

**Chapter 23B.08 RCW
DIRECTORS AND OFFICERS**

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RCW 23B.08.010 Requirement for and duties of board of directors.

(1) Each corporation must have a board of directors, except that a corporation may dispense with or limit the authority of its board of directors by describing in its articles of incorporation, or in a shareholders' agreement authorized by RCW 23B.07.320, who will perform some or all of the duties of the board of directors.

(2) Subject to any limitation set forth in this title, the articles of incorporation, or a shareholders' agreement authorized by RCW 23B.07.320:

(a) All corporate powers shall be exercised by or under the authority of the corporation's board of directors; and

(b) The business and affairs of the corporation shall be managed under the direction of its board of directors, which shall have exclusive authority as to substantive decisions concerning management of the corporation's business. [2011 c 328 s 2; 1989 c 165 s 80.]

RCW 23B.08.020 Qualifications of directors. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe. [1989 c 165 s 81.]

RCW 23B.08.030 Number and election of directors. (1) A board of directors must consist of one or more individuals.

(2) Unless the articles of incorporation under RCW 23B.08.010 or an agreement among the shareholders under RCW 23B.07.320 dispense with a board of directors, the articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed.

(3) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless (a) their terms are staggered under RCW 23B.08.060, or (b) their terms are otherwise governed by RCW 23B.05.050. Directors also may be elected by execution of a shareholder consent under RCW 23B.07.040. [2020 c 194 s 7; 2009 c 189 s 23; 2007 c 467 s 1; 2002 c 297 s 27; 1994 c 256 s 29; 1989 c 165 s 82.]

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

RCW 23B.08.040 Election of directors by certain classes or series of shares. If the articles of incorporation authorize dividing the shares into classes or series, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class, or classes, or series of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors. [1989 c 165 s 83.]

RCW 23B.08.050 Terms of directors—Generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless (a) their terms are staggered under RCW 23B.08.060 then at the applicable second or third annual shareholders' meeting following their election; or (b) their terms are otherwise governed by RCW 23B.05.050, except to the extent (i) the terms are otherwise provided in a bylaw adopted pursuant to RCW 23B.10.205, or (ii) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(5) Except to the extent otherwise provided in the articles of incorporation or pursuant to RCW 23B.10.205, if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualified or there is a decrease in the number of directors. [2007 c 467 s 2; 1994 c 256 s 30; 1989 c 165 s 84.]

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

RCW 23B.08.060 Staggered terms for directors. (1) The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

(2) If cumulative voting is authorized, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual shareholders' meeting. [1989 c 165 s 85.]

RCW 23B.08.070 Resignation of directors. (1) A director may resign at any time by delivering a written notice of resignation to the board of directors, its chairperson, the president, or the secretary of the corporation.

(2) A resignation is effective as provided in RCW 23B.01.410(9) unless the notice provides for a delayed effectiveness, including effectiveness determined upon a future event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable. [2020 c 57 s 58; 2007 c 467 s 3; 2002 c 297 s 28; 1989 c 165 s 86.]

RCW 23B.08.080 Removal of directors by shareholders. (1) The shareholders may remove one or more directors with or without cause

unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by holders of one or more authorized classes or series of shares, only the holders of those classes or series of shares may participate in the vote to remove the director.

(3) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number; except that if cumulative voting is authorized, and if less than the entire board is to be removed, no director may be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal.

(4) A director may be removed by the shareholders only at a special meeting called for the purpose of removing the director and the meeting notice must state that removal of the director is a purpose of the meeting. [2024 c 22 s 17; 1995 c 47 s 7; 1989 c 165 s 87.]

RCW 23B.08.090 Removal of directors by judicial proceeding. (1)

The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent of the outstanding shares of any class if the court finds that (a) the director engaged in fraudulent or dishonest conduct with respect to the corporation, and (b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant. [1989 c 165 s 88.]

RCW 23B.08.100 Vacancy on board of directors. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy, if it is filled by the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under RCW 23B.08.070(2) or otherwise, may be filled before the vacancy occurs but the new

director may not take office until the vacancy occurs. [2007 c 467 s 4; 1989 c 165 s 89.]

RCW 23B.08.110 Compensation of directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors. [1989 c 165 s 90.]

