

**Chapter 23B.02 RCW
INCORPORATION**

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RCW 23B.02.010 Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing. [1989 c 165 s 26.]

RCW 23B.02.020 Articles of incorporation. (1) The articles of incorporation must include:

- (a) A corporate name for the corporation that satisfies the requirements of Article 3 of chapter 23.95 RCW;
- (b) The number of shares the corporation is authorized to issue in accordance with RCW 23B.06.010 and 23B.06.020;
- (c) The name and address of the corporation's initial registered agent designated in accordance with Article 4 of chapter 23.95 RCW; and
- (d) The name and address of each incorporator in accordance with RCW 23B.02.010.

(2) The articles of incorporation may include:

- (a) The names and addresses of the individuals who are to serve as initial directors;
- (b) The par value of any authorized shares or classes of shares;
- (c) Provisions not inconsistent with law regarding:
 - (i) The purpose or purposes for which the corporation is organized;
 - (ii) Managing the business and regulating the affairs of the corporation; or
 - (iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
- (d) Any provision that under this title is required or permitted to be set forth in the bylaws;
- (e) A provision eliminating or limiting a director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director in accordance with RCW 23B.08.320;
- (f) A provision permitting or making obligatory indemnification of a director made a party to a proceeding, or advancement or reimbursement of expenses incurred by a director in a proceeding to the extent permitted by RCW 23B.08.560; and
- (g) A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business

opportunities, prior to the pursuit or taking of the opportunity by the director or other person in accordance with RCW 23B.08.735(1)(b).

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this title.

(4) Provisions in the articles of incorporation may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with RCW 23B.01.200(3). [2020 c 194 s 2; 2019 c 141 s 1. Prior: 2015 c 176 s 2112; 2015 c 20 s 2; 2009 c 189 s 3; 2002 c 297 s 11; 1997 c 19 s 1; 1996 c 155 s 5; 1994 c 256 s 27; 1989 c 165 s 27.]

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

Findings—Construction—1994 c 256: See RCW 43.320.007.

RCW 23B.02.030 Effect of filing. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to the incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily to dissolve the corporation. [1989 c 165 s 28.]

RCW 23B.02.032 Certificate of authority as insurance company—Filing of records. 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 records are required to be filed with the secretary of state, the records shall be filed with the insurance commissioner rather than the secretary of state. [2002 c 297 s 12; 1998 c 23 s 6.]

RCW 23B.02.040 Liability for preincorporation transactions. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this title, are jointly and severally liable for liabilities created while so acting except for any liability to any person who also knew that there was no incorporation. [1989 c 165 s 29.]

RCW 23B.02.050 Organization of corporation. (1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Corporate action required or permitted by this title to be approved by incorporators at an organizational meeting may be approved without a meeting if the approval is evidenced by one or more written consents describing the corporate action so approved and executed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

(4) A corporation must deliver an initial report to the secretary of state in accordance with RCW 23.95.255. [2020 c 57 s 42; 2015 c 176 s 2113; 2009 c 189 s 4; 2002 c 297 s 13; 1991 c 72 s 31; 1989 c 165 s 30.]

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

RCW 23B.02.060 Bylaws. (1) The incorporators or board of directors of a corporation must adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation to the extent the provision does not infringe upon or limit the exclusive authority of the board of directors under RCW 23B.08.010(2)(b) or otherwise conflict with this title or any other law, the articles of incorporation, or a shareholders' agreement authorized by RCW 23B.07.320. [2020 c 194 s 3; 2011 c 328 s 1; 2009 c 189 s 5; 1989 c 165 s 31.]

RCW 23B.02.070 Emergency bylaws. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (a) Procedures for calling a meeting of the board of directors;
- (b) Quorum requirements for the meeting; and
- (c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

- (a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. [1989 c 165 s 32.]

RCW 23B.02.080 Forum selection. (1) The articles of incorporation or bylaws may contain provisions that require any or all internal corporate proceedings to be commenced and maintained exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision permitted under subsection (1) of this section:

(a) May not confer jurisdiction on any court, over any person, or of any proceeding; and

(b) May not (i) prohibit commencing or maintaining an internal corporate proceeding in the courts of this state or (ii) require claims asserted in an internal corporate proceeding to be determined by arbitration.

(3) If the court or courts of this state specified in a provision permitted under subsection (1) of this section do not have jurisdiction, but any other court or courts specified in the provision do have jurisdiction, then the internal corporate proceeding may be commenced and maintained:

(a) In any court of this state that has jurisdiction; or

(b) In any other court specified in the provision that has jurisdiction.

(4) If no court specified in a provision permitted under subsection (1) of this section has jurisdiction, then the internal corporate proceeding may be commenced and maintained in any court that has jurisdiction.

(5) For purposes of this section, "internal corporate proceeding" means (a) any proceeding asserting a claim based on a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity, (b) any proceeding commenced or maintained in the right of the corporation, (c) any proceeding asserting a claim arising pursuant to any provision of the act or the corporation's articles of incorporation or bylaws, or (d) any proceeding asserting a claim concerning the internal affairs of the corporation that is not included in (a) through (c) of this subsection. [2017 c 28 s 9.]