection (6) of this section.

25 (3) If proposed corporate action creating dissenters' rights
26 under RCW 23B.13.020 is approved without a vote of shareholders in
27 accordance with RCW 23B.07.040, the notice delivered pursuant to RCW
28 23B.07.040(3)(b) to shareholders who satisfied the requirements of
29 RCW 23B.13.210~~((2))~~ (3) shall comply with subsection ~~((5))~~ (6) of
30 this section.

31 ~~((3))~~ (4) In the case of proposed corporate action creating
32 dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation
33 shall within ten days after the effective date of the corporate
34 action deliver to all shareholders of the subsidiary other than the
35 parent a notice in compliance with subsection ~~((5))~~ (6) of this
36 section.

37 ~~((4))~~ (5) In the case of proposed corporate action creating
38 dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW
39 23B.10.020(4)(b), is not required to be approved by the shareholders

1 of the corporation, the corporation shall within ten days after the
2 effective date of the corporate action deliver to all shareholders
3 entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance
4 with subsection ~~((5))~~ (6) of this section.

5 ~~((5))~~ (6) Any notice under subsection (1), (2), (3), ~~((4))~~
6 (4), or (5) of this section must:

7 (a) State where the payment demand must be sent and where and
8 when certificates for certificated shares must be deposited;

9 (b) Inform holders of uncertificated shares to what extent
10 transfer of the shares will be restricted after the payment demand is
11 received;

12 (c) Supply a form for demanding payment that includes the date of
13 the first announcement to news media or to shareholders of the terms
14 of the proposed corporate action and requires that the person
15 asserting dissenters' rights certify whether or not the person
16 acquired beneficial ownership of the shares before that date;

17 (d) Set a date by which the corporation must receive the payment
18 demand, which date may not be fewer than thirty nor more than sixty
19 days after the date the notice in subsection (1), (2), (3), ~~((4))~~
20 (4), or (5) of this section is delivered; and

21 (e) Be accompanied by a copy of this chapter.

22 **Sec. 117.** RCW 23B.13.230 and 2013 c 97 s 3 are each amended to
23 read as follows:

24 (1) A shareholder sent a notice described in RCW 23B.13.220 must
25 demand payment, certify whether the shareholder acquired beneficial
26 ownership of the shares before the date required to be set forth in
27 the notice pursuant to RCW 23B.13.220~~((5))~~ (6)(c), and deposit the
28 shareholder's certificates, all in accordance with the terms of the
29 notice.

30 (2) The shareholder who demands payment and deposits the
31 shareholder's share certificates under subsection (1) of this section
32 retains all other rights of a shareholder until the proposed
33 corporate action is effected.

34 (3) A shareholder who does not demand payment or deposit the
35 shareholder's share certificates where required, each by the date set
36 in the notice, is not entitled to payment for the shareholder's
37 shares under this chapter.

PART II
LIMITED PARTNERSHIPS

1
2
3 **Sec. 201.** RCW 25.10.011 and 2020 c 57 s 81 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Certificate of limited partnership" means the certificate
8 required by RCW 25.10.201, including the certificate as amended or
9 restated.

10 (2) "Contribution," except in the term "right of contribution,"
11 means any benefit provided by a person to a limited partnership in
12 order to become a partner or in the person's capacity as a partner.

13 (3) "Debtor in bankruptcy" means a person that is the subject of:

14 (a) An order for relief under Title 11 of the United States Code
15 or a comparable order under a successor statute of general
16 application; or

17 (b) A comparable order under federal, state, or foreign law
18 governing insolvency.

19 (4) "Designated office" means the principal office indicated in
20 the limited partnership's most recent annual report, or, if the
21 principal office is not located within this state, the office of the
22 limited partnership's registered agent.

23 (5) "Distribution" means a transfer of money or other property
24 from a limited partnership to a partner in the partner's capacity as
25 a partner or to a transferee on account of a transferable interest
26 owned by the transferee.

27 (6) "Foreign limited liability limited partnership" means a
28 foreign limited partnership whose general partners have limited
29 liability for the obligations of the foreign limited partnership
30 under a provision similar to RCW 25.10.401(3).

31 (7) "Foreign limited partnership" means a partnership formed
32 under the laws of a jurisdiction other than this state and required
33 by those laws to have one or more general partners and one or more
34 limited partners. "Foreign limited partnership" includes a foreign
35 limited liability limited partnership.

