

Title 23

CORPORATIONS AND ASSOCIATIONS (PROFIT)

(Business Corporation Act: See Title 23B RCW)

Chapters	1891	35	73
23.78 Employee cooperative corporations.	1891	116	213
23.86 Cooperative associations.	1893	118	279
23.90 Massachusetts trusts.	1895	38	61
23.95 Uniform business organizations code.	1895	127	338
Reviser's note: See Title 23B RCW for the Washington Business Corporation Act.	1895	142	355
<i>Acknowledgment form, corporations: RCW 64.08.070.</i>	1897	70	134
<i>Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest: RCW 19.86.060.</i>	1899	58	100
	1899	106	174
<i>Actions by and against public corporations: RCW 4.08.110, 4.08.120.</i>	1903	84	124
<i>Constitutional provisions, generally: State Constitution Art. 12.</i>	1903	93	141
<i>Consumer loan act: Chapter 31.04 RCW.</i>	1905	11	27
<i>Corporations for educational, social, religious, fraternal, etc., purposes: Title 24 RCW.</i>	1905	27	51
<i>Crimes relating to corporations: Chapter 9.24 RCW.</i>	1905	109	215
<i>Criminal procedure: RCW 10.01.070 through 10.01.100.</i>	1907	107	205
<i>Dentistry, practice or solicitation prohibited: RCW 18.32.675.</i>	1907	140	270
<i>Doing business without license, gross misdemeanor: RCW 9.24.040.</i>	1909	46	72
<i>Eminent domain by corporations: Chapter 8.20 RCW.</i>	1909 ex.s.	19	57
<i>Legal services, advertising of, penalty: RCW 30A.04.260.</i>	1911	41	135
<i>Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.</i>	1911	80	379
<i>Partnerships: Title 25 RCW.</i>	1915	93	272
<i>"Person" defined: RCW 1.16.080.</i>	1919	172	512
<i>Seals, effect of: RCW 64.04.105.</i>	1923	39	102
<i>Secretary of state, duties: Chapter 43.07 RCW.</i>	1923	105	288
<i>Washington business corporation act: Title 23B RCW.</i>	1923	144	462
	1923	168	539
	1925 ex.s.	87	112
	1925 ex.s.	147	410
	1925 ex.s.	149	417
	1927	169	188
	1927	206	301
	1929	227	631

TABLE OF PRIOR LAWS

LAWS OF	CHAPTER	PAGES
1866		55-66
1867		137-138
1869		330-350
1871		101
1873		398-419
1879		109
1879		124
1879		134
1879		140
1879		155
Code 1881	§§ 2421-2487	
1883		45
1886		84-89
1888	31	63-64
1888	32	65
1890	9	288-291

TABLE OF COMPILATION OF PRIOR LAWS

1 Hill's Code §§ 1497 through 1645
1 Ballinger's §§ 4250 through 4462
2 Rem. and Bal. §§ 3677 through 3766-20
Rem. 1915 Code §§ 3677 through 3677-20
Rem. Comp. Stat. §§ 3803 through 3923
Rem. Rev. Stat. §§ 3803 through 3923-24

Chapter 23.78 RCW

EMPLOYEE COOPERATIVE CORPORATIONS

Sections

23.78.010	Definitions.
23.78.020	Election by corporation to be governed as an employee cooperative—Laws governing.
23.78.030	Revocation of election.
23.78.040	Corporate name.
23.78.050	Members—Membership shares.
23.78.060	Right to vote—Power to amend or repeal bylaws—Right to amend articles of incorporation.
23.78.070	Net earnings or losses—Apportionment, distribution, and payment.
23.78.080	Internal capital accounts authorized—Redemptions—Assignment of portion of retained net earnings and net losses to collective reserve account authorized.
23.78.090	Internal capital account cooperatives.
23.78.100	Provision for conversion of shares and accounts—Limitations upon merger.
23.78.900	Short title.

Employee ownership programs through the department of community, trade, and economic development: RCW 43.63A.230.

23.78.010 Definitions. For the purposes of this chapter, the terms defined in this section have the meanings given:

(1) "Employee cooperative" means a corporation that has elected to be governed by the provisions of this chapter.

(2) "Member" means a natural person who has been accepted for membership in, and owns a membership share issued by an employee cooperative.

(3) "Patronage" means the amount of work performed as a member of an employee cooperative, measured in accordance with the articles of incorporation and bylaws.

(4) "Written notice of allocation" means a written instrument which discloses to a member the stated dollar amount of the member's patronage allocation, and the terms for payment of that amount by the employee cooperative. [1987 c 457 § 2.]

23.78.020 Election by corporation to be governed as an employee cooperative—Laws governing. Any corporation organized under the laws of this state may elect to be governed as an employee cooperative under the provisions of this chapter, by so stating in its articles of incorporation, or articles of amendment filed in accordance with Title 23B RCW and Article 2 of chapter 23.95 RCW.

A corporation so electing shall be governed by all provisions of Title 23B RCW, except RCW 23B.07.050, 23B.13.020, and chapter 23B.11 RCW, and except as otherwise provided in this chapter. [2015 c 176 § 9101; 1991 c 72 § 9; 1987 c 457 § 3.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.78.030 Revocation of election. An employee cooperative may revoke its election under this chapter by a vote of two-thirds of the members and through articles of amendment delivered to the secretary of state for filing in accordance with RCW 23B.01.200, 23B.10.060, and Article 2 of chapter 23.95 RCW. [2015 c 176 § 9102; 1991 c 72 § 10; 1987 c 457 § 4.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.78.040 Corporate name. An employee cooperative may include the word "cooperative" or "co-op" in its corporate name. [1987 c 457 § 5.]

23.78.050 Members—Membership shares. (1) The articles of incorporation or the bylaws shall establish qualifications and the method of acceptance and termination of members. No person may be accepted as a member unless employed by the employee cooperative on a full-time or part-time basis.

(2) An employee cooperative shall issue a class of voting stock designated as "membership shares." Each member shall own only one membership share, and only members may own these shares.

(3) Membership shares shall be issued for a fee as determined from time to time by the directors. RCW 23B.06.040 and 23B.06.200 do not apply to such membership shares.

Members of an employee cooperative shall have all the rights and responsibilities of stockholders of a corporation organized under Title 23B RCW, except as otherwise provided in this chapter. [1991 c 72 § 11; 1987 c 457 § 6.]

23.78.060 Right to vote—Power to amend or repeal bylaws—Right to amend articles of incorporation. (1) No capital stock other than membership shares shall be given voting power in an employee cooperative, except as otherwise provided in this chapter, or in the articles of incorporation.

(2) The power to amend or repeal bylaws of an employee cooperative shall be in the members only.

(3) Except as otherwise permitted by RCW 23B.10.040, no capital stock other than membership shares shall be permitted to vote on any amendment to the articles of incorporation. [1991 c 72 § 12; 1987 c 457 § 7.]

23.78.070 Net earnings or losses—Apportionment, distribution, and payment. (1) The net earnings or losses of an employee cooperative shall be apportioned and distributed at the times and in the manner as the articles of incorporation or bylaws shall specify. Net earnings declared as patronage allocations with respect to a period of time, and paid or credited to members, shall be apportioned among the members in accordance with the ratio which each member's patronage during the period involved bears to total patronage by all members during that period.

(2) The apportionment, distribution, and payment of net earnings required by subsection (1) of this section may be in cash, credits, written notices of allocation, or capital stock issued by the employee cooperative. [1987 c 457 § 8.]

23.78.080 Internal capital accounts authorized—Redemptions—Assignment of portion of retained net earnings and net losses to collective reserve account authorized. (1) Any employee cooperative may establish through its articles of incorporation or bylaws a system of internal capital accounts to reflect the book value and to determine the redemption price of membership shares, capital stock, and written notices of allocation.

(2) The articles of incorporation or bylaws of an employee cooperative may permit the periodic redemption of written notices of allocation and capital stock, and must pro-

vide for recall and redemption of the membership share upon termination of membership in the cooperative. No redemption shall be made if redemption would result in a violation of RCW 23B.06.400.

(3) The articles of incorporation or bylaws may provide for the employee cooperative to pay or credit interest on the balance in each member's internal capital account.

(4) The articles of incorporation or bylaws may authorize assignment of a portion of retained net earnings and net losses to a collective reserve account. Earnings assigned to the collective reserve account may be used for any and all corporate purposes as determined by the board of directors. [1991 c 72 § 13; 1987 c 457 § 9.]

23.78.090 Internal capital account cooperatives. (1)

An internal capital account cooperative is an employee cooperative whose entire net book value is reflected in internal capital accounts, one for each member, and a collective reserve account, and in which no persons other than members own capital stock. In an internal capital account cooperative, each member shall have one and only one vote in any matter requiring voting by stockholders.

(2) An internal capital account cooperative shall credit the paid-in membership fee and additional paid-in capital of a member to the member's internal capital account, and shall also record the apportionment of retained net earnings or net losses to the members in accordance with patronage by appropriately crediting or debiting the internal capital accounts of members. The collective reserve account in an internal capital account cooperative shall reflect any paid-in capital, net losses, and retained net earnings not allocated to individual members.

(3) In an internal capital account cooperative, the balances in all the individual internal capital accounts and collective reserve account, if any, shall be adjusted at the end of each accounting period so that the sum of the balances is equal to the net book value of the employee cooperative. [1987 c 457 § 10.]

23.78.100 Provision for conversion of shares and accounts—Limitations upon merger. (1) When any employee cooperative revokes its election in accordance with RCW 23.78.030, the articles of amendment shall provide for conversion of membership shares and internal capital accounts or their conversion to securities or other property in a manner consistent with Title 23B RCW.

(2) An employee cooperative that has not revoked its election under this chapter may not merge with another corporation other than an employee cooperative. Two or more employee cooperatives may merge in accordance with RCW 23B.01.200, 23B.07.050, and chapter 23B.11 RCW. [1991 c 72 § 14; 1987 c 457 § 11.]

23.78.900 Short title. This chapter may be cited as the employee cooperative corporations act. [1987 c 457 § 1.]

**Chapter 23.86 RCW
COOPERATIVE ASSOCIATIONS**

Sections

23.86.007 Definitions.

(2018 Ed.)

23.86.010 Cooperative associations—Who may organize.
 23.86.020 Business authorized.
 23.86.022 Certificate of authority as insurance company—Filing of documents.
 23.86.030 Association name—Immunity from liability of association board members and officers.
 23.86.035 Powers.
 23.86.050 Articles—Contents.
 23.86.055 Articles—Filing.
 23.86.070 Applicable fees, charges, and penalties.
 23.86.075 Fees for services by secretary of state.
 23.86.080 Directors—Election and appointment.
 23.86.085 Election of officers.
 23.86.087 Removal of officers or directors.
 23.86.090 Amendments to articles.
 23.86.095 Registered agent.
 23.86.100 Bylaws.
 23.86.105 Member liability—Termination.
 23.86.115 Voting.
 23.86.125 Voting—Quorum.
 23.86.135 Members right to dissent—Exception for members of a rural electric association.
 23.86.145 Rights of dissenting members.
 23.86.160 Apportionment of earnings.
 23.86.170 Distribution of dividends.
 23.86.191 Indemnification of agents of any corporation authorized.
 23.86.195 Cooperative associations organized under other statutes—Reorganization under chapter.
 23.86.200 Definitions.
 23.86.210 Conversion of cooperative association to domestic ordinary business corporation—Procedure.
 23.86.220 Merger of cooperative association with one or more cooperative associations or business corporations—Procedure.
 23.86.230 Merger of cooperative association with one or more cooperative associations or business corporations—Rights, powers, duties and liabilities of surviving entity—Articles.
 23.86.250 Dissolution.
 23.86.310 Annual report.
 23.86.330 Administrative dissolution.
 23.86.350 Application of RCW 24.06.100 and 24.06.105.
 23.86.360 Application of Title 23B RCW.
 23.86.370 Application of Article 5 of chapter 23.95 RCW.
 23.86.400 Locally regulated utilities—Attachments to poles.
 23.86.410 Tariff for irrigation pumping service—Authority for locally regulated utility to buy back electricity.
 23.86.900 Application—1989 c 307.

