
HOUSE BILL 1096

State of Washington 54th Legislature 1995 Regular Session

By Representatives Padden, Appelwick and Hickel

Read first time 01/12/95. Referred to Committee on Law and Justice.

1 AN ACT Relating to clarifying the Washington limited liability
2 company act by amending RCW 25.15.005, 25.15.045, 25.15.060, 25.15.085,
3 25.15.130, 25.15.220, 25.15.250, 25.15.280, 25.15.310, and 24.06.045;
4 amending RCW 25.15.005, 25.15.045, 25.15.060, 25.15.085, 25.15.130,
5 25.15.220, 25.15.250, 25.15.280, 25.15.310, and 24.06.045; and
6 declaring an emergency.

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

8 **Sec. 1.** RCW 25.15.005 and 1994 c 211 s 101 are each amended to
9 read as follows:

10 As used in this chapter, unless the context otherwise requires:

11 (1) "Certificate of formation" means the certificate referred to in
12 RCW 25.15.070, and the certificate as amended.

13 (2) "Event of dissociation" means an event that causes a person to
14 cease to be a member as provided in RCW 25.15.130.

15 (3) "Foreign limited liability company" means an entity that is
16 formed under:

17 (a) ~~((An unincorporated enterprise;~~

18 ~~(b) Organized under the))~~ The limited liability company laws of

19 ~~((a))~~ any state other than ((the laws of)) this state, or ~~((under the))~~

1 (b) The laws of any foreign country(~~(÷~~
2 ~~(c) Organized~~)) that is: (A) An unincorporated association, (B)
3 formed under a statute pursuant to which an ((enterprise)) association
4 may be formed that affords to each of its members limited liability
5 with respect to the liabilities of the entity(~~(÷))~~, and (~~((d) Is))~~ (C)
6 not required, in order to transact business or conduct affairs in this
7 state, to be registered or (~~(organized under any statute of this state~~
8 ~~other than this chapter)~~) qualified under Title 23B or 24 RCW, or any
9 other chapter of the Revised Code of Washington authorizing the
10 formation of a domestic entity and the registration or qualification in
11 this state of similar entities formed under the laws of a jurisdiction
12 other than this state.

13 (4) "Limited liability company" and "domestic limited liability
14 company" means a limited liability company organized and existing under
15 this chapter.

16 (5) "Limited liability company agreement" means any written
17 agreement as to the affairs of a limited liability company and the
18 conduct of its business which is binding upon all of the members.

19 (6) "Limited liability company interest" means a member's share of
20 the profits and losses of a limited liability company and a member's
21 right to receive distributions of the limited liability company's
22 assets.

23 (7) "Manager" or "managers" means, with respect to a limited
24 liability company that has set forth in its certificate of formation
25 that it is to be managed by managers, the person, or persons designated
26 in accordance with RCW 25.15.150(2).

27 (8) "Member" means a person who has been admitted to a limited
28 liability company as a member as provided in RCW 25.15.115 and who has
29 not been dissociated from the limited liability company.

30 (9) "Person" means a natural person, partnership (whether general
31 or limited and whether domestic or foreign), limited liability company,
32 foreign limited liability company, trust, estate, association,
33 corporation, custodian, nominee, or any other individual or entity in
34 its own or any representative capacity.

35 (10) "Professional limited liability company" means a limited
36 liability company which is organized for the purpose of rendering
37 professional service and whose certificate of formation sets forth that
38 it is a professional limited liability company subject to RCW
39 25.15.045.

1 (11) "Professional service" means (~~(any type of personal service to~~
2 ~~the public which requires as a condition precedent to the rendering of~~
3 ~~such service the obtaining of a license or other legal authorization,~~
4 ~~including, but not by way of limitation, certified public accountants,~~
5 ~~architects, veterinarians, attorneys at law, and health professions~~
6 ~~regulated under chapter 18.130 RCW)) the same as defined under RCW
7 18.100.030.~~

8 (12) "State" means the District of Columbia or the Commonwealth of
9 Puerto Rico or any state, territory, possession, or other jurisdiction
10 of the United States other than the state of Washington.

11 **Sec. 2.** RCW 25.15.045 and 1994 c 211 s 109 are each amended to
12 read as follows:

13 (1) A person or group of persons licensed or otherwise legally
14 authorized to render professional services within this state may
15 organize and become a member or members of a professional limited
16 liability company under the provisions of this chapter for the purposes
17 of rendering professional service. A "professional limited liability
18 company" is subject to all the provisions of chapter 18.100 RCW that
19 apply to a professional corporation, and its managers, members, agents,
20 and employees shall be subject to all the provisions of chapter 18.100
21 RCW that apply to the directors, officers, shareholders, agents, or
22 employees of a professional corporation, except as provided otherwise
23 in this section. Nothing in this section prohibits a person duly
24 licensed or otherwise legally authorized to render professional
25 services in any jurisdiction other than this state from becoming a
26 member of a professional limited liability company organized for the
27 purpose of rendering the same professional services. Nothing in this
28 section prohibits a professional limited liability company from
29 rendering professional services outside this state through individuals
30 who are not duly licensed or otherwise legally authorized to render
31 such professional services within this state. Notwithstanding RCW
32 18.100.065, persons engaged in a profession and otherwise meeting the
33 requirements of this chapter may operate under this chapter as a
34 professional limited liability company so long as each member
35 personally engaged in the practice of the profession in this state is
36 duly licensed or otherwise legally authorized to practice the
37 profession in this state and:

1 (a) At least one manager of the company is duly licensed or
2 otherwise legally authorized to practice the profession in this state;
3 ((and)) or

4 (b) Each ~~((resident manager or))~~ member in charge of an office of
5 the company in this state ~~((and each resident manager or member~~
6 ~~personally engaged in this state in the practice of the profession))~~ is
7 duly licensed or otherwise legally authorized to practice the
8 profession in this state.

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

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

30 (4) The name of a professional limited liability company must
31 contain either the words "Professional Limited Liability Company," or
32 the words "Professional Limited Liability" and the abbreviation "Co.,"
33 or the abbreviation "P.L.L.C." provided that the name of a professional
34 limited liability company organized to render dental services shall
35 contain the full names or surnames of all members and no other word
36 than "chartered" or the words "professional services" or the
37 abbreviation "P.L.L.C."

38 (5) Subject to the provisions in article VII of this chapter, the
39 following may be a member of a professional limited liability company

1 and may be the transferee of the interest of an ineligible person or
2 deceased member of the professional limited liability company:

3 (a) A professional corporation, if its shareholders, directors, and
4 its officers other than the secretary and the treasurer, are licensed
5 or otherwise legally authorized to render the same specific
6 professional services as the professional limited liability company;
7 and

8 (b) Another professional limited liability company, if the managers
9 and members of both professional limited liability companies are
10 licensed or otherwise legally authorized to render the same specific
11 professional services.

12 **Sec. 3.** RCW 25.15.060 and 1994 c 211 s 112 are each amended to
13 read as follows:

14 Members of a limited liability company shall be personally liable
15 for any act, debt, obligation, or liability of the limited liability
16 company to the extent that shareholders of a Washington business
17 corporation would be liable in analogous circumstances. In this
18 regard, the court may consider the factors and policies set forth in
19 established case law with regard to piercing the corporate veil, except
20 that the failure to hold meetings of members or managers or the failure
21 to observe formalities pertaining to the calling or conduct of meetings
22 shall not be considered a factor tending to establish that the members
23 have personal liability for any act, debt, obligation, or liability of
24 the limited liability company if the certificate of formation and
25 limited liability company agreement do not expressly require the
26 holding of meetings of members or managers.

27 **Sec. 4.** RCW 25.15.085 and 1994 c 211 s 204 are each amended to
28 read as follows:

29 (1) Each document required by this chapter to be filed in the
30 office of the secretary of state shall be executed in the following
31 manner:

32 (a) Each original certificate of formation must be signed by the
33 person or persons forming the limited liability company;

34 (b) A reservation of name may be signed by any person;

35 (c) A transfer of reservation of name must be signed by, or on
36 behalf of, the applicant for the reserved name;

1 (d) A registration of name must be signed by any member or manager
2 of the foreign limited liability company;

3 (e) A certificate of amendment or restatement must be signed by at
4 least one manager, or by a member if management of the limited
5 liability company is reserved to the members;

6 (f) A certificate of cancellation must be signed by the person or
7 persons authorized to wind up the limited liability company's affairs
8 pursuant to RCW 25.15.295(1);

9 (g) If a surviving domestic limited liability company is filing
10 articles of merger, the articles of merger must be signed by at least
11 one manager, or by a member if management of the limited liability
12 company is reserved to the members, or if the articles of merger are
13 being filed by a surviving foreign limited liability company, limited
14 partnership, or corporation, the articles of merger must be signed by
15 a person authorized by such foreign limited liability company, limited
16 partnership, or corporation; and

17 (h) A foreign limited liability company's application for
18 registration as a foreign limited liability company doing business
19 within the state must be signed by any member or manager of the foreign
20 limited liability company.

21 (2) Any person may sign a certificate, articles of merger, ((or))
22 limited liability company agreement, or other document by an attorney-
23 in-fact or other person acting in a valid representative capacity, so
24 long as each document signed in such manner identifies the capacity in
25 which the signator signed.

26 (3) The person executing the document shall sign it and state
27 beneath or opposite the signature the name of the person and capacity
28 in which the person signs. The document must be typewritten or
29 printed, and must meet such legibility or other standards as may be
30 prescribed by the secretary of state.