36 (8) "General partner" means:

37 (a) With respect to a limited partnership, a person that:

38 (i) Becomes a general partner under RCW 25.10.371; or

1 (ii) Was a general partner in a limited partnership when the
2 limited partnership became subject to this chapter under RCW
3 25.10.911 (1) or (2); and

4 (b) With respect to a foreign limited partnership, a person that
5 has rights, powers, and obligations similar to those of a general
6 partner in a limited partnership.

7 (9) "Limited liability limited partnership," except in the term
8 "foreign limited liability limited partnership," means a limited
9 partnership whose certificate of limited partnership states that the
10 limited partnership is a limited liability limited partnership.

11 (10) "Limited partner" means:

12 (a) With respect to a limited partnership, a person that:

13 (i) Becomes a limited partner under RCW 25.10.301; or

14 (ii) Was a limited partner in a limited partnership when the
15 limited partnership became subject to this chapter under RCW
16 25.10.911 (1) or (2); and

17 (b) With respect to a foreign limited partnership, a person that
18 has rights, powers, and obligations similar to those of a limited
19 partner in a limited partnership.

20 (11) "Limited partnership," except in the terms "foreign limited
21 partnership" and "foreign limited liability limited partnership,"
22 means an entity, having one or more general partners and one or more
23 limited partners, that is formed under this chapter by two or more
24 persons or becomes subject to this chapter under article 11 of this
25 chapter or RCW 25.10.911 (1) or (2). "Limited partnership" includes a
26 limited liability limited partnership.

27 (12) "Partner" means a limited partner or general partner.

28 (13) "Partnership agreement" means the partners' agreement,
29 whether oral, implied, in a record, or in any combination, concerning
30 the limited partnership. "Partnership agreement" includes the
31 agreement as amended or restated.

32 (14) "Person" means an individual, corporation, business trust,
33 estate, trust, partnership, limited liability company, association,
34 joint venture, government; governmental subdivision, agency, or
35 instrumentality; (~~(public corporation,)~~) or any other legal or
36 commercial entity.

37 (15) "Person dissociated as a general partner" means a person
38 dissociated as a general partner of a limited partnership.

39 (16) "Principal office" means the office where the principal
40 executive office of a limited partnership or foreign limited

1 partnership is located, whether or not the office is located in this
2 state.

3 (17) "Record" means information that is inscribed on a tangible
4 medium or that is stored in an electronic or other medium and is
5 retrievable in perceivable form.

6 (18) "Required information" means the information that a limited
7 partnership is required to maintain under RCW 25.10.091.

8 (19) "Sign" means, with present intent to authenticate or adopt a
9 record:

10 (a) To execute or adopt a tangible symbol;

11 (b) To attach to or logically associate with the record an
12 electronic symbol, sound, or process; or

13 (c) With respect to a record to be filed with the secretary of
14 state, to comply with the standard for filing with the office of the
15 secretary of state as prescribed by the secretary of state.

16 (20) "State" means a state of the United States, the District of
17 Columbia, Puerto Rico, the United States Virgin Islands, or any
18 territory or insular possession subject to the jurisdiction of the
19 United States.

20 (21) "Tangible medium" means a writing, copy of a writing,
21 facsimile, or a physical reproduction, each on paper or on other
22 tangible material.

23 (22) "Transfer" includes an assignment, conveyance, deed, bill of
24 sale, lease, mortgage, security interest, encumbrance, gift, and
25 transfer by operation of law.

26 (23) "Transferable interest" means a partner's right to receive
27 distributions.

28 (24) "Transferee" means a person to which all or part of a
29 transferable interest has been transferred, whether or not the
30 transferor is a partner.

31 **Sec. 202.** RCW 25.10.101 and 2009 c 188 s 112 are each amended to
32 read as follows:

33 A partner may lend money to and transact other business with the
34 limited partnership and, subject to other applicable law, has the
35 same rights and obligations with respect to the loan or other
36 transaction as a person that is not a partner.