Exemptions to commission merchant's act: RCW 20.01.030.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

23.86.007 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Association" means any corporation subject to this chapter.

(2) "Member" or "members" includes a member or members of an association subject to this chapter without capital stock and a shareholder or shareholders of voting common stock in an association subject to this chapter with capital stock.

(3) "Articles of incorporation" means the original or restated articles of incorporation, articles of consolidation, or articles of association and all amendments including articles of merger. Corporations incorporated under this chapter with articles of association shall not be required to amend the title or references to the term "articles of association."

(4) "Director," "directors," or "board of directors" includes "trustee," "trustees," or "board of trustees" respectively. Corporations incorporated under this chapter with references in their articles of association or bylaws to "trustee," "trustees," or "board of trustees" shall not be required to amend the references.

(5) "Agricultural association" means an association that engages in any activity in connection with the marketing or

selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies, or in the financing of these activities. In the application of the definition of agricultural association, "agricultural products" includes horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and farm products. [1994 c 206 § 1; 1989 c 307 § 3.]

Legislative finding—1989 c 307: "The legislature finds that since 1921 there have existed in the laws of this state two separate incorporation statutes expressly designed for corporations intending to operate as nonprofit cooperatives. The existence of two cooperative incorporation statutes has been the source of confusion, disparity of treatment, and legal and administrative ambiguities, and the rationale for having two cooperative incorporation statutes is no longer valid. These cooperative incorporation statutes have not been updated with the regularity of this state's business incorporation statutes and, as a result, are deficient in certain respects." [1989 c 307 § 1.]

23.86.010 Cooperative associations—Who may organize. Any number of persons may associate themselves together as a cooperative association, society, company or exchange, with or without capital stock, for the transaction of any lawful business on the cooperative plan. For the purposes of this chapter the words "association," "company," "exchange," "society" or "union" shall be construed the same. [1989 c 307 § 4; 1913 c 19 § 1; RRS § 3904. Formerly RCW 23.56.010.] [1954 SLC-RO-7]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Additional notes found at www.leg.wa.gov

23.86.020 Business authorized. An association created under this chapter, being for mutual welfare, the words "lawful business" shall extend to every kind of lawful effort for business, agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the cooperative plan. [1913 c 19 § 7; RRS § 3910. Formerly RCW 23.56.020.]

23.86.022 Certificate of authority as insurance company—Filing of documents. For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate documents are required to be filed with the secretary of state, the documents shall be filed with the insurance commissioner rather than the secretary of state. [1998 c 23 § 4.]

23.86.030 Association name—Immunity from liability of association board members and officers. (1) The name of any association subject to this chapter must comply with Article 3 of chapter 23.95 RCW.

(2) No corporation or association organized or doing business in this state shall be entitled to use the term "cooperative" as a part of its corporate or other business name or title, unless it: (a) Is subject to the provisions of this chapter, chapter 23.78, or 31.12 RCW; (b) is subject to the provisions of chapter 24.06 RCW and operating on a cooperative basis; (c) is, on July 23, 1989, an organization lawfully using the term "cooperative" as part of its corporate or other business name

or title; or (d) is a nonprofit corporation or association the voting members of which are corporations or associations operating on a cooperative basis. Any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any member or any association subject to this chapter.

(3) A member of the board of directors or an officer of any association subject to this chapter shall have the same immunity from liability as is granted in RCW 4.24.264. [2015 c 176 § 9103; 1989 c 307 § 5; 1987 c 212 § 706; 1913 c 19 § 17; RRS § 3920. Formerly RCW 23.56.030.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.035 Powers. Each association subject to this chapter shall have the following powers:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in the articles of incorporation.

(2) To sue and be sued, complain, and defend in its corporate name.

(3) To have and use a corporate seal.

(4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and deal in and with real or personal property or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets.

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, use, and deal in and with shares or other interest in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or any other government, state, territory, governmental district or municipality, or any instrumentality thereof.

(7) To make contracts and incur liabilities, borrow money at rates of interest the association may determine, issue notes, bonds, certificates of indebtedness, and other obligations, receive funds from members and pay interest thereon, issue capital stock and certificates representing equity interests in assets, allocate earnings and losses at the times and in the manner the articles of incorporation or bylaws or other contract specify, create book credits, capital funds, and reserves, and secure obligations by mortgage or pledge of any of its property, franchises, and income.

(8) To lend money for corporate purposes, invest and reinvest funds, and take and hold real and personal property as security for the payment of funds loaned or invested.

(9) To conduct business, carry on operations, have offices, and exercise the powers granted by this chapter, within or without this state.

(10) To elect or appoint officers and agents of the corporation, define their duties, and fix their compensation.

(11) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the association.

(12) To make donations for the public welfare or for charitable, scientific, or educational purposes, and in time of war to make donations in aid of war activities.

(13) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees.

(14) To be a partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise.

(15) To cease corporate activities and surrender its corporate franchise.

(16) To have and exercise all powers necessary or convenient to effect its purposes. [1989 c 307 § 6.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.050 Articles—Contents. Every association formed under this chapter after July 23, 1989, shall prepare articles of incorporation in writing, which shall set forth:

(1) The name of the association.

(2) The purpose for which it was formed which may include the transaction of any lawful business for which associations may be incorporated under this chapter. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) Its principal place of business.

(4) The term for which it is to exist which may be perpetual or for a stated number of years.

(5) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rules by which the property rights and interests of all members shall be determined and fixed. The association may admit new members who shall be entitled to share in the property of the association with old members in accordance with the general rules.

(6) If the association is to have capital stock:

(a) The aggregate number of shares which the association shall have authority to issue; if shares are to consist of one class only, the par value of each share, or a statement that all shares are without par value; or, if shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that shares are to be without par value;

(b) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect to the shares of each class;

(c) If the association is to issue the shares of any preferred or special class in series, the designation of each series and a statement of the variations in the relative rights and preferences between series fixed in the articles of incorporation, and a statement of any authority vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences between series; and

(d) Any provision limiting or denying to members the preemptive right to acquire additional shares of the association.

(7) Provisions for distribution of assets on dissolution or final liquidation.

(8) Whether a dissenting member shall be limited to a return of less than the fair value of the member's equity interest in the association. A dissenting member may not be limited to a return of less than the consideration paid to or

(2018 Ed.)

retained by the association for the equity interest unless the fair value is less than the consideration paid to or retained by the association.

(9) The address of its initial registered office, including street and number, and the name of its initial registered agent at the address.

(10) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors.

(11) The name and address of each incorporator.

(12) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the association, including provisions regarding:

(a) Eliminating or limiting the personal liability of a director to the association or its members for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(b) Any provision which under this chapter is required or permitted to be set forth in the bylaws.

Associations organized under this chapter before July 23, 1989, or under *chapter 24.32 RCW shall not be required to amend their articles of association or articles of incorporation to conform to this section unless the association is otherwise amending the articles of association or articles of incorporation.

The information specified in subsections (9) through (11) of this section may be deleted when filing amendments. [1989 c 307 § 7; 1987 c 212 § 704; 1982 c 35 § 171; 1961 c 34 § 1; 1913 c 19 § 2; RRS § 3905. Formerly RCW 23.56.050.]

***Reviser's note:** Chapter 24.32 RCW was repealed by 1989 c 307.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

23.86.055 Articles—Filing. (1) The articles of incorporation shall be signed by the incorporators and delivered to the secretary of state for filing in accordance with Article 2 of chapter 23.95 RCW.

(2) Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall, except as against the state in a proceeding to cancel or revoke the certificate of incorporation, be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter. [2015 c 176 § 9104; 1989 c 307 § 8.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.070 Applicable fees, charges, and penalties.

Associations organized under or subject to this chapter are subject to the applicable fees, charges, and penalties established by the secretary of state under RCW 23.95.260 and 43.07.120. [2015 c 176 § 9105; 2010 1st sp.s. c 29 § 10; 1993 c 269 § 1; 1991 c 72 § 15; 1989 c 307 § 9; 1982 c 35 § 173; 1959 c 263 § 2; 1953 c 214 § 1; 1925 ex.s. c 99 § 1; 1913 c 19 § 4; RRS § 3907. Formerly RCW 23.56.070.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Intent—2010 1st sp.s. c 29: See note following RCW 24.03.405.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

23.86.075 Fees for services by secretary of state. See RCW 43.07.120.

23.86.080 Directors—Election and appointment. (1)

Associations shall be managed by a board of not less than three directors (which may be referred to as "trustees"). The directors shall be elected by the members of the association at such time, in such manner, and for such term of office as the bylaws may prescribe, and shall hold office during the term for which they were elected and until their successors are elected and qualified.

(2) Except as provided in RCW 23.86.087, any vacancy occurring in the board of directors, and any directorship to be filled by reason of an increase in the number of directors, may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of the predecessor in office. [2003 c 252 § 1; 1989 c 307 § 10; 1913 c 19 § 5; RRS § 3908. Formerly RCW 23.56.080.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.085 Election of officers. The directors shall elect a president and one or more vice presidents, who need not be directors. If the president and vice presidents are not members of the board of directors, the directors shall elect from their number a chair of the board of directors and one or more vice chairs. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered an officer but a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as authorized by the board of directors. [2011 c 336 § 654; 1989 c 307 § 11.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.087 Removal of officers or directors. Any member may bring charges against an officer or director by filing charges in writing with the secretary of the association, together with a petition signed by ten percent of the members requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special

meeting of the association and, by a vote of a majority of the members voting, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges prior to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses. The person or persons bringing the charges shall have the same opportunity. If the bylaws provide for election of directors by districts, the petition for removal of a director must be signed by the number of members residing in the district from which the officer or director was elected as the articles of incorporation or bylaws specify and, in the absence of such specification, the petition must be signed by ten percent of the members residing in the district. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of the district voting, the association may remove the officer or director and fill the vacancy. [1989 c 307 § 12.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.090 Amendments to articles. The articles of incorporation may be amended by a majority vote of the members voting thereon, at any regular meeting or at any special meeting called for that purpose, after notice of the proposed amendment has been given to all members entitled to vote thereon, in the manner provided by the bylaws: PROVIDED, That if the total vote upon the proposed amendment shall be less than twenty-five percent of the total membership of the association, the amendment shall not be approved. At the meeting, members may vote upon the proposed amendment in person, or by written proxy, or by mailed ballot. The power to amend shall include the power to extend the period of its duration for a further definite time or perpetually, and also include the power to increase or diminish the amount of capital stock and the number of shares: PROVIDED, The amount of the capital stock shall not be diminished below the amount of the paid-up capital stock at the time such amendment is adopted. After the adoption of an amendment to its articles of incorporation, the association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state as provided in RCW 24.06.195. [1989 c 307 § 23; 1982 c 35 § 174; 1981 c 297 § 32; 1961 c 34 § 2; 1913 c 19 § 6; RRS § 3909. Formerly RCW 23.56.090.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

23.86.095 Registered agent. Effective January 1, 1990, every association subject to this chapter shall have and maintain a registered agent in this state in accordance with the requirements set forth in Article 4 of chapter 23.95 RCW. [2015 c 176 § 9106; 1989 c 307 § 13.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.100 Bylaws. Any association subject to this chapter may pass bylaws to govern itself in the carrying out of the provisions of this chapter which are not inconsistent

with the provisions of this chapter. [1989 c 307 § 24; 1913 c 19 § 19; RRS § 3922. Formerly RCW 23.56.100.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.105 Member liability—Termination. (1) Except for debts lawfully contracted between a member and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or subscription to capital stock.

(2) Membership may be terminated under provisions, rules, or regulations prescribed in the articles of incorporation or bylaws. In the absence thereof, the board of directors may prescribe such provisions, rules, and regulations. [1989 c 307 § 19.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.115 Voting. (1) The right of a member to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or bylaws. Unless so limited, enlarged, or denied, each member shall be entitled to one vote on each matter submitted to a vote of members. The bylaws may allow subscribers to vote as members if one-fifth of the subscription for the membership fee or capital stock has been paid.

