

**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 § 8; 2015 c 20 § 5.]