RCW 23B.08.120 Gender-diverse board of directors—Board diversity discussion and analysis—Remedy for failure to comply. (1) Beginning no later than January 1, 2022, each public company must have a gender-diverse board of directors or that public company must comply with the requirements in subsection (2) of this section. For purposes of this section, a public company is deemed to have a gender-diverse board of directors if, for at least two hundred seventy days of the fiscal year preceding the applicable annual meeting of shareholders, individuals who self-identify as women comprised at least twenty-five percent of the directors serving on the board of directors.

(2) If a public company does not have a gender-diverse board of directors as specified in subsection (1) of this section for at least two hundred seventy days of the fiscal year preceding the applicable annual meeting of shareholders, the public company must deliver to its shareholders a board diversity discussion and analysis, which meets the requirements of subsection (3) of this section. This information must be delivered to all shareholders entitled to vote at that annual meeting of shareholders no fewer than ten nor more than sixty days before the date of that meeting.

(3) If a public company is required under subsection (2) of this section to deliver to its shareholders a board diversity discussion and analysis, the discussion and analysis must include information regarding the public company's approach to developing and maintaining diversity on its board of directors. At a minimum, this discussion and analysis should include the following information:

(a) A discussion regarding how the board of directors, or an appropriate committee thereof, considered the representation of any diverse groups in identifying and nominating candidates for election as directors in connection with the last annual meeting of shareholders, and if the board of directors, or an appropriate committee thereof, did not consider the representation of any diverse groups, the discussion should explain the reasons it did not;

(b) A discussion regarding any policy adopted by the board of directors, or an appropriate committee thereof, relating to identifying and nominating members of any diverse groups for election as directors, and if the board of directors, or an appropriate committee thereof, has not adopted such a policy, the discussion should explain the reasons it has not; and

(c) A discussion of the public company's use of mechanisms of refreshment of the board of directors, such as term limits and mandatory retirement age policies for its directors, and if the public company does not use any such mechanisms, the discussion should explain the reasons it does not.

(4) The requirements of subsection (2) of this section are satisfied if a public company:

(a) Posts the information required by subsection (3) of this section on the public company's principal internet website address or

another electronic network (either separate from, or in combination or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law); or

(b) Includes the information required by subsection (3) of this section in a proxy statement filed in accordance with 17 C.F.R. Sec. 240.14a-1 through 17 C.F.R. Sec. 240.14a-101, or in an information statement filed in accordance with 17 C.F.R. Sec. 240.14c-1 through 17 C.F.R. Sec. 240.14c-101.

(5) This section does not apply to any public company:

(a) That does not have outstanding shares of any class or series listed on a United States national securities exchange;

(b) That is an "emerging growth company" or a "smaller reporting company" as defined in 17 C.F.R. Sec. 240.12b-2;

(c) Of which voting shares entitled to cast votes comprising more than fifty percent of the voting power of the public company are held by a person or group of persons;

(d) Of which its articles of incorporation authorize the election of all or a specified number of directors by one or more separate voting groups in accordance with RCW 23B.08.040; or

(e) That is not required by this chapter or the rules of any United States national securities exchange to hold an annual meeting of shareholders.

(6) The failure of a public company to comply with this section does not affect the validity of any corporate action. Nothing in this section alters the general standards for any director of a public company.

(7) The exclusive remedy for any failure of a public company to comply with this section is that any shareholder of that public company entitled to vote in the election of directors at an annual meeting, after notice to the public company, may apply to the superior court of the county in which the public company's registered office is located for an order to deliver to shareholders the information required by subsection (3) of this section if the public company fails to furnish that information in accordance with this section, in which case the court, after notice to the public company, may summarily order the public company to furnish to shareholders that information.

(8) For the purposes of this section:

(a) "Diverse groups" means women, racial minorities, and historically underrepresented groups.

(b) "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a public company.

(c) "Voting shares" means shares of all classes of a public company entitled to vote generally in the election of directors.

[2020 c 194 s 1.]

Short title—2020 c 194 s 1: "Section 1 of this act may be known and cited as the women on corporate boards act." [2020 c 194 s 16.]

RCW 23B.08.200 Regular or special meetings of the board. (1)

The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, any or all directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating can hear

each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. [1989 c 165 s 91.]