(2) A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by mail or by proxy executed in writing by the member or by a duly authorized attorney-in-fact. No proxy shall be valid for more than eleven months from the date of its execution unless otherwise specified in the proxy. Votes by mail or by proxy shall be made by mail ballot or proxy form prepared and distributed by the association in accordance with procedures set forth in the articles of incorporation or bylaws. Persons voting by mail shall be deemed present for all purposes of quorum, count of votes, and percentage voting of total voting power.

(3) If the articles of incorporation or bylaws provide for more or less than one vote per member on any matter, every reference in this chapter to a majority or other proportion of members shall refer to such a majority or other proportion of votes entitled to be cast by members. [1989 c 307 § 21.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.125 Voting—Quorum. Except as otherwise provided in this chapter, the articles of incorporation or the bylaws may provide the number or percentage of votes that members are entitled to cast in person, by mail, or by proxy that shall constitute a quorum at meetings of members. In the absence of any provision in the articles of incorporation or bylaws, twenty-five percent of the total membership of the association shall constitute a quorum. [1989 c 307 § 22.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.135 Members right to dissent—Exception for members of a rural electric association. (1) Except as provided in subsection (2) of this section, a member of an association shall have the right to dissent from any of the following association actions:

(a) Any plan of merger or consolidation to which the association is a party;

(2018 Ed.)

(b) Any plan of conversion of the association to an ordinary business corporation; or

(c) Any sale or exchange of all or substantially all of the property and assets of the association not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of the sale be distributed to the members in accordance with their respective interests within one year from the date of sale.

(2) A member of a rural electric association is not entitled to dissent from a merger to which the association is a party if all members of the association have the right to continue their membership status in the surviving association on substantially similar terms. [2016 c 228 § 1; 1989 c 307 § 30.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.145 Rights of dissenting members. (1) Except as provided otherwise under this chapter, the rights and procedures set forth in chapter 23B.13 RCW shall apply to a member who elects to exercise the right of dissent.

(2) The articles of incorporation of an association subject to this chapter may provide that a dissenting member shall be limited to a return of less than the fair value of the member's equity interest in the association, but a dissenting member may not be limited to a return of less than the consideration paid to or retained by the association for the equity interest unless the fair value is less than the consideration paid to or retained by the association.

(3) Any member of an agricultural association who exercises the right to dissent from an association action described in RCW 23.86.135 shall be entitled to payment of the member's equity interest on the same time schedule that would have applied if membership in the association had been terminated.

(4) Subsection (3) of this section does not apply to agricultural associations that are involved in an action under subsection (3) of this section before June 9, 1994: (a) As to the associations that were involved in the particular action; (b) for three years after June 9, 1994. [1994 c 206 § 2; 1991 c 72 § 16; 1989 c 307 § 31.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.160 Apportionment of earnings. The directors may apportion the net earnings by paying dividends upon the paid-up capital stock at a rate not exceeding eight percent per annum. They may set aside reasonable reserves out of such net earnings for any association purpose. The directors may, however, distribute all or any portion of the net earnings to members in proportion to the business of each with the association and they may include nonmembers at a rate not exceeding that paid to members. The directors may distribute, on a patronage basis, such net earnings at different rates on different classes, kinds, or varieties of products handled. All dividends declared or other distributions made under this section may, in the discretion of the directors, be in the form of capital stock, capital or equity certificates, book credits, or capital funds of the association. All unclaimed dividends or distributions authorized under this chapter or funds payable on redeemed stock, equity certificates, book credits, or capi-

tal funds shall revert to the association at the discretion of the directors at any time after one year from the end of the fiscal year during which such distributions or redemptions have been declared. [1989 c 307 § 25; 1947 c 37 § 1; 1943 c 99 § 3; 1913 c 19 § 13; Rem. Supp. 1947 § 3916. Formerly RCW 23.56.160.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.170 Distribution of dividends. The profits or net earnings of such association shall be distributed to those entitled thereto at such time and in such manner not inconsistent with this chapter as its bylaws shall prescribe, which shall be as often as once a year. [1913 c 19 § 14; RRS § 3917. Formerly RCW 23.56.170.]

23.86.191 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

23.86.195 Cooperative associations organized under other statutes—Reorganization under chapter. Any cooperative association organized under any other statute may be reorganized under the provisions of this chapter by adopting and filing amendments to its articles of incorporation in accordance with the provisions of this chapter for amending articles of incorporation. The articles of incorporation as amended must conform to the requirements of this chapter, and shall state that the cooperative association accepts the benefits and will be bound by the provisions of this chapter. [1989 c 307 § 26; 1981 c 297 § 38.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Additional notes found at www.leg.wa.gov

23.86.200 Definitions. For the purposes of RCW 23.86.200 through 23.86.230 a "domestic" cooperative association or "domestic" corporation is one formed under the laws of this state, and an "ordinary business" corporation is one formed or which could be formed under Title 23B RCW. [1991 c 72 § 17; 1971 ex.s. c 221 § 1.]

23.86.210 Conversion of cooperative association to domestic ordinary business corporation—Procedure. (1) A cooperative association may be converted to a domestic ordinary business corporation pursuant to the following procedures:

(a) The board of directors of the association shall, by affirmative vote of not less than two-thirds of all such directors, adopt a plan for such conversion setting forth:

(i) The reasons why such conversion is desirable and in the interests of the members of the association;

(ii) The proposed contents of articles of conversion with respect to items (ii) through (ix) of subparagraph (c) below; and

(iii) Such other information and matters as the board of directors may deem to be pertinent to the proposed plan.

(b) After adoption by the board of directors, the plan for conversion shall be submitted for approval or rejection to the members of the association at any regular meetings or at any special meetings called for that purpose, after notice of the proposed conversion has been given to all members entitled to vote thereon, in the manner provided by the bylaws. The notice of the meeting shall be accompanied by a full copy of

the proposed plan for conversion or by a summary of its provisions. At the meeting members may vote upon the proposed conversion in person, or by written proxy, or by mailed ballot. The affirmative vote of two-thirds of the members voting thereon shall be required for approval of the plan of conversion. If the total vote upon the proposed conversion shall be less than twenty-five percent of the total membership of the association, the conversion shall not be approved.

(c) Upon approval by the members of the association, the articles of conversion shall be executed in duplicate by the association by one of its officers and shall set forth:

(i) The dates and vote by which the plan for conversion was adopted by the board of directors and members respectively;

(ii) The corporate name of the converted organization. The name shall comply with requirements in Article 3 of chapter 23.95 RCW for names of business corporations formed under Title 23B RCW, and shall not contain the term "cooperative";

(iii) The purpose or purposes for which the converted corporation is to exist;

(iv) The duration of the converted corporation, which may be perpetual or for a stated term of years;

(v) The capitalization of the converted corporation and the class or classes of shares of stock into which divided, together with the par value, if any, of such shares, in accordance with statutory requirements applicable to ordinary business corporations, and the basis upon which outstanding shares of the association are converted into shares of the converted corporation;

(vi) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the converted corporation;

(vii) The address of the converted corporation's initial registered agent;

(viii) The names and addresses of the persons who are to serve as directors of the converted corporation until the first annual meeting of shareholders of the converted corporation or until their successors are elected and qualify;

(ix) Any additional provisions, not inconsistent with law, provided for by the plan for conversion for the regulation of the internal affairs of the converted corporation, including any provision restricting the transfer of shares or which under Title 23B RCW is required or permitted to be set forth in bylaws.

(d) The articles of conversion shall be delivered to the secretary of state for filing in accordance with Article 2 of chapter 23.95 RCW.

(e) Upon delivering the articles of conversion to the secretary of state for filing, the converted corporation shall pay, and the secretary of state shall collect, the same filing and license fees as for filing articles of incorporation of a newly formed business corporation similarly capitalized.

(2) Upon filing by the secretary of state of the articles of conversion, the conversion of the cooperative association to an ordinary business corporation shall become effective as provided in RCW 23.95.210; the articles of conversion shall thereafter constitute and be treated in like manner as articles of incorporation; and the converted corporation shall be subject to all laws applicable to corporations formed under Title 23B RCW, and shall not thereafter be subject to laws applic-

ing only to cooperative associations. The converted corporation shall constitute and be deemed to constitute a continuation of the corporate substance of the cooperative association and the conversion shall in no way derogate from the rights of creditors of the former association. [2015 c 176 § 9107; 1991 c 72 § 18; 1989 c 307 § 27; 1982 c 35 § 175; 1981 c 297 § 34; 1971 ex.s. c 221 § 2.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

23.86.220 Merger of cooperative association with one or more cooperative associations or business corporations—Procedure. (1) A cooperative association may merge with one or more domestic cooperative associations, or with one or more domestic ordinary business corporations, in accordance with the procedures and subject to the conditions set forth or referred to in this section.

(2) If the merger is into another domestic cooperative association, the board of directors of each of the associations shall approve by vote of not less than two-thirds of all the directors, a plan of merger setting forth:

- (a) The names of the associations proposing to merge;
- (b) The name of the association which is to be the surviving association in the merger;
- (c) The terms and conditions of the proposed merger;
- (d) The manner and basis of converting the shares of each merging association into shares or other securities or obligations of the surviving association;
- (e) A statement of any changes in the articles of incorporation of the surviving association to be effected by such merger; and
- (f) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(3) Following approval by the boards of directors, the plan of merger shall be submitted to a vote of the members of each of the associations at any regular meeting or at any special meetings called for that purpose, after notice of the proposed merger has been given to all members entitled to vote thereon, in the manner provided in the bylaws. The notice of the meeting shall be in writing stating the purpose or purposes of the meeting and include or be accompanied by a copy or summary of the plan of merger. At the meeting members may vote upon the proposed merger in person, or by written proxy, or by mailed ballot. The affirmative vote of two-thirds of the members voting thereon, by each association, shall be required for approval of the plan of merger. If the total vote of either association upon the proposed merger shall be less than twenty-five percent of the total membership of such association, the merger shall not be approved.

(4) Upon approval by the members of the associations proposing to merge, articles of merger shall be executed in duplicate by each association by an officer of each association, and shall set forth:

- (a) The plan of merger;
- (b) As to each association, the number of members and, if there is capital stock, the number of shares outstanding; and

(c) As to each association, the number of members who voted for and against such plan, respectively.

(5) The articles of merger shall be delivered to the secretary of state for filing in accordance with Article 2 of chapter 23.95 RCW.

(6) For filing articles of merger hereunder the secretary of state shall charge and collect the same fees as apply to filing of articles of merger of ordinary business corporations.

(7) If the plan of merger is for merger of the cooperative association into a domestic ordinary business corporation, the association shall follow the same procedures as hereinabove provided for merger of domestic cooperative associations and the ordinary business corporation shall follow the applicable procedures set forth in RCW 23B.07.050 and chapter 23B.11 RCW.

(8) At any time prior to filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger. [2015 c 176 § 9108; 1991 c 72 § 19; 1989 c 307 § 28; 1982 c 35 § 176; 1981 c 297 § 35; 1971 ex.s. c 221 § 3.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

23.86.230 Merger of cooperative association with one or more cooperative associations or business corporations—Rights, powers, duties and liabilities of surviving entity—Articles. (1) Upon issuance of the certificate of merger by the secretary of state, the merger of the cooperative association into another cooperative association or ordinary business corporation, as the case may be, shall be effected.

(2) When merger has been effected:

(a) The several parties to the plan of merger shall be a single cooperative association or corporation, as the case may be, which shall be that cooperative association or corporation designated in the plan of merger as the survivor.

(b) The separate existence of all parties to the plan of merger, except that of the surviving cooperative association or corporation, shall cease.

(c) If the surviving entity is a cooperative association, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative association organized under chapter 23.86 RCW. If the surviving entity is an ordinary business corporation, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized or existing under Title 23B RCW.

(d) Such surviving cooperative association or corporation, as the case may be, shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, both public and private of each of the merging organizations, to the extent that such rights, privileges, immunities, and franchises are not inconsistent with the corporate nature of the surviving organization; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of

the organizations so merged shall be taken and deemed to be transferred to and vested in such surviving cooperative association or corporation, as the case may be, without further act or deed; and the title to any real estate, or any interest therein, vested in any such merged cooperative association shall not revert or be in any way impaired by reason of such merger.