31 (4) The execution of a certificate or articles of merger by any
32 person constitutes an affirmation under the penalties of perjury that
33 the facts stated therein are true.

34 **Sec. 5.** RCW 25.15.130 and 1994 c 211 s 304 are each amended to
35 read as follows:

36 (1) A person ceases to be a member of a limited liability company
37 upon the occurrence of one or more of the following events:

1 (a) The member dies or withdraws by voluntary act from the limited
2 liability company as provided in subsection (3) of this section;

3 (b) The member ceases to be a member as provided in RCW
4 25.15.250(2)(b) following an assignment of all the member's limited
5 liability company interest;

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

8 (d) Unless otherwise provided in the limited liability company
9 agreement, or with the written consent of all other members at the
10 time, the member (i) makes a general assignment for the benefit of
11 creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes
12 the subject of an order for relief in bankruptcy proceedings; (iv)
13 files a petition or answer seeking for himself or herself any
14 reorganization, arrangement, composition, readjustment, liquidation,
15 dissolution, or similar relief under any statute, law, or regulation;
16 (v) files an answer or other pleading admitting or failing to contest
17 the material allegations of a petition filed against him or her in any
18 proceeding of the nature described in (d) (i) through (iv) of this
19 subsection; or (vi) seeks, consents to, or acquiesces in the
20 appointment of a trustee, receiver, or liquidator of the member or of
21 all or any substantial part of the member's properties;

22 (e) Unless otherwise provided in the limited liability company
23 agreement, or with the consent of all other members at the time, one
24 hundred twenty days after the commencement of any proceeding against
25 the member seeking reorganization, arrangement, composition,
26 readjustment, liquidation, dissolution, or similar relief under any
27 statute, law, or regulation, the proceeding has not been dismissed, or
28 if within ninety days after the appointment without his or her consent
29 or acquiescence of a trustee, receiver, or liquidator of the member or
30 of all or any substantial part of the member's properties, the
31 appointment is not vacated or stayed, or within ninety days after the
32 expiration of any stay, the appointment is not vacated;

33 (f) Unless otherwise provided in the limited liability company
34 agreement, or with written consent of all other members at the time, in
35 the case of a member who is an individual, the entry of an order by a
36 court of competent jurisdiction adjudicating the member (~~(incompetent~~
37 ~~to manage his or her person or estate))~~ incapacitated, as used and
38 defined under chapter 11.88 RCW, as to his or her estate;

(g) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is another limited liability company, the dissolution and commencement of winding up of such limited liability company;

(h) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period authorized for application for reinstatement; or

(i) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a limited partnership, the dissolution and commencement of winding up of such limited partnership.

(2) The limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

~~(3) ((Unless otherwise provided in the limited liability company agreement,))~~ A member may withdraw from a limited liability company at ~~((any time by giving thirty days' written notice to the other members))~~ the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the time for the dissolution and commencement of winding up of the limited liability company, without the written consent of all other members at the time.

Sec. 6. RCW 25.15.220 and 1994 c 211 s 602 are each amended to read as follows:

Unless otherwise provided in the limited liability company agreement, upon the occurrence of an event of dissociation under RCW 25.15.130 which does not cause dissolution (other than an event of dissociation specified in RCW 25.15.130((2))) (1)(b) where the dissociating member's assignee is admitted as a member), a dissociating member (or the member's assignee) is entitled to receive any distribution to which ~~((the member (or assignee) is entitled under the limited liability company agreement and, if not otherwise provided in~~

1 ~~a limited liability company agreement, the member (or the member's~~
2 ~~assignee) is entitled to receive, within a reasonable time after~~
3 ~~dissociation, the fair value of the member's limited liability company~~
4 ~~interest as of the date of the dissociation based upon the member's~~
5 ~~right to share in distributions from the limited liability company)) an~~
6 ~~assignee would be entitled.~~

7 **Sec. 7.** RCW 25.15.250 and 1994 c 211 s 702 are each amended to
8 read as follows:

9 (1) A limited liability company interest is assignable in whole or
10 in part except as provided in a limited liability company agreement.
11 The assignee of a member's limited liability company interest shall
12 have no right to participate in the management of the business and
13 affairs of a limited liability company except:

14 (a) Upon the approval of all of the members of the limited
15 liability company other than the member assigning his or her limited
16 liability company interest; or

17 (b) As provided in a limited liability company agreement.

18 (2) Unless otherwise provided in a limited liability company
19 agreement:

20 (a) An assignment entitles the assignee to share in such profits
21 and losses, to receive such distributions, and to receive such
22 allocation of income, gain, loss, deduction, or credit or similar item
23 to which the assignor was entitled, to the extent assigned; and

24 (b) A member ceases to be a member and to have the power to
25 exercise any rights or powers of a member upon assignment of all of his
26 or her limited liability company interest.