37 **Sec. 203.** RCW 25.10.491 and 2009 c 188 s 507 are each amended to
38 read as follows:

1 When a partner or transferee becomes entitled to receive a
2 distribution, the partner or transferee has the status of, and is
3 entitled to all remedies available to, a creditor of the limited
4 partnership with respect to the distribution. However, the limited
5 partnership's obligation to make a distribution is subject to offset
6 for any amount (~~owed~~) due and payable to the limited partnership by
7 the partner or dissociated partner on whose account the distribution
8 is made.

9 **Sec. 204.** RCW 25.10.496 and 2009 c 188 s 508 are each amended to
10 read as follows:

11 (1) A limited partnership may not make a distribution in
12 violation of the partnership agreement.

13 (2) A limited partnership may not make a distribution (~~if~~
14 ~~after~~) to the extent that at the time of the distribution, after
15 giving effect to the distribution:

16 (a) The limited partnership would not be able to pay its debts as
17 they become due in the ordinary course of the limited partnership's
18 activities; or

19 (b) The limited partnership's total assets would be less than the
20 sum of its total liabilities other than liabilities to partners on
21 account of their partnership interests and liabilities for which
22 recourse of creditors is limited to specified property of the limited
23 partnership, except that the fair value of property that is subject
24 to a liability for which the recourse of creditors is limited shall
25 be included in the assets of the limited partnership only to the
26 extent that the fair value of that property exceeds that liability.

27 (3) A limited partnership may base a determination that a
28 distribution is not prohibited under subsection (2) of this section
29 on financial statements prepared on the basis of accounting practices
30 and principles that are reasonable in the circumstances or on a fair
31 valuation or other method that is reasonable in the circumstances.

32 (4) Except as otherwise provided in subsection (7) of this
33 section, the effect of a distribution under subsection (2) of this
34 section is measured:

35 (a) In the case of distribution by purchase, redemption, or other
36 acquisition of a transferable interest in the limited partnership, as
37 of the date money or other property is transferred or debt incurred
38 by the limited partnership; and

39 (b) In all other cases, as of the date:

1 (i) The distribution is authorized, if the payment occurs within
2 one hundred twenty days after that date; or

3 (ii) The payment is made, if payment occurs more than one hundred
4 twenty days after the distribution is authorized.

5 (5) A limited partnership's indebtedness to a partner incurred by
6 reason of a distribution made in accordance with this section is at
7 parity with the limited partnership's indebtedness to its general,
8 unsecured creditors.

9 (6) A limited partnership's indebtedness, including indebtedness
10 issued in connection with or as part of a distribution, is not
11 considered a liability for purposes of subsection (2) of this section
12 if the terms of the indebtedness provide that payment of principal
13 and interest are made only to the extent that a distribution could
14 then be made to partners under this section.

15 (7) (~~If indebtedness is issued as~~) The effect of a distribution
16 of indebtedness under subsection (2) of this section is measured:

17 (a) In the case of a distribution of indebtedness described in
18 subsection (6) of this section, each payment of principal or interest
19 (~~on the indebtedness~~) is treated as a distribution, the effect of
20 which is measured on the date the payment is actually made; and

21 (b) In the case of a distribution of any other indebtedness, the
22 effect of the distribution is measured as of the date the
23 indebtedness is distributed.

24 **Sec. 205.** RCW 25.10.546 and 2009 c 188 s 701 are each amended to
25 read as follows:

26 The only interest of a partner that is transferable is the
27 partner's transferable interest. A transferable interest is personal
28 property. A partner has no interest in specific partnership property.

29 **Sec. 206.** RCW 25.10.771 and 2015 c 176 s 6127 are each amended
30 to read as follows:

31 (1) An organization that has been converted pursuant to this
32 article is for all purposes the same entity that existed before the
33 conversion.

34 (2) When a conversion takes effect:

35 (a) (~~All~~) The title to all real estate and other property owned
36 by the converting organization remains vested in the converted
37 organization without reversion or impairment;

1 (b) All debts, liabilities, and other obligations of the
2 converting organization continue as obligations of the converted
3 organization;

4 (c) An action or proceeding pending by or against the converting
5 organization may be continued as if the conversion had not occurred;

6 (d) Except as prohibited by other law, all of the rights,
7 privileges, immunities, powers, and purposes of the converting
8 organization remain vested in the converted organization;

9 (e) Except as otherwise provided in the plan of conversion, the
10 terms and conditions of the plan of conversion take effect; and

11 (f) Except as otherwise agreed, the conversion does not dissolve
12 a converting limited partnership for the purposes of article 8 of
13 this chapter.