(3) The surviving cooperative association or corporation, as the case may be, shall, after the merger is effected, be responsible and liable for all the liabilities and obligations of each of the organizations so merged; and any claim existing or action or proceeding pending by or against any of such organizations may be prosecuted as if the merger had not taken place and the surviving cooperative association or corporation may be substituted in its place. Neither the right of creditors nor any liens upon the property of any cooperative association or corporation party to the merger shall be impaired by the merger.

(4) The articles of incorporation of the surviving cooperative association or of the surviving ordinary business corporation, as the case may be, shall be deemed to be amended to the extent, if any, that changes in such articles are stated in the plan of merger. [1991 c 72 § 20; 1989 c 307 § 29; 1971 ex.s. c 221 § 4.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.250 Dissolution. The members of any association may by the vote of two-thirds of the members voting thereon, at any regular meeting or at any special meeting called for that purpose, vote to dissolve said association after notice of the proposed dissolution has been given to all members entitled to vote thereon, in the manner provided by the bylaws, and thereupon such proceeding shall be had for the dissolution of said association as is provided by law for the dissolution of corporations organized under chapter 24.06 RCW: PROVIDED, That if the total vote upon the proposed dissolution shall be less than twenty-five percent of the total membership of the association, the dissolution shall not be approved. At the meeting, members may vote upon the proposed dissolution in person, or by written proxy, or by mailed ballot. [1981 c 297 § 36.]

Additional notes found at www.leg.wa.gov

23.86.310 Annual report. Every association subject to this chapter shall deliver an annual report to the secretary of state in accordance with RCW 23.95.255. [2015 c 176 § 9109; 1989 c 307 § 15.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.330 Administrative dissolution. The provisions of Article 6 of chapter 23.95 RCW relating to administrative dissolution by the secretary of state shall apply to every association subject to this chapter formed on or after July 23, 1989. [2015 c 176 § 9110; 1991 c 72 § 21; 1989 c 307 § 17.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.350 Application of RCW 24.06.100 and 24.06.105. The provisions of RCW 24.06.100 and 24.06.105 shall apply to every association subject to this chapter. [1989 c 307 § 20.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.360 Application of Title 23B RCW. The provisions of Title 23B RCW shall apply to the associations subject to this chapter, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter. The terms "shareholder" or "shareholders" as used in Title 23B RCW, or in chapter 24.06 RCW as incorporated by reference herein, shall be deemed to refer to "member" or "members" as defined in this chapter. When the terms "share" or "shares" are used with reference to voting rights in Title 23B RCW, or in chapter 24.06 RCW as incorporated by reference herein, such terms shall be deemed to refer to the vote or votes entitled to be cast by a member or members. [1991 c 72 § 23; 1989 c 307 § 32.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.370 Application of Article 5 of chapter 23.95 RCW. The provisions of Article 5 of chapter 23.95 RCW and RCW 24.06.367 and 24.06.369 shall apply to every foreign corporation which desires to conduct affairs in this state under the authority of this chapter. [2015 c 176 § 9111; 1989 c 307 § 33.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.400 Locally regulated utilities—Attachments to poles. (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means an electric service cooperative organized under this chapter and not subject to rate or service regulation by the utilities and transportation commission.

(c) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities. [1996 c 32 § 1.]

23.86.410 Tariff for irrigation pumping service— Authority for locally regulated utility to buy back electricity. The board may approve a tariff for irrigation pumping service that allows the locally regulated utility to buy back electricity from customers to reduce electricity usage by those customers during the locally regulated utility's particular irrigation season. [2001 c 122 § 4.]

Additional notes found at www.leg.wa.gov

23.86.900 Application—1989 c 307. The provisions of this chapter relating to domestic cooperative associations shall apply to:

- (1) All cooperative associations organized under this chapter; and
- (2) All agricultural cooperative associations organized under *chapter 24.32 RCW. All such agricultural cooperatives are deemed to have been incorporated under this chapter. [1989 c 307 § 2.]

*Reviser's note: Chapter 24.32 RCW was repealed by 1989 c 307.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

**Chapter 23.90 RCW
MASSACHUSETTS TRUSTS**

Sections

- 23.90.010 Short title.
- 23.90.020 Massachusetts trust defined.
- 23.90.030 Form of association authorized.
- 23.90.040 Filing trust instrument, effect—Powers and duties of trust.
- 23.90.050 Fees for services by secretary of state.
- 23.90.060 Indemnification of agents of any corporation authorized.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

23.90.010 Short title. This chapter may be known and cited as the "Massachusetts Trust Act of 1959". [1959 c 220 § 1.]

23.90.020 Massachusetts trust defined. A Massachusetts trust is an unincorporated business association created at common law by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as may be or may become the holders of transferable certificates evidencing beneficial interests in the trust estate, the holders of which certificates are entitled to the same limitation of personal liability extended to stockholders of private corporations. [1959 c 220 § 2.]

23.90.030 Form of association authorized. A Massachusetts trust is permitted as a recognized form of association for the conduct of business within the state of Washington. [1959 c 220 § 3.]

23.90.040 Filing trust instrument, effect—Powers and duties of trust. (1) Any Massachusetts trust desiring to do business in this state shall file with the secretary of state, in accordance with Article 2 of chapter 23.95 RCW, a verified copy of the trust instrument creating such a trust and any amendment thereto, the assumed business name, if any, and the names and addresses of its trustees.

(2018 Ed.)

(2) Any person dealing with such Massachusetts trust shall be bound by the terms and conditions of the trust instrument and any amendments thereto so filed.

(3) Any Massachusetts trust created under this chapter or entering this state pursuant thereto shall pay such taxes and fees as are imposed by the laws, ordinances, and resolutions of the state of Washington and any counties and municipalities thereof on domestic and foreign corporations, respectively, on an identical basis therewith. In computing such taxes and fees, the shares of beneficial interest of such a trust shall have the character for tax purposes of shares of stock in private corporations.

(4) Any Massachusetts trust shall be subject to such applicable provisions of law, now or hereafter enacted, with respect to domestic and foreign corporations, respectively, as relate to the issuance of securities, filing of required statements or reports, service of process, general grants of power to act, right to sue and be sued, limitation of individual liability of shareholders, rights to acquire, mortgage, sell, lease, operate and otherwise to deal in real and personal property, and other applicable rights and duties existing under the common law and statutes of this state in a manner similar to those applicable to domestic and foreign corporations.

(5) The secretary of state, director of licensing, and the department of revenue of the state of Washington are each authorized and directed to prescribe binding rules and regulations applicable to said Massachusetts trusts consistent with this chapter. [2015 c 176 § 9112; 1981 c 302 § 3; 1979 c 158 § 88; 1967 ex.s. c 26 § 21; 1959 c 220 § 4.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Additional notes found at www.leg.wa.gov

23.90.050 Fees for services by secretary of state. See RCW 43.07.120.

23.90.060 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

**Chapter 23.95 RCW
UNIFORM BUSINESS ORGANIZATIONS CODE**

Sections

ARTICLE 1
GENERAL PROVISIONS

- 23.95.100 Short title.
- 23.95.105 Definitions.
- 23.95.110 Delivery of record.
- 23.95.115 Rules and procedures.

ARTICLE 2
FILING

- 23.95.200 Entity filing requirements.
- 23.95.205 Forms.
- 23.95.210 Effective date and time.
- 23.95.215 Withdrawal of filed record before effectiveness.
- 23.95.220 Correcting filed record.
- 23.95.225 Duty of secretary of state to file—Review of refusal to file.
- 23.95.230 Evidentiary effect of copy of filed record.
- 23.95.235 Certificate of existence or registration—Definitions.
- 23.95.240 Execution of entity filing.
- 23.95.245 Execution and filing pursuant to judicial order.
- 23.95.250 Delivery by secretary of state.
- 23.95.255 Initial or annual report for secretary of state.
- 23.95.260 Fees.
- 23.95.265 Waiver of penalty fees.

ARTICLE 3
NAME OF ENTITY

- 23.95.300 Permitted names.
23.95.305 Name requirements for certain types of entities.
23.95.310 Reservation of name.
23.95.315 Registration of name.

ARTICLE 4
REGISTERED AGENT OF ENTITY

- 23.95.400 Definitions.
23.95.405 Entities required to designate and maintain registered agent.
23.95.410 Addresses in filing.
23.95.415 Designation of registered agent.
23.95.420 Listing of commercial registered agent.
23.95.425 Termination of listing of commercial registered agent.
23.95.430 Change of registered agent by entity.
23.95.435 Change of name, address, type of entity, or jurisdiction of formation by noncommercial registered agent.
23.95.440 Change of name, address, type of entity, or jurisdiction of formation by commercial registered agent.
23.95.445 Resignation of registered agent.
23.95.450 Service of process, notice, or demand on entity.
23.95.455 Duties of registered agent.
23.95.460 Jurisdiction and venue.

ARTICLE 5
FOREIGN ENTITIES

- 23.95.500 Governing law.
23.95.505 Registration to do business in this state.
23.95.510 Foreign registration statement.
23.95.515 Amendment of foreign registration statement.
23.95.520 Activities not constituting doing business.
23.95.525 Noncomplying name of foreign entity.
23.95.530 Withdrawal of registration of registered foreign entity.
23.95.535 Withdrawal deemed on conversion to domestic entity.
23.95.540 Withdrawal on dissolution or conversion.
23.95.545 Transfer of registration.
23.95.550 Termination of registration.
23.95.555 Action by attorney general.

ARTICLE 6
ADMINISTRATIVE DISSOLUTION

- 23.95.600 Domestic entity—Definition.
23.95.605 Grounds.
23.95.610 Procedure and effect.
23.95.615 Reinstatement.
23.95.620 Judicial review of denial of reinstatement.
23.95.625 Entity name not distinguishable from name of governmental entity.

ARTICLE 7
MISCELLANEOUS PROVISIONS

- 23.95.700 Reservation of power to amend or repeal.
23.95.705 Supplemental principles of law.
23.95.710 Relation to electronic signatures in global and national commerce act.
23.95.715 Savings.

ARTICLE 1
GENERAL PROVISIONS

23.95.100 Short title. This chapter may be known and cited as the uniform business organizations code—general provisions. [2015 c 176 § 1101.]

Effective date—Contingent effective date—2015 c 176: "(1) Parts I, II, III, IV, V, VI, VIII, and IX of this act take effect January 1, 2016.

(2) Part VII of this act takes effect upon the effective date of chapter 188, Laws of 2015." [2015 c 176 § 1803.]

23.95.105 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise or as set forth in RCW 23.95.400 or 23.95.600.

(1) "Annual report" means the report required by RCW 23.95.255.

(2) "Business corporation" means a domestic business corporation incorporated under or subject to Title 23B RCW or a foreign business corporation.

(3) "Commercial registered agent" means a person listed under RCW 23.95.420.

(4) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(5) "Electronic transmission" means an electronic communication:

(a) Not directly involving the physical transfer of a record in a tangible medium; and

(b) That may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.

(6) "Entity" means:

(a) A business corporation;

(b) A nonprofit corporation;

(c) A limited liability partnership;

(d) A limited partnership;

(e) A limited liability company; or

(f) A general cooperative association.

(7) "Entity filing" means a record delivered to the secretary of state for filing pursuant to this chapter.

(8) "Execute," "executes," or "executed" means:

(a) Signed with respect to a written record;

(b) Electronically transmitted along with sufficient information to determine the sender's identity with respect to an electronic transmission; or

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

(9) "Filed record" means a record filed by the secretary of state pursuant to this chapter.

(10) "Foreign," with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than this state.

(11) "General cooperative association" means a domestic general cooperative association formed under or subject to chapter 23.86 RCW.

(12) "Governor" means:

(a) A director of a business corporation;

(b) A director of a nonprofit corporation;

(c) A partner of a limited liability partnership;

(d) A general partner of a limited partnership;

(e) A manager of a manager-managed limited liability company;

(f) A member of a member-managed limited liability company;

(g) A director of a general cooperative association; or

(h) Any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(13) "Interest" means:

(a) A share in a business corporation;

(b) A membership in a nonprofit corporation;

(c) A share in a nonprofit corporation formed under chapter 24.06 RCW;

(d) A partnership interest in a limited liability partnership;

(e) A partnership interest in a limited partnership;

(f) A limited liability company interest; or

(g) A share or membership in a general cooperative association.