27 (3) For the purposes of this chapter, unless otherwise provided in
28 a limited liability company agreement:

29 (a) The pledge of, or granting of a security interest, lien, or
30 other encumbrance in or against, any or all of the limited liability
31 company interest of a member shall not be deemed to be an assignment of
32 the member's limited liability company interest, but a foreclosure or
33 execution sale or exercise of similar rights with respect to all of a
34 member's limited liability company interest shall be deemed to be an
35 assignment of the member's limited liability company interest to the
36 transferee pursuant to such foreclosure or execution sale or exercise
37 of similar rights;

1 ~~(b) ((The death of a member who is an individual shall be deemed to~~
2 ~~be an assignment of that member's entire limited liability company~~
3 ~~interest to his or her personal representative;~~

4 ~~(c)))~~ Where a limited liability company interest is held in a trust
5 or estate, or is held by a trustee, personal representative, or other
6 fiduciary, the transfer of the limited liability company interest,
7 whether to a beneficiary of the trust or estate or otherwise, shall be
8 deemed to be an assignment of such limited liability company interest,
9 but the mere substitution or replacement of the trustee, personal
10 representative, or other fiduciary shall not constitute an assignment
11 of any portion of such limited liability company interest.

12 (4) Unless otherwise provided in a limited liability company
13 agreement and except to the extent assumed by agreement, until an
14 assignee of a limited liability company interest becomes a member, the
15 assignee shall have no liability as a member solely as a result of the
16 assignment.

17 **Sec. 8.** RCW 25.15.280 and 1994 c 211 s 803 are each amended to
18 read as follows:

19 The secretary of state may commence a proceeding under RCW
20 25.15.285 to administratively dissolve a limited liability company if:

21 (1) The limited liability company does not pay any license fees or
22 penalties, imposed by this chapter, when they become due;

23 (2) The limited liability company does not deliver its completed
24 initial report or annual report to the secretary of state when it is
25 due;

26 (3) The limited liability company is without a registered agent or
27 registered office in this state for sixty days or more; or

28 ~~((2)))~~ (4) The limited liability company does not notify the
29 secretary of state within sixty days that its registered agent or
30 registered office has been changed, that its registered agent has
31 resigned, or that its registered office has been discontinued.

32 **Sec. 9.** RCW 25.15.310 and 1994 c 211 s 901 are each amended to
33 read as follows:

34 (1) Subject to the Constitution of the state of Washington:

35 (a) The laws of the state, territory, possession, or other
36 jurisdiction or country under which a foreign limited liability company

1 is organized govern its organization and internal affairs and the
2 liability of its members and managers; and

3 (b) A foreign limited liability company may not be denied
4 registration by reason of any difference between those laws and the
5 laws of this state.

6 (2) A foreign limited liability company is subject to RCW 25.15.030
7 and, notwithstanding subsection (1)(a) of this section, a foreign
8 limited liability company rendering professional services in this state
9 is also subject to RCW 25.15.045(2).

10 (3) A foreign limited liability company and its members and
11 managers doing business in this state thereby submit to personal
12 jurisdiction of the courts of this state and are subject to RCW
13 25.15.125.

14 **Sec. 10.** RCW 24.06.045 and 1994 c 211 s 1307 are each amended to
15 read as follows:

16 The corporate name:

17 (1) Shall not contain any word or phrase which indicates or implies
18 that it is organized for any purpose other than one or more of the
19 purposes contained in its articles of incorporation.

20 (2) Shall not be the same as, or deceptively similar to, the name
21 of any corporation existing under any act of this state, or any foreign
22 corporation authorized to transact business or conduct affairs in this
23 state under any act of this state, or the name of any limited liability
24 ~~((corporation))~~ company organized or authorized to transact business
25 under any act of this state, the name of a domestic or foreign limited
26 partnership on file with the secretary, or a corporate name reserved or
27 registered as permitted by the laws of this state. This subsection
28 shall not apply if the applicant files with the secretary of state
29 either of the following: (a) The written consent of the other
30 corporation, limited liability company, limited partnership, or holder
31 of a reserved name to use the same or deceptively similar name and one
32 or more words are added or deleted to make the name distinguishable
33 from the other name as determined by the secretary of state, or (b) a
34 certified copy of a final decree of a court of competent jurisdiction
35 establishing the prior right of the applicant to the use of the name in
36 this state.

37 (3) Shall be transliterated into letters of the English alphabet if
38 it is not in English.

1 (4) The name of any corporation formed under this section shall not
2 include nor end with "incorporated", "company", or "corporation" or any
3 abbreviation thereof, but may use "club", "league", "association",
4 "services", "committee", "fund", "society", "foundation", " ,
5 a nonprofit mutual corporation", or any name of like import.

6 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and shall take
9 effect immediately.

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