14 (3) A converted organization that is a foreign organization
15 consents to the jurisdiction of the courts of this state to enforce
16 any obligation owed by the converting limited partnership, if before
17 the conversion the converting limited partnership was subject to suit
18 in this state on the obligation. A converted organization that is a
19 foreign organization and not registered to transact business in this
20 state may be served with process pursuant to RCW 23.95.450 for
21 purposes of enforcing an obligation under this subsection.

22 **Sec. 207.** RCW 25.10.791 and 2015 c 176 s 6129 are each amended
23 to read as follows:

24 (1) When a merger becomes effective:

25 (a) The surviving organization continues;

26 (b) Each constituent organization that merges into the surviving
27 organization ceases to exist as a separate entity;

28 (c) ~~((All))~~ The title to all real estate and other property owned
29 by each constituent organization that ceases to exist vests in the
30 surviving organization without reversion or impairment;

31 (d) All debts, liabilities, and other obligations of each
32 constituent organization that ceases to exist continue as obligations
33 of the surviving organization;

34 (e) An action or proceeding pending by or against any constituent
35 organization that ceases to exist may be continued as if the merger
36 had not occurred;

37 (f) Except as prohibited by other law, all of the rights,
38 privileges, immunities, powers, and purposes of each constituent
39 organization that ceases to exist vest in the surviving organization;

1 (g) Except as otherwise provided in the plan of merger, the terms
2 and conditions of the plan of merger take effect;

3 (h) Except as otherwise agreed, if a constituent limited
4 partnership ceases to exist, the merger does not dissolve the limited
5 partnership for the purposes of article 8 of this chapter; and

6 (i) Any amendments provided for in the articles of merger for the
7 organizational document that created the surviving organization
8 become effective.

9 (2) A surviving organization that is a foreign organization
10 consents to the jurisdiction of the courts of this state to enforce
11 any obligation owed by a constituent organization, if before the
12 merger the constituent organization was subject to suit in this state
13 on the obligation. A surviving organization that is a foreign
14 organization and not registered to transact business in this state
15 may be served with process pursuant to RCW 23.95.450 for the purposes
16 of enforcing an obligation under this subsection.

17 **PART III**

18 **LIMITED LIABILITY COMPANIES**

19 **Sec. 301.** RCW 25.15.006 and 2020 c 57 s 82 are each amended to
20 read as follows:

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

23 (1) "Agreed value" means the value of the contributions made by a
24 member to the limited liability company. Such value shall equal the
25 amount agreed upon in a limited liability company agreement or, if no
26 value is agreed upon, the value shall be determined based on the
27 records of the limited liability company.

28 (2) "Certificate of formation" means the certificate of formation
29 required by RCW 25.15.071 and such certificate as amended or
30 restated.

31 (3) "Distribution" means a transfer of money or other property
32 from a limited liability company to a member in the member's capacity
33 as a member or to a transferee on account of a transferable interest
34 owned by the transferee.

35 (4) "Execute," "executes," or "executed" means with present
36 intent to authenticate or adopt a record:

37 (a) To sign or adopt a tangible symbol; or

1 (b) To attach to or logically associate with the record an
2 electronic symbol, sound, or process.

3 (5) "Foreign limited liability company" means an unincorporated
4 entity formed under the law of a jurisdiction other than this state
5 and denominated by that law as a limited liability company.

6 (6) "Foreign professional limited liability company" means a
7 foreign limited liability company formed for the purpose of rendering
8 professional services.

9 (7) "Limited liability company" or "domestic limited liability
10 company" means a limited liability company having one or more members
11 or transferees that is formed under this chapter.

12 (~~(7)~~) (8) "Limited liability company agreement" means the
13 agreement, including the agreement as amended or restated, whether
14 oral, implied, in a record, or in any combination, of the member or
15 members of a limited liability company concerning the affairs of the
16 limited liability company and the conduct of its business.

17 (~~(8)~~) (9) "Manager" means a person, or a board, committee, or
18 other group of persons, named as a manager of a limited liability
19 company in, or designated as a manager of a limited liability company
20 pursuant to, a limited liability company agreement.