(14) "Interest holder" means:

(a) A shareholder of a business corporation;

(b) A member of a nonprofit corporation;

(c) A shareholder of a nonprofit corporation formed under chapter 24.06 RCW;

(d) A partner of a limited liability partnership;

(e) A general partner of a limited partnership;

(f) A limited partner of a limited partnership;

(g) A member of a limited liability company; or

(h) A shareholder or member of a general cooperative association.

(15) "Jurisdiction[.]" when used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(16) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(17) "Limited liability company" means a domestic limited liability company formed under or subject to chapter 25.15 RCW or a foreign limited liability company.

(18) "Limited liability limited partnership" means a domestic limited liability limited partnership formed under or subject to chapter 25.10 RCW or a foreign limited liability limited partnership.

(19) "Limited liability partnership" means a domestic limited liability partnership registered under or subject to chapter 25.05 RCW or a foreign limited liability partnership.

(20) "Limited partnership" means a domestic limited partnership formed under or subject to chapter 25.10 RCW or a foreign limited partnership. "Limited partnership" includes a limited liability limited partnership.

(21) "Noncommercial registered agent" means a person that is not a commercial registered agent and is:

(a) An individual or domestic or foreign entity that serves in this state as the registered agent of an entity;

(b) An individual who holds the office or other position in an entity which is designated as the registered agent pursuant to RCW 23.95.415(1)(b)(ii); or

(c) A government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, that serves as the registered agent of an entity.

(22) "Nonprofit corporation" means a domestic nonprofit corporation incorporated under or subject to chapter 24.03 or 24.06 RCW or a foreign nonprofit corporation.

(23) "Nonregistered foreign entity" means a foreign entity that is not registered to do business in this state pursuant to a statement of registration filed by the secretary of state.

(24) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(25) "Organic rules" means the public organic record and private organic rules of an entity.

(26) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, general cooperative association, lim-

ited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(27) "Principal office" means the principal executive office of an entity, whether or not the office is located in this state.

(28) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. "Private organic rules" includes:

(a) The bylaws of a business corporation and any agreement among shareholders pursuant to RCW 23B.07.320;

(b) The bylaws of a nonprofit corporation;

(c) The partnership agreement of a limited liability partnership;

(d) The partnership agreement of a limited partnership;

(e) The limited liability company agreement; and

(f) The bylaws of a general cooperative association.

(29) "Proceeding" means civil suit and criminal, administrative, and investigatory action.

(30) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(31) "Public organic record" means the record the filing of which by the secretary of state is required to form an entity and any amendment to or restatement of that record. The term includes:

(a) The articles of incorporation of a business corporation;

(b) The articles of incorporation of a nonprofit corporation;

(c) The certificate of limited partnership of a limited partnership;

(d) The certificate of formation of a limited liability company;

(e) The articles of incorporation of a general cooperative association; and

(f) The document under the laws of another jurisdiction that is equivalent to a document listed in this subsection.

(32) "Receipt," as used in this chapter, means actual receipt. "Receive" has a corresponding meaning.

(33) "Record" means information inscribed on a tangible medium or contained in an electronic transmission.

(34) "Registered agent" means an agent of an entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term includes a commercial registered agent and a noncommercial registered agent.

(35) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a certificate of registration filed by the secretary of state.

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

(37) "Transfer" includes:

(a) An assignment;

(b) A conveyance;

(c) A sale;

- (d) A lease;
 - (e) An encumbrance, including a mortgage or security interest;
 - (f) A change of record owner of interest;
 - (g) A gift; and
 - (h) A transfer by operation of law.
- (38) "Type of entity" means a generic form of entity:
- (a) Recognized at common law; or
 - (b) Formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.
- (39) "Writing" does not include an electronic transmission.
- (40) "Written" means embodied in a tangible medium. [2015 c 176 § 1102.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.110 Delivery of record. (1) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, United States mail, private courier service, and electronic transmission.

(2) Records may be delivered to the secretary of state by electronic transmission as authorized by the secretary of state pursuant to RCW 23.95.115(2). The secretary of state may deliver a record to an entity by electronic transmission if the entity has designated an address, location, or system to which the record may be electronically transmitted. [2015 c 176 § 1103.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.115 Rules and procedures. (1) The secretary of state has the power reasonably necessary to perform the duties required by this chapter, including adoption, amendment, or repeal of rules under chapter 34.05 RCW for the efficient administration of this chapter.

(2) The secretary of state may adopt rules to facilitate electronic filing. The rules will detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the secretary of state will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted. [2015 c 176 § 1104.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

ARTICLE 2 FILING

23.95.200 Entity filing requirements. (1) To be filed by the secretary of state pursuant to this chapter, an entity filing must be received by the secretary of state, comply with this chapter, and satisfy the following:

- (a) The entity filing must be required or permitted by Title 23, 23B, 24, or 25 RCW.
- (b) The entity filing must be delivered in written form unless and to the extent the secretary of state permits elec-

tronic delivery of entity filings pursuant to RCW 23.95.115(2).

(c) The words in the entity filing must be in English, and numbers must be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.

(d) The entity filing must be executed by or on behalf of a person authorized or required under this chapter or the entity's organic law to execute the filing.

(e) The entity filing must state the name and capacity, if any, of each individual who executed it, on behalf of either the individual or the person authorized or required to execute the filing, but need not contain a seal, attestation, acknowledgment, or verification.

(2) When an entity filing is delivered to the secretary of state for filing, any fee required under this chapter and any fee, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the secretary of state or by that law.

(3) The secretary of state may require that an entity filing delivered in written form be accompanied by an identical or conformed copy.

(4) A record filed under this chapter may be executed by an individual acting in a valid representative capacity. [2015 c 176 § 1201.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.205 Forms. (1) The secretary of state may provide forms for entity filings required or permitted to be made by Title 23, 23B, 24, or 25 RCW, but, except as otherwise provided in subsection (2) of this section, their use is not required.

(2) The secretary of state may require that a cover sheet for an entity filing and an annual report be on forms prescribed by the secretary of state. [2015 c 176 § 1202.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.210 Effective date and time. Except as otherwise provided in this chapter and subject to RCW 23.95.220(4), an entity filing is effective:

(1) On the date of filing and at the time specified in the entity filing as its effective time;

(2) Unless prohibited by the entity's organic law, at a specified delayed effective date and time, which may not be more than ninety days after the date of filing;

(3) If a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified; or

(4) If subsection (1), (2), or (3) of this section does not apply, on the date and at the time of its filing by the secretary of state as provided in RCW 23.95.225. [2015 c 176 § 1203.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.215 Withdrawal of filed record before effectiveness. (1) Except as otherwise provided in this chapter, a filed record may be withdrawn before it takes effect by delivering to the secretary of state for filing a statement of withdrawal.

(2) A statement of withdrawal must:

(a) Be executed by an individual acting in a valid representative capacity; and

(b) Identify the filed record to be withdrawn.

(3) On filing by the secretary of state of a statement of withdrawal, the action or transaction evidenced by the original filed record shall not take effect. [2015 c 176 § 1204.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.220 Correcting filed record. (1) An entity may correct a filed record if:

(a) The filed record at the time of filing contained an inaccurate statement;

(b) The filed record was defectively executed; or

(c) The electronic transmission of the filed record to the secretary of state was defective.

(2) To correct a filed record, the entity must deliver to the secretary of state for filing a statement of correction.

(3) A statement of correction:

(a) May not state a delayed effective date;

(b) Must be executed by the individual correcting the filed record;

(c) Must identify the filed record to be corrected;

(d) Must specify the inaccuracy or defect to be corrected; and

(e) Must correct the inaccuracy or defect.

(4) A statement of correction is effective as of the effective date of the filed record that it corrects except as to persons relying on the uncorrected filed record and adversely affected by the correction. As to those persons, the statement of correction is effective when filed. [2015 c 176 § 1205.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.225 Duty of secretary of state to file—Review of refusal to file. (1) The secretary of state shall file an entity filing that satisfies this chapter. The duty of the secretary of state under this section is ministerial.

(2) The secretary of state shall record an entity filing on the date and at the time of its receipt. After filing an entity filing, the secretary of state shall deliver to the person that submitted the filing a copy of the filed record with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file an entity filing, the secretary of state not later than fifteen business days after the filing is received, shall:

(a) Return the entity filing or notify the person that submitted the filing of the refusal; and

(b) Provide a brief explanation in a record of the reason for the refusal.

(4) If the secretary of state refuses to file an entity filing, the person that submitted the entity filing may petition the superior court to compel its filing. The entity filing and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(5) The filing of or refusal to file an entity filing does not:

(a) Affect the validity or invalidity of the entity filing in whole or in part;

(2018 Ed.)

(b) Relate to the correctness or incorrectness of information contained in the entity filing; or

(c) Create a presumption that the information contained in the filing is correct or incorrect. [2015 c 176 § 1206.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.230 Evidentiary effect of copy of filed record.

A certification from the secretary of state accompanying a copy of a filed record is conclusive evidence that the copy is an accurate representation of the original record on file with the secretary of state. [2015 c 176 § 1207.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.235 Certificate of existence or registration—Definitions. (1) On request of any person, the secretary of state shall issue a certificate of existence for a domestic entity or a certificate of registration for a registered foreign entity.

(2) A certificate under subsection (1) of this section must state:

(a) The domestic entity's name or the registered foreign entity's name used in this state;

(b) In the case of a domestic entity:

(i) That its public organic record has been filed and has taken effect;

(ii) The date the public organic record became effective;

(iii) The period of the entity's duration if the records of the secretary of state reflect that the entity's period of duration is less than perpetual; and

(iv) That the records of the secretary of state do not reflect that the entity has been dissolved;

(c) In the case of a registered foreign entity:

(i) That it is registered to do business in this state;

(ii) The date the foreign entity registered to do business in this state; and

(iii) That the records of the secretary of state do not reflect that the foreign entity's registration to do business in the state has been terminated;

(d) That all fees, interest, and penalties owed to this state by the domestic or foreign entity and collected through the secretary of state have been paid, if:

(i) Payment is reflected in the records of the secretary of state; and

(ii) Nonpayment affects the existence or registration of the domestic or foreign entity;

(e) That the most recent annual report required by RCW 23.95.255 has been delivered to the secretary of state for filing;

(f) That a proceeding is not pending under RCW 23.95.610 as to a domestic entity or under RCW 23.95.550 as to a registered foreign entity; and

(g) Other facts reflected in the records of the secretary of state pertaining to the domestic or foreign entity which the person requesting the certificate reasonably requests.

(3) Subject to any qualification stated in the certificate, a certificate issued by the secretary of state under subsection (1) of this section may be relied upon as conclusive evidence of the facts stated in the certificate, and that as of the date of its issuance: (a) In the case of a domestic entity, it is in existence and duly formed or incorporated, as applicable; and (b)

in the case of a foreign entity, it is registered and authorized to do business in this state.

(4) The terms "doing business" and "transacting business," and their variants such as "do business" and "transact business," are used interchangeably, and each has the same meaning as the other when used in this title and in Titles 23B, 24, and 25 RCW. [2017 c 31 § 1; 2015 c 176 § 1208.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.240 Execution of entity filing. (1) Any person who executes a record the person knows is false in any material respect with the intent the record be an entity filing is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) A person that executes an entity filing as an agent or legal representative thereby affirms as a fact that the person is authorized to execute the entity filing. [2015 c 176 § 1209.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.245 Execution and filing pursuant to judicial order. (1) If a person required by the entity's organic law to execute a record that is to be an entity filing or to make an entity filing does not do so, any other person that is aggrieved may petition the superior court to order:

- (a) The person to execute the record;
- (b) The person to make the entity filing; or
- (c) The secretary of state to file the entity filing unexecuted.

(2) If the petitioner under subsection (1) of this section is not the entity to which the entity filing pertains, the petitioner shall make the entity a party to the action.