RCW 23B.08.210 Corporate action without meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, corporate action required or permitted by this title to be approved at a board of directors' meeting may be approved without a meeting if the corporate action is approved by all members of the board. The approval of the corporate action must be evidenced by one or more written consents describing the corporate action being approved, executed by each director either before or after the corporate action becomes effective, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A written consent in the form of an electronic transmission will be deemed to have been executed by a director if it indicates the director's present intent to approve the corporate action and contains or is accompanied by information from which the corporation can determine that the electronic transmission was transmitted by the director and the date on which the director transmitted the electronic transmission.

(3) Corporate action is approved under this section when the last director executes the consent.

(4) A consent under this section has the effect of a meeting vote and may be described as such in any document. [2021 c 84 s 5; 2020 c 57 s 59; 2009 c 189 s 24; 2002 c 297 s 29; 1989 c 165 s 92.]

RCW 23B.08.220 Notice of meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws. [1989 c 165 s 93.]

RCW 23B.08.230 Waiver of notice. (1) A director may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided by subsection (2) of this section, the waiver must be in writing, executed by the director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any corporate action approved at the meeting. [2020 c 57 s 60; 2009 c 189 s 25; 2002 c 297 s 30; 1989 c 165 s 94.]

RCW 23B.08.240 Quorum and voting. (1) Unless the articles of incorporation or bylaws provide for a greater or lesser number or unless otherwise expressly provided in this title, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Notwithstanding subsection (1) of this section, a quorum of the board of directors specified in or fixed in accordance with the articles of incorporation or bylaws may not consist of less than one-third of the specified or fixed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in this title.

(4) A director who is present at a meeting of the board of directors or a committee when corporate action is approved is deemed to have assented to the corporate action unless: (a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting; (b) the director's dissent or abstention as to the corporate action is entered in the minutes of the meeting; or (c) the director delivers written notice of the director's dissent or abstention as to the corporate action to the presiding officer of the meeting before adjournment or to the corporation within a reasonable time after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the corporate action. [2024 c 22 s 18; 2020 c 57 s 61; 2009 c 189 s 26; 2002 c 297 s 31; 1991 c 72 s 35; 1989 c 165 s 95.]

RCW 23B.08.245 Corporate action—Vote of shareholders. A corporation may agree to submit a corporate action to a vote of its shareholders whether or not the board of directors determines at any time subsequent to approving such a corporate action that it no longer recommends the corporate action. [2011 c 328 s 4.]

RCW 23B.08.250 Board committees. (1) Unless this title, the articles of incorporation, or the bylaws provide otherwise, a board of directors may establish one or more board committees composed exclusively of one or more directors to perform functions of the board of directors.

(2) The establishment of a board committee and appointment of members to it must be approved by the greater of (a) a majority of all the directors in office when this corporate action is taken or (b) the number of directors required by the articles of incorporation or bylaws to take corporate action under RCW 23B.08.240, unless, in either case, this title or the articles of incorporation provide otherwise.

(3) RCW 23B.08.200 through 23B.08.240 apply to board committees and their members.

(4) A board committee may exercise the powers of the board of directors under RCW 23B.08.010, to the extent specified by the board of directors or in the articles of incorporation or bylaws, except that a board committee may not:

(a) Authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors;

(b) Approve or propose to shareholders corporate action that this title requires be approved by shareholders;

(c) Fill vacancies on the board of directors or, subject to subsection (5) of this section, on any board committees; or

(d) Adopt, amend, or repeal bylaws.

(5) The board of directors may appoint one or more directors as alternate members of any board committee to replace any absent or disqualified member during the member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or members present at any board committee meeting and not disqualified from voting may, by unanimous action, appoint another director to act in place of an absent or disqualified member during that member's absence or disqualification. [2025 c 4 s 2; 2009 c 189 s 27; 1989 c 165 s 96.]

RCW 23B.08.300 General standards for directors. (1) A director shall discharge the duties of a director, including duties as member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section. [1989 c 165 s 97.]

RCW 23B.08.310 Liability for unlawful distributions. (1) A director who votes for or assents to a distribution made in violation of RCW 23B.06.400 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds the amount that could have been distributed without violating RCW 23B.06.400 or the articles of incorporation if it is established that the director did not perform the director's duties in compliance

with RCW 23B.08.300. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of RCW 23B.06.400 or the articles of incorporation.