21 (~~(9)~~) (10) "Manager-managed" means, with respect to a limited
22 liability company, that the limited liability company agreement vests
23 management of the limited liability company in one or more managers.

24 (~~(10)~~) (11) "Member" means a person who has been admitted to a
25 limited liability company as a member as provided in RCW 25.15.116
26 and who has not been dissociated from the limited liability company.

27 (~~(11)~~) (12) "Member-managed" means, with respect to a limited
28 liability company, that the limited liability company is not manager-
29 managed.

30 (~~(12)~~) (13) "Person" means an individual, corporation, business
31 trust, estate, trust, partnership, limited partnership, limited
32 liability company, association, joint venture, government,
33 governmental subdivision, agency, or instrumentality or any other
34 legal or commercial entity.

35 (~~(13)~~) (14) "Principal office" means the office, in or out of
36 this state, so designated in the annual report, where the principal
37 executive offices of a domestic or foreign limited liability company
38 are located.

1 ~~((14))~~ (15) "Professional limited liability company" means a
2 limited liability company that is formed in accordance with RCW
3 25.15.046 for the purpose of rendering professional service.

4 ~~((15))~~ (16) "Professional service" means the same as defined
5 under RCW 18.100.030.

6 ~~((16))~~ (17) "Record" means information that is inscribed on a
7 tangible medium or that is stored in an electronic or other medium
8 and is retrievable in perceivable form.

9 ~~((17))~~ (18) "State" means a state of the United States, the
10 District of Columbia, Puerto Rico, the United States Virgin Islands,
11 or any territory or insular possession subject to the jurisdiction of
12 the United States.

13 ~~((18))~~ (19) "Tangible medium" means a writing, copy of a
14 writing, facsimile, or a physical reproduction, each on paper or on
15 other tangible material.

16 ~~((19))~~ (20) "Transfer" includes an assignment, conveyance,
17 deed, bill of sale, lease, gift, and transfer by operation of law,
18 except as otherwise provided in RCW 25.15.251(6).

19 ~~((20))~~ (21) "Transferable interest" means a member's or
20 transferee's right to receive distributions of the limited liability
21 company's assets.

22 ~~((21))~~ (22) "Transferee" means a person to which all or part of
23 a transferable interest has been transferred, whether or not the
24 transferor is a member.

25 (23) "Withdraw" or "withdrawal" means, with respect to a member
26 of a limited liability company or a holder of a transferable interest
27 in a limited liability company, that the member or holder of the
28 transferable interest provides written notice to the limited
29 liability company of its intent to surrender all of its transferable
30 interest and rights as a member to the limited liability company. A
31 withdrawal is effective as of the later of the date the limited
32 liability company receives the written notice of withdrawal or the
33 date specified in such notice.

34 **Sec. 302.** RCW 25.15.046 and 2015 c 176 s 7105 are each amended
35 to read as follows:

36 (1) A person or group of persons duly licensed or otherwise
37 legally authorized to render the same professional services within
38 this state may form and become a member or members of a professional

1 limited liability company under the provisions of this chapter for
2 the purposes of rendering professional service.

3 (2) A professional limited liability company is subject to all
4 the provisions of chapter 18.100 RCW that apply to a professional
5 corporation. A professional limited liability company's managers,
6 members, agents, and employees are subject to all the provisions of
7 chapter 18.100 RCW that apply to the directors, officers,
8 shareholders, agents, or employees of a professional corporation,
9 except as provided otherwise in this section and RCW 25.15.048.

10 (3) If the limited liability company's members are required to be
11 licensed to practice such profession, and the limited liability
12 company fails to maintain for itself and for its members practicing
13 in this state a policy of professional liability insurance, bond, or
14 other evidence of financial responsibility of a kind designated by
15 rule by the state insurance commissioner and in the amount of at
16 least one million dollars or a greater amount as the state insurance
17 commissioner may establish by rule for a licensed profession or for
18 any specialty within a profession, taking into account the nature and
19 size of the business, then the limited liability company's members
20 are personally liable to the extent that, had the insurance, bond, or
21 other evidence of responsibility been maintained, it would have
22 covered the liability in question.