(3) A filed record created under subsection (1)(c) of this section is effective without being executed. [2015 c 176 § 1210.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.250 Delivery by secretary of state. Except as otherwise provided by RCW 23.95.450 or by law of this state other than this chapter, the secretary of state may deliver a record to a person by delivering it:

- (1) In person to the person that submitted it for filing;
- (2) To the address of the person's registered agent;
- (3) To the principal office address of the person; or
- (4) To another address the person provides to the secretary of state for delivery. [2015 c 176 § 1211.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.255 Initial or annual report for secretary of state. (1) A domestic entity other than a limited liability partnership or nonprofit corporation shall, within one hundred twenty days of the date on which its public organic record became effective, deliver to the secretary of state for filing an initial report that states the information required under subsection (2) of this section.

(2) A domestic entity or registered foreign entity shall deliver to the secretary of state for filing an annual report that states:

(a) The name of the entity and its jurisdiction of formation;

(b) The name and street and mailing addresses of the entity's registered agent in this state;

(c) The street and mailing addresses of the entity's principal office;

(d) In the case of a registered foreign entity, the street and mailing address of the entity's principal office in the state or country under the laws of which it is incorporated;

(e) The names of the entity's governors;

(f) A brief description of the nature of the entity's business; and

(g) The entity's unified business identifier number.

(3) Information in an initial or annual report must be current as of the date the report is executed by the entity.

(4) Annual reports must be delivered to the secretary of state on a date determined by the secretary of state and at such additional times as the entity elects.

(5) If an initial or annual report does not contain the information required by this section, the secretary of state promptly shall notify the reporting entity in a record and return the report for correction.

(6) If an initial or annual report contains the name or address of a registered agent that differs from the information shown in the records of the secretary of state immediately before the annual report becomes effective, the differing information in the initial or annual report is considered a statement of change under RCW 23.95.430.

(7) The secretary of state shall send to each domestic entity and registered foreign entity, not less than thirty or more than ninety days prior to the expiration date of the entity's annual renewal, a notice that the entity's annual report must be filed as required by this chapter and that any applicable annual renewal fee must be paid, and stating that if the entity fails to file its annual report or pay the annual renewal fee it will be administratively dissolved. The notice may be sent by postal or email as elected by the entity, addressed to its registered agent within the state, or to an electronic address designated by the entity in a record retained by the secretary of state. Failure of the secretary of state to provide any such notice does not relieve a domestic entity or registered foreign entity from its obligations to file the annual report required by this chapter or to pay any applicable annual renewal fee. The option to receive the notice provided under this section by email may be selected only when the secretary of state makes the option available. [2017 c 31 § 2; 2015 c 176 § 1212.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.260 Fees. (1) Except as provided in subsection (2) of this section, the secretary of state shall adopt rules in accordance with chapter 34.05 RCW setting:

(a) Fees for:

(i) Filing entity filings;

(ii) Furnishing copies or certified copies of any filed record under this chapter; and

(iii) Furnishing a certificate of existence or registration of an entity, or any other certificate;

(b) License or renewal fees authorized under Title 23, 23B, 24, or 25 RCW;

- (c) Penalty fees; and
- (d) Other miscellaneous charges.

(2) There is no fee for:

- (a) A registered agent's consent to act as agent or statement of resignation;
- (b) Filing articles of dissolution;
- (c) Filing certificates of judicial dissolution;
- (d) Filing statements of withdrawal; and
- (e) Filing annual reports when submitted concurrently with the payment of annual license fees.

(3) The withdrawal under RCW 23.95.215 of a filed record before it is effective or the correction of a filed record under RCW 23.95.220 does not entitle the person on whose behalf the record was filed to a refund of the filing fee.

(4) The secretary of state shall establish the fee schedule authorized under this section in a manner that is consistent with the fee schedule applicable to the various entities that is in effect on January 1, 2016. The amounts of fees, charges, and penalties established under this section may be no greater than the amounts applicable to entity filings, penalties, and other charges in effect on January 1, 2016. Fees may be adjusted by rule only in an amount that does not exceed the average biennial increase in the cost of providing service. This must be determined in a biennial cost study performed by the secretary of state.

(5) All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law or deposited in the secretary of state's revolving fund as provided in RCW 43.07.130. [2015 c 176 § 1213.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.265 Waiver of penalty fees. The secretary of state may, where exigent or mitigating circumstances are presented, waive penalty fees due from any entity previously in good standing which would otherwise be penalized or lose its active status. An entity desiring to seek relief under this section must, within fifteen days of discovery of the missed filing or lapse, notify the secretary of state in writing. The notification must include the name and mailing address of the entity, the governor or other entity official to whom correspondence should be sent, and a statement under oath by a governor or other entity official, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the entity has demonstrated good faith and a reasonable attempt to comply with the applicable statutes of this state, the secretary of state may issue an order allowing relief from the penalty. If the secretary of state determines the request does not comply with the requirements for relief, the secretary of state shall deny the relief and state the reasons for the denial. Any denial of relief by the secretary of state is not reviewable notwithstanding the provisions of chapter 34.05 RCW. [2015 c 176 § 1214.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

(2018 Ed.)

ARTICLE 3 NAME OF ENTITY

23.95.300 Permitted names. (1) The name of a domestic entity and the name under which a foreign entity may register to do business in this state, must be distinguishable on the records of the secretary of state from any:

- (a) Name of an existing domestic entity which at the time is not administratively dissolved;
- (b) Name of a foreign entity registered to do business in this state under Article 5 of this chapter;
- (c) Name reserved under RCW 23.95.310; or
- (d) Name registered under RCW 23.95.315.

(2) If an entity consents in a record to the use of its name and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable on the records of the secretary of state from any name in any category of names in subsection (1) of this section, the name of the consenting entity may be used by the person to which the consent was given.

(3) A name may not be considered distinguishable on the records of the secretary of state from the name of another entity by virtue of:

- (a) A variation in the words, phrases, or abbreviations indicating the type of entity, such as "corporation," "corp.," "incorporated," "Inc.," "company," "co.," "social purpose corporation," "SPC," "S.P.C.," "professional corporation," "PC," "P.C.," "professional service," "PS," "P.S.," "limited," "Ltd.," "limited partnership," "LP," "L.P.," "limited liability partnership," "LLP," "L.L.P.," "registered limited liability partnership," "RLLP," "R.L.L.P.," "limited liability limited partnership," "LLLLP," "L.L.L.P.," "registered limited liability limited partnership," "RLLLLP," "R.L.L.L.P.," "limited liability company," "LLC," "L.L.C.," "professional limited liability company," "PLLC," or "P.L.L.C.;"

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(4) An entity name may not contain language stating or implying that the entity is organized for a purpose other than those permitted by the entity's public organic record.

(5) This chapter does not control the use of assumed business names or "trade names."

(6) An entity may use a name that is not distinguishable from a name described in subsection (1) of this section if the entity delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the entity to use the name in this state.

(7) An entity may use the name, including the fictitious name, of another entity that is used in this state if the other entity is formed or authorized to transact business in this state and the proposed user entity:

- (a) Has merged with the other entity; or
- (b) Has been formed by reorganization of the other entity. [2015 c 176 § 1301.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

[Title 23 RCW—page 17]

23.95.305 Name requirements for certain types of entities. (1)(a) The name of a business corporation:

(i)(A) Except in the case of a social purpose corporation, must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd.," or words or abbreviations of similar import in another language; or

(B) In the case of a social purpose corporation, must contain the words "social purpose corporation" or the abbreviation "SPC" or "S.P.C."; and

(ii) Must not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state.

(b) The name of a professional service corporation must contain either the words "professional service" or "professional corporation" or the abbreviation "P.S." or "P.C." The name may also contain either the words "corporation," "incorporated," "company," or "limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd." The name of a professional service corporation organized to render dental services must contain the full names or surnames of all shareholders and no other word than "chartered" or the words "professional services" or the abbreviation "P.S." or "P.C."

(2) The name of a nonprofit corporation:

(a) May include "club," "league," "association," "services," "committee," "fund," "society," "foundation," "guild," ". , a nonprofit corporation," ". , a nonprofit mutual corporation," or any name of like import;

(b) Except for nonprofit corporations formed prior to January 1, 1969, must not include or end with "incorporated," "company," "corporation," "partnership," "limited partnership," or "Ltd.," or any abbreviation thereof; and

(c) May only include the term "public benefit" or names of like import if the nonprofit corporation has been designated as a public benefit nonprofit corporation by the secretary of state in accordance with chapter 24.03 RCW.

(3) The name of a limited partnership may contain the name of any partner. The name of a partnership that is not a limited liability limited partnership must contain the words "limited partnership" or the abbreviation "LP" or "L.P." and may not contain the words "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." If the limited partnership is a limited liability limited partnership, the name must contain the words "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and may not contain the abbreviation "LP" or "L.P."

(4) The name of a limited liability partnership must contain the words "limited liability partnership" or the abbreviation "LLP" or "L.L.P." If the name of a foreign limited liability partnership contains the words "registered limited liability partnership" or the abbreviation "R.L.L.P." or "RLLP," it may include those words or abbreviations in its foreign registration statement.

(5)(a) The name of a limited liability company:

(i) Must contain the words "limited liability company," the words "limited liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC"; and

(ii) May not contain any of the following words or phrases: "Cooperative," "partnership," "corporation," "incorporated," or the abbreviations "Corp.," "Ltd.," or "Inc.," or "LP," "L.P.," "LLP," "L.L.P.," "LLLP," "L.L.L.P.," or any words or phrases prohibited by any statute of this state.

(b) The name of a professional limited liability company must contain either the words "professional limited liability company," or the words "professional limited liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC," provided that the name of a professional limited liability company organized to render dental services must contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C." or "PLLC."

(6) The name of a cooperative association organized under chapter 23.86 RCW may contain the words "corporation," "incorporated," or "limited," or the abbreviation "Corp.," "Inc.," or "Ltd." [2015 c 176 § 1302.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.310 Reservation of name. (1) A person may reserve the exclusive use of an entity name including the alternate name adopted pursuant to RCW 23.95.525 by delivering an application to the secretary of state for filing. The application must state the name and address of the applicant and the name to be reserved. If the secretary of state finds that the entity name is available, the secretary of state shall reserve the name for the applicant's exclusive use for one hundred eighty days.

(2) The owner of a reserved entity name may transfer the reservation to another person that is not an individual by delivering to the secretary of state an executed notice in a record of the transfer which states the name and address of the transferee. [2015 c 176 § 1303.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.315 Registration of name. (1) A foreign entity not registered to do business in this state under Article 5 of this chapter may register its name, or an alternate name adopted pursuant to RCW 23.95.525, if the name is distinguishable on the records of the secretary of state from the names that are not available under RCW 23.95.300.

(2) To register its name or an alternate name adopted pursuant to RCW 23.95.525, a foreign entity must deliver to the secretary of state for filing an application stating the entity's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to RCW 23.95.525. The application must be accompanied by a certificate of existence, or a document of similar import, from the entity's jurisdiction of formation. If the secretary of state finds that the name applied for is available, the secretary of state shall register the name for the applicant's exclusive use.

(3) The registration of a name under this section is effective upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(4) A foreign entity whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expira-

tion of the registration, to the secretary of state for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for the following calendar year.

(5) A foreign entity whose name registration is effective may register as a foreign entity under the registered name or consent in an executed record to the use of that name by another entity. [2015 c 176 § 1304.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

ARTICLE 4 REGISTERED AGENT OF ENTITY

23.95.400 Definitions. The definitions in this section apply throughout this section and RCW 23.95.405 through 23.95.460 unless the context clearly requires otherwise.

(1) "Registered agent filing" means:

(a) The public organic record of a domestic entity;

(b) An application of a domestic limited liability partnership; or

(c) A registration statement filed pursuant to RCW 23.95.510.