(3) A shareholder who accepts a distribution made in violation of RCW 23B.06.400 or the articles of incorporation is personally liable to the corporation for the amount of any distribution received by the shareholder to the extent it exceeds the amount that could have been distributed to the shareholder without violating RCW 23B.06.400 or the articles of incorporation, if it is established that the shareholder accepted the distribution knowing that it was made in violation of RCW 23B.06.400 or the articles of incorporation.

(4) A shareholder held liable under subsection (3) of this section for an unlawful distribution is entitled to contribution from every other shareholder who could be held liable under subsection (3) of this section for the unlawful distribution.

(5) A proceeding under this section is barred unless it is commenced prior to the earlier of (a) the expiration of two years after the date on which the effect of the distribution was measured under *RCW 23B.06.400(4), or (b) the expiration of the survival period specified in RCW 23B.14.340. [2006 c 52 s 3; 1989 c 165 s 98.]

***Reviser's note:** RCW 23B.06.400 was amended by 2022 c 42 s 103, changing subsection (4) to subsection (5).

RCW 23B.08.320 Limitation on liability of directors. The articles of incorporation may contain provisions not inconsistent with law that eliminate or limit the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director, provided that such provisions 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, for conduct violating RCW 23B.08.310, 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 shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. [1989 c 165 s 99.]

RCW 23B.08.400 Officers. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation. [1989 c 165 s 100.]

RCW 23B.08.410 Duties of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by an officer authorized by the board of directors to prescribe the duties of other officers. [1989 c 165 s 101.]

RCW 23B.08.420 Standards of conduct for officers. (1) An officer with discretionary authority shall discharge the officer's duties under that authority:

- (a) In good faith;
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (c) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging the officer's duties, the officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (a) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
- (b) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section. [1989 c 165 s 102.]

RCW 23B.08.430 Resignation and removal of officers. (1) An officer may resign at any time by delivering a written notice to the board of directors, its chairperson, or to the appointing officer or the secretary of the corporation. A resignation is effective as provided in RCW 23B.01.410(9) unless the notice provides for a delayed effectiveness, including effectiveness determined upon a future event or events. If effectiveness of a resignation is stated to be delayed and the board of directors or the appointing officer accepts the delay, the board of directors or the appointing officer may fill the pending vacancy before the delayed effectiveness but the new officer may not take office until the vacancy occurs.

(2) The board of directors may remove any officer at any time with or without cause. An officer or assistant officer may be removed by:

- (a) An appointing officer at any time with or without cause, unless the bylaws or the board of directors provide otherwise; or
- (b) Any other officer if authorized by the bylaws or the board of directors.

(3) In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed. [2020 c 57 s 62; 1989 c 165 s 103.]

RCW 23B.08.440 Contract rights of officers. (1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer. [1989 c 165 s 104.]

RCW 23B.08.500 Indemnification definitions. For purposes of RCW 23B.08.510 through 23B.08.600:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon the effective date of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (a) When used with respect to a director, the office of director in a corporation; and (b) when used with respect to an individual other than a director, as contemplated in RCW 23B.08.570, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal. [2009 c 189 s 28; 1989 c 165 s 105.]

RCW 23B.08.510 Authority to indemnify. (1) Except as provided in subsection (4) of this section, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

- (a) The individual acted in good faith; and
 - (b) The individual reasonably believed:
 - (i) In the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in its best interests; and
 - (ii) In all other cases, that the individual's conduct was at least not opposed to its best interests; and
 - (c) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.
- (2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii) of this section.
- (3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.
- (4) A corporation may not indemnify a director under this section:
 - (a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
 - (b) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.
- (5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding. [1989 c 165 s 106.]

RCW 23B.08.520 Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. [1989 c 165 s 107.]

RCW 23B.08.530 Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

- (a) The director delivers to the corporation an executed written affirmation of the director's good faith belief that the director has met the standard of conduct described in RCW 23B.08.510; and
 - (b) The director delivers to the corporation an executed written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct.
- (2) The undertaking required by subsection (1)(b) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Authorization of payments under this section may be made by provision in the articles of incorporation or bylaws, by resolution adopted by the shareholders or board of directors, or by contract. [2020 c 57 s 63; 1989 c 165 s 108.]