23 (4) For purposes of applying chapter 18.100 RCW to a professional
24 limited liability company, the terms "director" or "officer" means
25 manager, "shareholder" means member, "corporation" means professional
26 limited liability company, "articles of incorporation" means
27 certificate of formation, "shares" or "capital stock" means a limited
28 liability company interest, "incorporator" means the person who
29 executes the certificate of formation, and "bylaws" means the limited
30 liability company agreement.

31 (5) The name of a professional limited liability company must
32 comply with RCW 23.95.305.

33 (6) Subject to Article VII of this chapter, the following may be
34 a member of a professional limited liability company and may be the
35 transferee of the interest of an ineligible person or deceased member
36 of the professional limited liability company:

37 (a) A professional corporation, if its shareholders, directors,
38 and its officers, other than the secretary and the treasurer, are
39 licensed or otherwise legally authorized to render the same specific

1 professional services as the professional limited liability company;
2 ((and))

3 (b) Another professional limited liability company, if the
4 managers and members of both professional limited liability companies
5 are licensed or otherwise legally authorized to render the same
6 specific professional services; and

7 (c) A foreign professional limited liability company, if the
8 managers and members of the foreign professional limited liability
9 company are duly licensed or otherwise legally authorized to render
10 the same specific professional services in any jurisdiction other
11 than this state as the managers and members of the professional
12 limited liability company.

13 (7) Formation of a limited liability company under this section
14 does not restrict the application of the uniform disciplinary act
15 under chapter 18.130 RCW, or any applicable health care professional
16 statutes under Title 18 RCW, including but not limited to
17 restrictions on persons practicing a health profession without being
18 appropriately credentialed and persons practicing beyond the scope of
19 their credential.

20 **Sec. 303.** RCW 25.15.116 and 2015 c 188 s 25 are each amended to
21 read as follows:

22 (1) In connection with the admission of the initial member or
23 members of a limited liability company, a person acquiring a limited
24 liability company interest is admitted as a member of the limited
25 liability company upon the later to occur of:

26 (a) The formation of the limited liability company; or

27 (b) The time provided in the limited liability company agreement
28 or, if the limited liability company agreement does not so provide or
29 does not exist, when the person's admission is reflected in the
30 records of the limited liability company.

31 (2) After the admission of the initial member or members of a
32 limited liability company, a person acquiring a limited liability
33 company interest is admitted as a member of the limited liability
34 company:

35 (a) In the case of a person acquiring a limited liability company
36 interest directly from the limited liability company, at the time
37 provided in the limited liability company agreement or, if the
38 limited liability company agreement does not so provide or does not
39 exist, upon the consent of all members and when the person's

1 admission is reflected in the records of the limited liability
2 company;

3 (b) In the case of a transferee of a limited liability company
4 interest, upon compliance with any procedure for admission provided
5 in the limited liability company agreement or, if the limited
6 liability company agreement does not so provide or does not exist,
7 upon the consent of all members and when the person's admission is
8 reflected in the records of the limited liability company agreement;
9 ((~~or~~))

10 (c) In the case of a person being admitted as a member of a
11 surviving or resulting limited liability company pursuant to a merger
12 or conversion approved in accordance with this chapter, as provided
13 in the limited liability company agreement of the surviving or
14 resulting limited liability company or in the agreement of merger or
15 plan of merger or conversion, and in the event of any inconsistency,
16 the terms of the agreement of merger or plan of merger or conversion
17 control; and in the case of a person being admitted as a member of a
18 limited liability company pursuant to a merger or conversion in which
19 such limited liability company is not the surviving or resulting
20 limited liability company in the merger or conversion, as provided in
21 the limited liability company agreement of such limited liability
22 company; or

23 (d) In the case of a transferee acquiring all of the transferor's
24 limited liability company interest from a transferor that is the only
25 member of the limited liability company, upon the effectiveness of
26 the transfer.

27 (3) A person may be admitted as a member of a limited liability
28 company without acquiring a transferable interest and without making
29 or being obligated to make a contribution to the limited liability
30 company.

31 **Sec. 304.** RCW 25.15.121 and 2015 c 188 s 26 are each amended to
32 read as follows:

33 (1) Except as otherwise provided by this chapter, the affirmative
34 vote, approval, or consent of a majority of the members is necessary
35 for actions requiring member approval.