(3) [(2)] "Represented entity" means:

(a) A domestic entity; or

(b) A registered foreign entity. [2015 c 176 § 1401.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.405 Entities required to designate and maintain registered agent. The following shall designate and maintain a registered agent in this state:

(1) A domestic entity; and

(2) A registered foreign entity. [2015 c 176 § 1402.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.410 Addresses in filing. If a provision of this chapter other than RCW 23.95.445(1)(d) requires that a record state an address, the record must state:

(1) A street address in this state; and

(2) A mailing address in this state, if different from the address described in subsection (1) of this section. [2015 c 176 § 1403.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.415 Designation of registered agent. (1) A registered agent filing must be executed by the represented entity and state:

(a) The name of the entity's commercial registered agent; or

(b) If the entity does not have a commercial registered agent:

(i) The name and address of the entity's noncommercial registered agent; or

(ii) The title of an office or other position with the entity, if service of process, notices, and demands are to be sent to whichever individual is holding that office or position, and the address to which process, notices, or demands are to be sent.

(2018 Ed.)

(2) A registered agent shall not be appointed without having given prior consent in a record to the appointment. The consent shall be delivered to the secretary of state in such form as the secretary of state may prescribe. The consent shall be filed with or as a part of the record first appointing a registered agent. In the event any individual or entity has been appointed registered agent without consent, that individual or entity may deliver to the secretary of state a notarized statement attesting to that fact, and the name shall immediately be removed from the records of the secretary of state. [2015 c 176 § 1404.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.420 Listing of commercial registered agent. (1) A person may become listed as a commercial registered agent by delivering to the secretary of state for filing a commercial-registered-agent listing statement executed by the person which states:

(a) The name of the individual or the name of the entity, type of entity, and jurisdiction of formation of the entity;

(b) That the person is in the business of serving as a commercial registered agent in this state; and

(c) The address of a place of business of the person in this state to which service of process, notices, and demands being served on or sent to entities represented by the person may be delivered.

(2) A commercial-registered-agent listing statement may include the information regarding acceptance by the agent of service of process, notices, and demands in a form other than a written record as provided in RCW 23.95.450(5).

(3) If the name of a person delivering to the secretary of state for filing a commercial-registered-agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(4) The secretary of state shall note the filing of a commercial-registered-agent listing statement in the records maintained by the secretary of state for each entity represented by the agent at the time of the filing. The statement has the effect of amending the registered agent filing for each of those entities to:

(a) Designate the person becoming listed as a commercial registered agent as the commercial registered agent of each of those entities; and

(b) Delete the name and address of the former agent from the registered agent filing of each of those entities. [2015 c 176 § 1405.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.425 Termination of listing of commercial registered agent. (1) A commercial registered agent may terminate its listing as a commercial registered agent by delivering to the secretary of state for filing a commercial-registered-agent termination statement executed by the agent which states:

(a) The name of the agent as listed under RCW 23.95.420; and

(b) That the agent is no longer in the business of serving as a commercial registered agent in this state.

(2) A commercial-registered-agent termination statement takes effect at 12:01 a.m. on the 31st day after the day on which it is delivered to the secretary of state for filing.

(3) The commercial registered agent promptly shall furnish each entity represented by the agent notice in a record of the filing of the commercial-registered-agent termination statement.

(4) When a commercial-registered-agent termination statement takes effect, the commercial registered agent ceases to be the registered agent for each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent designates a new registered agent, service of process may be made on the entity pursuant to RCW 23.95.450. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity has against the agent or that the agent has against the entity. [2015 c 176 § 1406.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.430 Change of registered agent by entity. (1) A represented entity may change its registered agent or other information on file under RCW 23.95.415(1) by delivering to the secretary of state for filing a statement of change executed by the entity which states:

(a) The name of the entity; and

(b) The information required under RCW 23.95.415(1).

(2) The interest holders or governors of a domestic entity need not approve the filing of:

(a) A statement of change under this section; or

(b) A similar filing changing the registered agent or registered office, if any, of the entity in any other jurisdiction.

(3) A statement of change under this section designating a new registered agent must be accompanied by the new registered agent's consent in a record, either on the statement or attached to it in a manner and form as the secretary of state may prescribe, to the appointment. [2015 c 176 § 1407.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.435 Change of name, address, type of entity, or jurisdiction of formation by noncommercial registered agent. (1) If a noncommercial registered agent changes its name or its address in effect with respect to a represented entity under RCW 23.95.415(1), the agent shall deliver to the secretary of state for filing, with respect to each entity represented by the agent, a statement of change executed by the agent which states:

(a) The name of the entity;

(b) The name and address of the agent in effect with respect to the entity;

(c) If the name of the agent has changed, the new name; and

(d) If the address of the agent has changed, the new address.

(2) A noncommercial registered agent promptly shall furnish the represented entity with notice in a record of the delivery to the secretary of state for filing of a statement of change and the changes made in the statement. [2015 c 176 § 1408.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.440 Change of name, address, type of entity, or jurisdiction of formation by commercial registered agent. (1) If a commercial registered agent changes its name, its address as listed under RCW 23.95.420(1), its type of entity, or its jurisdiction of formation, the agent shall deliver to the secretary of state for filing a statement of change executed by the agent which states:

(a) The name of the agent as listed under RCW 23.95.420(1);

(b) If the name of the agent has changed, the new name;

(c) If the address of the agent has changed, the new address; and

(d) If the agent is an entity:

(i) If the type of entity of the agent has changed, the new type of entity; and

(ii) If the jurisdiction of formation of the agent has changed, the new jurisdiction of formation.

(2) The filing by the secretary of state of a statement of change under subsection (1) of this section is effective to change the information regarding the agent with respect to each entity represented by the agent.

(3) A commercial registered agent promptly shall furnish to each entity represented by it a notice in a record of the filing by the secretary of state of a statement of change relating to the name or address of the agent and the changes made in the statement.

(4) If a commercial registered agent changes its address without delivering for filing a statement of change as required by this section, the secretary of state may cancel the listing of the agent under RCW 23.95.420. A cancellation under this subsection has the same effect as a termination under RCW 23.95.425. Promptly after canceling the listing of an agent, the secretary of state shall serve notice in a record in the manner provided in RCW 23.95.450 (2) or (3) on:

(a) Each entity represented by the agent, stating that the agent has ceased to be the registered agent for the entity and that, until the entity designates a new registered agent, service of process may be made on the entity as provided in RCW 23.95.450; and

(b) The agent, stating that the listing of the agent has been canceled under this section. [2015 c 176 § 1409.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.445 Resignation of registered agent. (1) A registered agent may resign as agent for a represented entity by delivering to the secretary of state for filing a statement of resignation executed by the agent which states:

(a) The name of the entity;

(b) The name of the agent;

(c) That the agent resigns from serving as registered agent for the entity; and

(d) The address of the entity to which the agent will send the notice required by subsection (3) of this section.

(2) A statement of resignation takes effect on the earlier of:

(a) The 31st day after the day on which it is filed by the secretary of state; or

(b) The designation of a new registered agent for the represented entity.

(3) A registered agent promptly shall furnish to the represented entity notice in a record of the date on which a statement of resignation was filed. [2015 c 176 § 1410.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.450 Service of process, notice, or demand on entity. (1) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(2) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at the entity's principal office. The address of the principal office must be as shown in the entity's most recent annual report filed by the secretary of state. Service is effected under this subsection on the earliest of:

(a) The date the entity receives the mail or delivery by the commercial delivery service;

(b) The date shown on the return receipt, if executed by the entity; or

(c) Five days after its deposit with the United States postal service or commercial delivery service, if correctly addressed and with sufficient postage or payment.

(3) If process, notice, or demand cannot be served on an entity pursuant to subsection (1) or (2) of this section, service may be made by handing a copy to the individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action.

(4) The secretary of state shall be an agent of the entity for service of process if process, notice, or demand cannot be served on an entity pursuant to subsection (1), (2), or (3) of this section.

(5) Service of process, notice, or demand on a registered agent must be in a written record, but service may be made on a commercial registered agent in other forms, and subject to such requirements, as the agent has stated in its listing under RCW 23.95.420 that it will accept.

(6) Service of process, notice, or demand may be made by other means under law other than this chapter. [2015 c 176 § 1411.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.455 Duties of registered agent. The only duties under this chapter of a registered agent that has complied with this chapter are:

(1) To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand pertaining to the entity which is served on or received by the agent;

(2018 Ed.)

(2) To provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;

(3) If the agent is a noncommercial registered agent, to keep current the information required by RCW 23.95.415(1) in the most recent registered agent filing for the entity; and

(4) If the agent is a commercial registered agent, to keep current the information listed for it under RCW 23.95.420(1). [2015 c 176 § 1412.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.460 Jurisdiction and venue. The designation or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or a proceeding involving the entity. [2015 c 176 § 1413.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

ARTICLE 5 FOREIGN ENTITIES

23.95.500 Governing law. (1) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign entity registered to do business in this state, or govern the liability that a person has as an interest holder or governor for a debt, obligation, or other liability of the foreign entity.

(2) A foreign entity is not precluded from registering to do business in this state because of any difference between the law of the entity's jurisdiction of formation and the law of this state.

(3) Registration of a foreign entity to do business in this state does not authorize the foreign entity to engage in any activity or exercise any power that a domestic entity of the same type may not engage in or exercise in this state. Except as otherwise provided in this chapter or other applicable law of this state, a foreign entity is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic entity of the same type. [2015 c 176 § 1501.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.505 Registration to do business in this state. (1) A foreign entity may not do business in this state until it registers with the secretary of state under this chapter.

(2) A foreign entity doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state and has paid to this state all fees and penalties for the years, or parts thereof, during which it did business in this state without having registered.

(3) The successor to a foreign entity that transacted business in this state without a certificate of registration and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign entity, or its successor, obtains a certificate of registration.

(4) A court may stay a proceeding commenced by a foreign entity, its successor, or assignee until it determines

whether the foreign entity, or its successor, requires a certificate of registration. If it so determines, the court may further stay the proceeding until the foreign entity, or its successor, obtains the certificate of registration.

(5) A foreign entity that transacts business in this state without a certificate of registration is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of registration, in an amount equal to all fees which would have been imposed by this chapter upon the entity had it applied for and received a certificate of registration to transact business in this state and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees.

(6) The failure of a foreign entity to register to do business in this state does not: (a) Impair the validity of a contract or act of the foreign entity; (b) impair the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or (c) preclude the foreign entity from defending an action or proceeding in this state.

(7) A limitation on the liability of an interest holder or governor of a foreign entity is not waived solely because the foreign entity does business in this state without registering.

(8) RCW 23.95.500 (1) and (2) applies even if a foreign entity fails to register under this Article 5. [2015 c 176 § 1502.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.510 Foreign registration statement. (1) To register to do business in this state, a foreign entity must deliver a foreign registration statement to the secretary of state for filing. The statement must be executed by the entity and state:

(a) The name of the foreign entity and, if the name does not comply with RCW 23.95.300, an alternate name adopted pursuant to RCW 23.95.525;

(b) The type of entity and, if it is a foreign limited partnership, whether it is a foreign limited liability limited partnership;

(c) The entity's jurisdiction of formation;

(d) The street and mailing addresses of the entity's principal office and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of the office;

(e) The information required by RCW 23.95.415(1);

(f) The names and addresses of the entity's governors and, if the entity is a business corporation or nonprofit corporation, the names and addresses of its officers;

(g) The date of the entity's formation and period of duration;

(h) The nature of the entity's business or purposes to be conducted or promoted in this state; and

(i) The date on which the entity first did, or intends to do, business in this state.

(2) The foreign entity shall deliver with the registration statement a certificate of existence, or a document of similar import, issued no more than sixty days before the date of submission of the registration statement and duly authenticated by the secretary of state or other official having custody of the entity's records in the entity's jurisdiction of formation. [2015 c 176 § 1503.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.515 Amendment of foreign registration statement. A registered foreign entity shall promptly deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) The name of the entity;

(2) The type of entity, including, if it is a foreign limited partnership, whether the entity became or ceased to be a foreign limited liability limited partnership;

(3) The entity's jurisdiction of formation;

(4) An address required by RCW 23.95.510(1)(d); or

(5) The information required by RCW 23.95.415(1). [2015 c 176 § 1504.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.520 Activities not constituting doing business.