RCW 23B.08.540 Court-ordered indemnification. Unless a corporation's articles of incorporation provide otherwise, a director of a corporation who is a party to a proceeding may apply for indemnification or advance of expenses to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification or advance of expenses if it determines:

(1) The director is entitled to mandatory indemnification under RCW 23B.08.520, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification;

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in RCW 23B.08.510 or was adjudged liable as described in RCW 23B.08.510(4), but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred unless the articles of incorporation or a bylaw, contract, or resolution approved or ratified by the shareholders pursuant to RCW 23B.08.560 provides otherwise; or

(3) In the case of an advance of expenses, the director is entitled pursuant to the articles of incorporation, bylaws, or any applicable resolution or contract, to payment or reimbursement of the director's reasonable expenses incurred as a party to the proceeding in advance of final disposition of the proceeding. [1989 c 165 s 109.]

RCW 23B.08.550 Determination and authorization of indemnification. (1) A corporation may not indemnify a director under RCW 23B.08.510 unless approved in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in RCW 23B.08.510.

(2) The determination shall be made:

(a) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under (a) of this subsection, by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(c) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in (a) or (b) of this subsection; or

(ii) If a quorum of the board of directors cannot be obtained under (a) of this subsection and a committee cannot be designated under (b) of this subsection, selected by majority vote of the full board of directors, in which selection directors who are parties may participate; or

(d) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Approval of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, approval of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (2)(c) of this section to select counsel. [2009 c 189 s 29; 1989 c 165 s 110.]

RCW 23B.08.560 Shareholder authorized indemnification and advancement of expenses. (1) If authorized by the articles of incorporation, a bylaw adopted or ratified by the shareholders, or a resolution adopted or ratified, before or after the event, by the shareholders, a corporation shall have power to indemnify or agree to indemnify a director made a party to a proceeding, or obligate itself to advance or reimburse expenses incurred in a proceeding, without regard to the limitations in RCW 23B.08.510 through 23B.08.550, provided that no such indemnity shall indemnify any director from or on account of:

(a) Acts or omissions of the director finally adjudged to be intentional misconduct or a knowing violation of law;

(b) Conduct of the director finally adjudged to be in violation of RCW 23B.08.310; or

(c) Any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property, or services to which the director was not legally entitled.

(2) Unless the articles of incorporation, or a bylaw or resolution adopted or ratified by the shareholders, provide otherwise, any determination as to any indemnity or advance of expenses under subsection (1) of this section shall be made in accordance with RCW 23B.08.550. [1989 c 165 s 111.]

RCW 23B.08.570 Indemnification of officers, employees, and agents. Unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director;

(2) The corporation may indemnify and advance expenses under RCW 23B.08.510 through 23B.08.560 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract. [1989 c 165 s 112.]

RCW 23B.08.580 Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who,

while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under RCW 23B.08.510 or 23B.08.520. [1989 c 165 s 113.]

RCW 23B.08.590 Validity of indemnification or advance for expenses. (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with RCW 23B.08.500 through 23B.08.580. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation.

(2) RCW 23B.08.500 through 23B.08.580 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding. [1989 c 165 s 114.]

RCW 23B.08.600 Report to shareholders. If a corporation indemnifies or advances expenses to a director under RCW 23B.08.510, 23B.08.520, 23B.08.530, 23B.08.540, or 23B.08.560 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in the form of a notice to the shareholders delivered with or before the notice of the next shareholders' meeting. [2002 c 297 s 32; 1989 c 165 s 115.]

RCW 23B.08.603 Indemnification or advance for expenses—Later amendment or repeal of subject provision. The right of a director, officer, employee, or agent to indemnification or to advancement of expenses arising under a provision in the articles of incorporation or a bylaw shall not be eliminated or impaired by an amendment to or repeal of that provision after the occurrence of the act or omission that is the subject of the proceeding for which indemnification or advancement of expenses under that provision is sought, unless the provision in effect at the time of such an act or omission explicitly authorizes the elimination or impairment of the right after such an action or omission has occurred. [2011 c 328 s 9.]

RCW 23B.08.700 Definitions. For purposes of RCW 23B.08.710 through 23B.08.735:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or

by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction: (i) An entity, other than the corporation, of which the director is a director, general partner, agent, or employee; (ii) a person that controls one or more of the entities specified in (b) (i) of this subsection or an entity that is controlled by, or is under common control with, one or more of the entities specified in (b) (i) of this subsection; or (iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting which a director of the corporation has a conflicting interest.