36 (2) The affirmative vote, approval, or consent of all members is
37 required to:

38 (a) Amend the certificate of formation, except as provided in RCW
39 25.15.076(2);

- 1 (b) Amend the limited liability company agreement;
- 2 (c) Authorize a manager, member, or other person to do any act on
3 behalf of the limited liability company that contravenes the limited
4 liability company agreement, including any provision that expressly
5 limits the purpose, business, or affairs of the limited liability
6 company or the conduct thereof;
- 7 (d) Admit as a member of the limited liability company a person
8 acquiring a limited liability company interest directly from the
9 limited liability company as provided in RCW 25.15.116(2) (a);
- 10 (e) Admit as a member of the limited liability company a
11 transferee of a limited liability company interest as provided in RCW
12 25.15.116(2) (b);
- 13 (f) Authorize a member's removal as a member of the limited
14 liability company as provided in RCW 25.15.131(1) (e);
- 15 (g) Waive a member's dissociation as a member of the limited
16 liability company as provided in RCW 25.15.131(1) (f), (g), or (h);
- 17 (h) ~~((Authorize the withdrawal of a member from the limited
18 liability company as provided in RCW 25.15.131(2));~~
- 19 ~~(i))~~ Compromise any member's obligation to make a contribution
20 or return cash or other property paid or distributed to the member in
21 violation of this chapter as provided in RCW 25.15.196(2);
- 22 ~~((j))~~ (i) Amend the certificate of formation and extend the
23 date of dissolution, if a dissolution date is specified in the
24 certificate of formation, as provided in RCW 25.15.265(1);
- 25 ~~((k))~~ (j) Dissolve the limited liability company as provided in
26 RCW 25.15.265(3);
- 27 (k) Approve a plan of conversion as provided in RCW 25.15.441(1);
- 28 (l) Sell, lease, exchange, or otherwise dispose of all, or
29 substantially all, of the limited liability company's property, other
30 than in the ordinary course of the limited liability company's
31 activities or activities of the kind carried on by the limited
32 liability company; or
- 33 (m) Undertake any other act outside the ordinary course of the
34 limited liability company's activities.
- 35 (3) A limited liability company agreement may provide for classes
36 or groups of members having such relative rights, powers, and duties
37 as the limited liability company agreement may provide, and may make
38 provision for the future creation in the manner provided in the
39 limited liability company agreement of additional classes or groups
40 of members having such relative rights, powers, and duties as may

1 from time to time be established, including rights, powers, and
2 duties senior to existing classes and groups of members. A limited
3 liability company agreement may provide for the taking of an action,
4 including the amendment of the limited liability company agreement,
5 without the vote or approval of any member or class or group of
6 members, including an action to create under the provisions of the
7 limited liability company agreement a class or group of limited
8 liability company interests that was not previously outstanding. A
9 limited liability company agreement may provide that any member or
10 class or group of members do not have voting rights.

11 (4) A limited liability company agreement may grant to all or
12 certain identified members or a specified class or group of the
13 members the right to vote separately or with all or any class or
14 group of the members or managers, on any matter. If the limited
15 liability company agreement so provides, voting by members may be on
16 a per capita, profit share, class, group, or any other basis.

17 (5) A limited liability company agreement may set forth
18 provisions relating to notice of the time, place, or purpose of any
19 meeting at which any matter is to be voted on by any members, waiver
20 of any such notice, action by consent without a meeting, the
21 establishment of a record date, quorum requirements, voting in person
22 or by proxy, or any other matter with respect to the exercise of any
23 such right to vote.

24 **Sec. 305.** RCW 25.15.131 and 2020 c 312 s 727 are each amended to
25 read as follows:

26 (1) A person is dissociated as a member of a limited liability
27 company upon the occurrence of one or more of the following events:

28 (a) The member dies or withdraws (~~((by voluntary act))~~) from the
29 limited liability company as provided in subsection (2) of this
30 section;

31 (b) The transfer of all of the member's transferable interest in
32 the limited liability company;

33 (c) The member is removed as a member in accordance with the
34 limited liability company agreement;

35 (d) The occurrence of an event upon which the member ceases to be
36 a member under the limited liability company agreement;

37 (e) The person is a corporation, limited liability company,
38 general partnership, or limited partnership, and the person is

1 removed as a member by the unanimous consent of the other members,
2 which may be done under this subsection (1)(e) only if:

3 (i) The person has filed articles of dissolution, a certificate
4 of dissolution or the equivalent, or the person has been
5 administratively or judicially dissolved, or its right to conduct
6 business has been suspended or revoked by the jurisdiction of its
7 incorporation, or the person has otherwise been dissolved; and

8 (ii) The dissolution has not been revoked or the person or its
9 right to conduct business has not been reinstated within ninety days
10 after the limited liability company notifies the person that it will
11 be removed as a member for any reason identified in (e)(i) of this
12 subsection;

13 (f) Unless all other members otherwise agree at the time, the
14 member (i) makes a general assignment for the benefit of creditors;

15 (ii) files a voluntary petition in bankruptcy; (iii) becomes the
16 subject of an order for relief in bankruptcy proceedings; (iv) files
17 a petition or answer seeking for the member any reorganization,
18 arrangement, composition, readjustment, liquidation, dissolution, or
19 similar relief under any statute, law, or regulation; (v) files an
20 answer or other pleading admitting or failing to contest the material
21 allegations of a petition filed against the member in any proceeding
22 of the nature described in (f)(i) through (iv) of this subsection; or
23 (vi) seeks, consents to, or acquiesces in the appointment of a
24 trustee, receiver, or liquidator of the member or of all or any
25 substantial part of the member's properties;

26 (g) Unless all other members otherwise agree at the time, if
27 within one hundred twenty days after the commencement of any
28 proceeding against the member seeking reorganization, arrangement,
29 composition, readjustment, liquidation, dissolution, or similar
30 relief under any statute, law, or regulation, the proceeding has not
31 been dismissed, or if within ninety days after the appointment
32 without his or her consent or acquiescence of a trustee, receiver, or
33 liquidator of the member or of all or any substantial part of the
34 member's properties, the appointment is not vacated or stayed, or
35 within ninety days after the expiration of any stay, the appointment
36 is not vacated; or

37 (h) Unless all other members otherwise agree at the time, in the
38 case of a member who is an individual, the entry of an order by a
39 court of competent jurisdiction adjudicating the member as being
40 subject to a conservatorship under RCW 11.130.360.

1 (2) A member may withdraw from a limited liability company at
2 (~~the time or upon the happening of events specified in and in~~
3 ~~accordance with the limited liability company agreement. If the~~
4 ~~limited liability company agreement does not specify the time or the~~
5 ~~events upon the happening of which a member may withdraw, a member~~
6 ~~may not withdraw from the limited liability company without the~~
7 ~~written consent of all other members)) any time. The withdrawn member
8 or transferee shall have no right to payment from the limited
9 liability company as a consequence of its withdrawal.~~

10 (3) When a person is dissociated as a member of a limited
11 liability company:

12 (a) The person's right to participate as a member in the
13 management and conduct of the limited liability company's activities
14 terminates;

15 (b) If the limited liability company is member-managed, the
16 person's fiduciary duties as a member end with regard to matters
17 arising and events occurring after the person's dissociation; and

18 (c) Subject to subsection (5) of this section, any transferable
19 interest owned by the person immediately before dissociation in the
20 person's capacity as a member is owned by the person solely as a
21 transferee.

22 (4) A person's dissociation as a member of a limited liability
23 company does not of itself discharge the person from any debt,
24 obligation, or other liability to the limited liability company or
25 the other members which the person incurred while a member.

26 (5) If a member dies, the deceased member's personal
27 representative or other legal representative may exercise the rights
28 of a transferee provided in RCW 25.15.251 and, for the purposes of
29 settling the estate, the rights of a current member under RCW
30 25.15.136.

31 **Sec. 306.** RCW 25.15.441 and 2015 c 188 s 85 are each amended to
32 read as follows:

33 (1) Subject to RCW 25.15.456, a plan of conversion must be
34 (~~consented to~~) approved either by all the members of a converting
35 limited liability company or as provided in a written limited
36 liability company agreement.

37 (2) Subject to RCW 25.15.456 and any contractual rights, after a
38 conversion is approved, and at any time before a filing is made under

1 RCW 25.15.446, a converting limited liability company may amend the
2 plan or abandon the planned conversion:

3 (a) As provided in the plan; and

4 (b) Except as prohibited by the plan, by the same approval as was
5 required to approve the plan.

--- **END** ---