(1) Activities of a foreign entity that do not constitute doing business in this state under this chapter include, but are not limited to:

(a) Maintaining, defending, mediating, arbitrating, or settling an action or proceeding, or settling claims or disputes;

(b) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors;

(c) Maintaining accounts in financial institutions;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become binding contracts and where the contracts do not involve any local performance other than delivery and installation;

(g) Creating or acquiring indebtedness, mortgages, or security interests in property;

(h) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts;

(i) Conducting an isolated transaction that is completed within thirty days and that is not in the course of repeated transactions of a like nature;

(j) Owning, without more, property;

(k) Doing business in interstate commerce; and

(l) Operating an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW and in accordance with subsection (2) of this section.

(2) In addition to those acts that are specified in subsection (1) of this section, a foreign degree-granting institution that establishes an approved branch campus in the state under chapter 28B.90 RCW shall not be deemed to transact business in the state solely because it:

(a) Owns and controls an incorporated branch campus in this state;

(b) Pays the expenses of tuition or room and board charged by the incorporated branch campus for its students

enrolled at the branch campus or contributes to the capital thereof; or

(c) Provides personnel who furnish assistance and counsel to its students while in the state but who have no authority to enter into any transactions for or on behalf of the foreign degree-granting institution.

(3) A person does not do business in this state solely by being an interest holder or governor of a domestic entity or foreign entity that does business in this state.

(4) This section does not apply in determining the contacts or activities that may subject a foreign entity to service of process, taxation, or regulation under law of this state other than this chapter. [2015 c 176 § 1505.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.525 Noncomplying name of foreign entity. (1)

A foreign entity whose name does not comply with RCW 23.95.300 for an entity of its type may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with RCW 23.95.300. A registered foreign entity that registers under an alternate name under this subsection need not comply with chapter 19.80 RCW. After registering to do business in this state with an alternate name, a registered foreign entity shall do business in this state under:

- (a) The alternate name;
- (b) Its entity name, with the addition of its jurisdiction of formation clearly identified; or
- (c) An assumed or fictitious name the entity is authorized to use under chapter 19.80 RCW.

(2) If a registered foreign entity changes its name to one that does not comply with RCW 23.95.300, it may not do business in this state until it complies with subsection (1) of this section by amending its foreign registration statement to adopt an alternate name that complies with RCW 23.95.300. [2015 c 176 § 1506.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.530 Withdrawal of registration of registered foreign entity. (1) A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be executed by the entity and state:

- (a) The name of the entity and its jurisdiction of formation;
- (b) That the entity is not doing business in this state and that it withdraws its registration to do business in this state;
- (c) That the entity revokes the authority of its registered agent to accept service on its behalf in this state; and
- (d) An address to which service of process may be made under subsection (3) of this section.

(2) For foreign corporations, the statement of withdrawal must be accompanied by a copy of a revenue clearance certificate issued pursuant to RCW 82.32.260.

(3) After the withdrawal of the registration of an entity, service of process in any action or proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made pursuant to RCW 23.95.450. [2017 c 31 § 3; 2015 c 176 § 1507.]

(2018 Ed.)

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.535 Withdrawal deemed on conversion to domestic entity. A registered foreign entity that converts to any type of domestic entity is deemed to have withdrawn its registration on the effective date of the conversion. [2015 c 176 § 1508.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.540 Withdrawal on dissolution or conversion.

(1) A registered foreign entity that has dissolved and completed winding up or has converted to a domestic or foreign person not subject to this chapter shall deliver a statement of withdrawal to the secretary of state for filing. The statement must be executed by the dissolved or converted entity and state:

(a) In the case of a foreign entity that has completed winding up:

- (i) Its name and jurisdiction of formation; and
- (ii) That the foreign entity surrenders its registration to do business in this state; and

(b) In the case of a foreign entity that has converted to a domestic or foreign person not subject to chapter 176, Laws of 2015:

- (i) The name of the converting foreign entity and its jurisdiction of formation;
- (ii) The type of person to which it has converted and its jurisdiction of formation;
- (iii) That it surrenders its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf; and
- (iv) A mailing address to which service of process may be made under subsection (2) of this section.

(2) After a withdrawal is effective under this section, service of process in any action or proceeding based on a cause of action arising during the time the foreign entity was registered to do business in this state may be made pursuant to RCW 23.95.450. [2015 c 176 § 1509.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.545 Transfer of registration. (1) If a registered foreign entity merges into a nonregistered foreign entity or converts to a foreign entity required to register with the secretary of state to do business in this state, the foreign entity shall deliver to the secretary of state for filing an application for transfer of registration. The application must be executed by the surviving or converted entity and state:

- (a) The name of the registered foreign entity before the merger or conversion;
- (b) The type of entity it was before the merger or conversion;
- (c) The name of the applicant entity and, if the name does not comply with RCW 23.95.300, an alternate name adopted pursuant to RCW 23.95.525(1);
- (d) The type of entity of the applicant entity and its jurisdiction of formation; and
- (e) The following information regarding the applicant entity, if different than the information for the foreign entity before the merger or conversion:

(i) The street and mailing addresses of the principal office of the entity and, if the law of the entity's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(ii) The information required pursuant to RCW 23.95.415(1).

(2) When an application for transfer of registration takes effect, the registration of the registered foreign entity to do business in this state is transferred without interruption to the entity into which it has merged or to which it has been converted. [2015 c 176 § 1510.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.550 Termination of registration. (1) The secretary of state may terminate the registration of a registered foreign entity in the manner provided in subsections (2) and (3) of this section if:

(a) The entity does not pay any fee, interest, or penalty required to be paid to the secretary of state under this chapter or law of this state other than this chapter;

(b) The entity does not deliver to the secretary of state for filing an annual report when it is due;

(c) The entity does not have a registered agent as required by RCW 23.95.405;

(d) The entity does not deliver to the secretary of state for filing a statement of change under RCW 23.95.430 if change occurs in the name or address of the entity's registered agent;

(e) A governor, officer, or agent of the entity executed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(f) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of the entity's records in the entity's jurisdiction of formation stating that it has been dissolved or disappeared as the result of a merger.

(2) If the secretary of state determines that one or more grounds for termination exist under subsection (1) of this section, the secretary of state shall deliver a notice of the determination to the registered foreign entity's registered agent or, if the entity does not have a registered agent, to the entity's principal office. The notice must state the grounds for termination under subsection (1) of this section.

(3) If the entity does not cure each ground for termination stated in the notice within sixty days after the notice is effective, the secretary of state shall terminate the registration of the foreign entity by filing a statement of termination that recites the ground or grounds for termination and the effective date of termination and delivering a copy of the statement of termination to the foreign entity.

(4) The authority of a registered foreign entity to do business in this state ceases on the effective date of termination shown on the statement of termination.

(5) The termination of a foreign entity's registration does not terminate the authority of the registered agent of the foreign entity. [2015 c 176 § 1511.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.555 Action by attorney general. The attorney general may maintain an action to enjoin a foreign entity from doing business in this state in violation of this chapter. [2015 c 176 § 1512.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

ARTICLE 6 ADMINISTRATIVE DISSOLUTION

23.95.600 Domestic entity—Definition. For the purposes of this Article 6, the term "domestic entity" does not include a domestic limited liability partnership. [2015 c 176 § 1601.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.605 Grounds. The secretary of state may commence a proceeding under RCW 23.95.610 to dissolve a domestic entity administratively if:

(1) The entity does not pay any fee, interest, or penalty required to be paid to the secretary of state when due;

(2) The entity does not deliver an annual report to the secretary of state not later than one hundred twenty days after it is due;

(3) The entity does not have a registered agent in this state for thirty consecutive days; or

(4) The entity's period of duration stated in its public organic record expired. [2015 c 176 § 1602.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.610 Procedure and effect. (1) If the secretary of state determines that one or more grounds exist under RCW 23.95.605 for administratively dissolving a domestic entity, the secretary of state shall serve the entity pursuant to RCW 23.95.250 with notice in a record of the secretary of state's determination.

(2) If a domestic entity, not later than sixty days after service of the notice required by subsection (1) of this section, does not cure or demonstrate to the satisfaction of the secretary of state the nonexistence of each ground determined by the secretary of state, the secretary of state shall administratively dissolve the entity by executing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The secretary of state shall file the statement and serve a copy on the entity pursuant to RCW 23.95.250.

(3) A domestic entity that is dissolved administratively continues its existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets in the manner provided in its organic law or to apply for reinstatement under RCW 23.95.615.

(4) The administrative dissolution of a domestic entity does not terminate the authority of its registered agent. [2015 c 176 § 1603.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.615 Reinstatement. (1) A domestic entity that is dissolved administratively under RCW 23.95.610 may apply

to the secretary of state for reinstatement not later than five years after the effective date of dissolution. The application must be executed by the entity and state:

(a) The name of the entity and a statement that the name satisfies RCW 23.95.300; if the name does not satisfy RCW 23.95.300, the entity must deliver with its application an amendment to its public organic record changing its name;

(b) The address of the principal office of the entity and the name and address of its registered agent;

(c) The effective date of the entity's administrative dissolution; and

(d) That the grounds for dissolution did not exist or have been cured.

(2) To be reinstated, an entity must pay the full amount of all annual license or renewal fees which would have been assessed during the period of administrative dissolution had the entity been in active status, plus a penalty fee established by the secretary of state by rule, and the license or renewal fee for the year of reinstatement.

(3) If the secretary of state determines that an application under subsection (1) of this section contains the information required by subsection (1) of this section, is satisfied that the information is correct, and determines that all payments required to be made to the secretary of state by subsection (2) of this section have been made, the secretary of state shall:

(a) Cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the secretary of state's determination and the effective date of reinstatement;

(b) File the statement; and

(c) Serve a copy of the statement on the entity.

(4) When reinstatement under this section is effective as provided in RCW 23.95.210:

(a) It relates back to and takes effect as of the effective date of the administrative dissolution; and

(b) The domestic entity resumes carrying on its activities and affairs as if the administrative dissolution had never occurred, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement. [2015 c 176 § 1604.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.620 Judicial review of denial of reinstatement.

(1) If the secretary of state denies a domestic entity's application for reinstatement following administrative dissolution, the secretary of state shall serve the entity with a notice in a record that explains the reasons for denial.

(2) An entity may seek judicial review of denial of reinstatement in the superior court not later than thirty days after service of the notice of denial. [2015 c 176 § 1605.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.625 Entity name not distinguishable from name of governmental entity. (1) Any county, city, town, district, or other political subdivision of the state, or the state of Washington or any department or agency of the state, may apply to the secretary of state for the administrative dissolution, or the termination of registration, of any entity using a

name that is not distinguishable from the name of the applicant for dissolution. The application must state the precise legal name of the governmental entity and its date of formation and the applicant shall mail a copy to the entity's registered agent. If the name of the entity is not distinguishable from the name of the applicant, then, except as provided in subsection (4) of this section, the secretary of state shall commence proceedings for administrative dissolution under RCW 23.95.610 or termination of registration under RCW 23.95.550.

(2) A name may not be considered distinguishable by virtue of the items specified in RCW 23.95.300(3).

(3)(a) The following are not distinguishable for purposes of this section:

(i) "City of Anytown" and "City of Anytown, Inc."; and

(ii) "City of Anytown" and "Anytown City."

(b) The following are distinguishable for purposes of this section:

(i) "City of Anytown" and "Anytown, Inc."; and

(ii) "City of Anytown" and "The Anytown Company";

and

(iii) "City of Anytown" and "Anytown Cafe, Inc."

(4) If the entity that is the subject of the application was formed or registered before the formation of the applicant as a governmental entity, then this section applies only if the applicant for dissolution provides a certified copy of a final judgment of a court of competent jurisdiction determining that the applicant holds a superior property right to the name than does the entity.

(5) The duties of the secretary of state under this section are ministerial. [2015 c 176 § 1606.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

ARTICLE 7 MISCELLANEOUS PROVISIONS

23.95.700 Reservation of power to amend or repeal.

The legislature has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign entities subject to this chapter are governed by the amendment or repeal. [2015 c 176 § 1701.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.705 Supplemental principles of law. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter. [2015 c 176 § 1702.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.710 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Sec. 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2015 c 176 § 1703.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.715 Savings. The repeal of a statute by chapter 176, Laws of 2015 does not affect:

(1) The operation of the statute or any action taken under it before its repeal;

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation before its repeal; or

(4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed. [2015 c 176 § 1704.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.