(3) "Related person" of an individual means (a) (i) the spouse, or a parent or sibling thereof, of the individual, or a child, grandchild, sibling, parent, or spouse of any thereof, of the individual, or a natural person having the same home as the individual, or a trust or estate of which a person specified in this subsection (3) (a) is a substantial beneficiary; or (ii) a trust, estate, incompetent, conservatee, or minor of which the individual is a fiduciary and (b) with respect to RCW 23B.08.735, in addition to the persons under (a) of this subsection, (i) an entity controlled by the individual or any person specified in (a) (i) or (ii) of this subsection; (ii) an entity, other than the corporation, of which the individual is a director, general partner, agent[,] or employee; (iii) a person that controls one or more of the entities specified in (b) (ii) of this subsection or an entity that is controlled by, or is under common control with, one or more of the entities specified in (b) (ii) of this subsection; or (iv) a natural person who is a general partner, principal, or employer of the individual.

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of (a) the existence and nature of the director's conflicting interest, and (b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction becomes effective or, if made pursuant to contract, the time when the corporation, or its subsidiary or the

entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage. [2015 c 20 s 3; 2009 c 189 s 30; 1989 c 165 s 116.]

RCW 23B.08.710 Judicial action. (1) A transaction effected or proposed to be effected by a corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because the director, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction, if:

(a) Directors' action respecting the transaction was at any time taken in compliance with RCW 23B.08.720;

(b) Shareholders' action respecting the transaction was at any time taken in compliance with RCW 23B.08.730; or

(c) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation. [1989 c 165 s 117.]

RCW 23B.08.720 Directors' action. (1) Directors' action respecting a transaction is effective for purposes of RCW 23B.08.710(2)(a) if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2) of this section, provided that action by a committee is so effective only if:

(a) All its members are qualified directors; and

(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director specified in RCW 23B.08.700(3)(a) (i) and (ii) is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in RCW 23B.08.700(4)(b), then disclosure is sufficient for purposes of subsection (1) of this section if the director (a) discloses to the directors voting on the transaction the existence and nature of the director's conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction,

and (b) plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director. [2015 c 20 s 4; 1989 c 165 s 118.]

RCW 23B.08.730 Shareholders' action. (1) Shareholders' action respecting a transaction is effective for purposes of RCW 23B.08.710(2)(b) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after (a) notice to shareholders describing the director's conflicting interest transaction, (b) provision of the information referred to in subsection (4) of this section, and (c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) For purposes of this section, "qualified shares" means any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary, or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (4) and (5) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.

(4) For purposes of compliance with subsection (1) of this section, a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number, and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned, or the voting of which is controlled, by the director, or by a related person of the director, or both.

(5) If a shareholders' vote does not comply with subsection (1) of this section solely because of a failure of a director to comply with subsection (4) of this section, and if the director establishes that the director's failure did not determine and was not intended by the director to influence the outcome of the vote, the court may, with or without further proceedings respecting RCW 23B.08.710(2)(c), take such action respecting the transaction and the director, and give such effect, if any, to the shareholders' vote, as it considers appropriate in the circumstances. [1989 c 165 s 119.]

RCW 23B.08.735 Pursuit of business opportunities—Duty to corporation. (1) If a director or officer or related person of either pursues or takes advantage, directly or indirectly, of a business opportunity, that action may not be enjoined or set aside, or give

rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if:

(a) Before the director, officer, or related person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation, and:

(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures stated in RCW 23B.08.720, as if the decision being made concerned a director's conflicting interest transaction; or

(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures stated in RCW 23B.08.730, as if the decision being made concerned a director's conflicting interest transaction;

except that, in the case of both (a)(i) and (ii) of this subsection, rather than making "required disclosure" as defined in RCW 23B.08.700(4), in each case the director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director or officer; or

(b) The duty to offer the corporation the right to have or participate in the particular business opportunity or the class or category in to which that particular business opportunity falls has been limited or eliminated pursuant to a provision of the articles of incorporation. However, if such provision applies to an officer or related person of that officer, the board of directors, by action of qualified directors taken in compliance with the same procedures under RCW 23B.08.720 and taken subsequent to the inclusion of such provision in the articles of incorporation, (i) must approve the application of such provision to an officer or a related person of that officer, and (ii) may condition the application of such provision to such officer or related person of that officer on any basis.

(2) In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (ii) of this section before taking advantage of the opportunity does not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.
[2020 c 194 s 8; 2015 c 20 s 5.]

RCW 23B.08.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of

2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 s 63.]