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HOUSE BILL 1042

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State of Washington                      60th Legislature                      2007 Regular Session

By Representatives Rodne, Pedersen, Moeller and Lantz

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Committee on Judiciary.

1            AN ACT Relating to business transactions; and amending RCW  
2 23B.19.040.

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

4            **Sec. 1.** RCW 23B.19.040 and 1997 c 19 s 3 are each amended to read  
5 as follows:

6            (1)(a) Notwithstanding anything to the contrary contained in this  
7 title, a target corporation shall not for a period of five years  
8 following the acquiring person's share acquisition time engage in a  
9 significant business transaction unless:

10            (i) It is exempted by RCW 23B.19.030 ((~~or unless~~));

11            (ii) The significant business transaction or the purchase of shares  
12 made by the acquiring person is approved prior to the acquiring  
13 person's share acquisition time by a majority of the members of the  
14 board of directors of the target corporation; or

15            (iii) At or subsequent to the acquiring person's share acquisition  
16 time, such significant business transaction is approved by a majority  
17 of the members of the board of directors of the target corporation and  
18 authorized at an annual or special meeting of shareholders, and not by

1 written consent, by the affirmative vote of at least two-thirds of the  
2 outstanding voting shares, except shares beneficially owned by or under  
3 the voting control of the acquiring person.

4 (b) If a good faith proposal for a significant business transaction  
5 is made in writing to the board of directors of the target corporation  
6 prior to the significant business transaction or prior to the share  
7 acquisition time, the board of directors shall respond in writing,  
8 within thirty days or such shorter period, if any, as may be required  
9 by the exchange act setting forth its reasons for its decision  
10 regarding the proposal. If a good faith proposal to purchase shares is  
11 made in writing to the board of directors of the target corporation,  
12 the board of directors, unless it responds affirmatively in writing  
13 within thirty days or a shorter period, if any, as may be required by  
14 the exchange act shall be deemed to have disapproved such share  
15 purchase.

16 (2) Except for a significant business transaction approved under  
17 subsection (1) of this section or exempted by RCW 23B.19.030, in  
18 addition to any other requirement, a target corporation shall not  
19 engage at any time in any significant business transaction described in  
20 RCW 23B.19.020(15) (a) or (e) with any acquiring person of such a  
21 corporation other than a significant business transaction that either  
22 meets all of the conditions of (a), (b), and (c) of this subsection or  
23 meets the conditions of (d) of this subsection:

24 (a) The aggregate amount of the cash and the market value as of the  
25 consummation date of consideration other than cash to be received per  
26 share by holders of outstanding common shares of such a target  
27 corporation in a significant business transaction is at least equal to  
28 the higher of the following:

29 (i) The highest per share price paid by such an acquiring person at  
30 a time when the person was the beneficial owner, directly or  
31 indirectly, of five percent or more of the outstanding voting shares of  
32 a target corporation, for any shares of common shares of the same class  
33 or series acquired by it: (A) Within the five-year period immediately  
34 prior to the announcement date with respect to a significant business  
35 transaction; or (B) within the five-year period immediately prior to,  
36 or in, the transaction in which the acquiring person became an  
37 acquiring person, whichever is higher plus, in either case, interest  
38 compounded annually from the earliest date on which the highest per

1 share acquisition price was paid through the consummation date at the  
2 rate for one-year United States treasury obligations from time to time  
3 in effect; less the aggregate amount of any cash dividends paid, and  
4 the market value of any dividends paid other than in cash, per share of  
5 common shares since the earliest date, up to the amount of the  
6 interest; and

7 (ii) The market value per share of common shares on the  
8 announcement date with respect to a significant business transaction or  
9 on the date of the acquiring person's share acquisition time, whichever  
10 is higher; plus interest compounded annually from such a date through  
11 the consummation date at the rate for one-year United States treasury  
12 obligations from time to time in effect; less the aggregate amount of  
13 any cash dividends paid, and the market value of any dividends paid  
14 other than in cash, per share of common shares since the date, up to  
15 the amount of the interest.

16 (b) The aggregate amount of the cash and the market value as of the  
17 consummation date of consideration other than cash to be received per  
18 share by holders of outstanding shares of any class or series of  
19 shares, other than common shares, of the target corporation is at least  
20 equal to the highest of the following, whether or not the acquiring  
21 person has previously acquired any shares of such a class or series of  
22 shares:

23 (i) The highest per share price paid by an acquiring person at a  
24 time when the person was the beneficial owner, directly or indirectly,  
25 of five percent or more of the outstanding voting shares of a resident  
26 domestic corporation, for any shares of the same class or series of  
27 shares acquired by it: (A) Within the five-year period immediately  
28 prior to the announcement date with respect to a significant business  
29 transaction; or (B) within the five-year period immediately prior to,  
30 or in, the transaction in which the acquiring person became an  
31 acquiring person, whichever is higher; plus, in either case, interest  
32 compounded annually from the earliest date on which the highest per  
33 share acquisition price was paid through the consummation date at the  
34 rate for one-year United States treasury obligations from time to time  
35 in effect; less the aggregate amount of any cash dividends paid, and  
36 the market value of any dividends paid other than in cash, per share of  
37 the same class or series of shares since the earliest date, up to the  
38 amount of the interest;

1 (ii) The highest preferential amount per share to which the holders  
2 of shares of the same class or series of shares are entitled in the  
3 event of any voluntary liquidation, dissolution, or winding up of the  
4 target corporation, plus the aggregate amount of any dividends declared  
5 or due as to which the holders are entitled prior to payment of  
6 dividends on some other class or series of shares, unless the aggregate  
7 amount of the dividends is included in the preferential amount; and

8 (iii) The market value per share of the same class or series of  
9 shares on the announcement date with respect to a significant business  
10 transaction or on the date of the acquiring person's share acquisition  
11 time, whichever is higher; plus interest compounded annually from such  
12 a date through the consummation date at the rate for one-year United  
13 States treasury obligations from time to time in effect; less the  
14 aggregate amount of any cash dividends paid and the market value of any  
15 dividends paid other than in cash, per share of the same class or  
16 series of shares since the date, up to the amount of the interest.

17 (c) The consideration to be received by holders of a particular  
18 class or series of outstanding shares, including common shares, of the  
19 target corporation in a significant business transaction is in cash or  
20 in the same form as the acquiring person has used to acquire the  
21 largest number of shares of the same class or series of shares  
22 previously acquired by the person, and the consideration shall be  
23 distributed promptly.

24 (d) The significant business transaction is approved at an annual  
25 meeting of shareholders, or special meeting of shareholders called for  
26 such a purpose, no earlier than five years after the acquiring person's  
27 share acquisition time, by a majority of the votes entitled to be  
28 counted within each voting group entitled to vote separately on the  
29 transaction. The votes of all outstanding shares entitled to vote  
30 under this title or the articles of incorporation shall be entitled to  
31 be counted under this subsection except that the votes of shares as to  
32 which an acquiring person has beneficial ownership or voting control  
33 may not be counted to determine whether shareholders have approved a  
34 transaction for purposes of this subsection. The votes of shares as to  
35 which an acquiring person has beneficial ownership or voting control  
36 shall, however, be counted in determining whether a transaction is  
37 approved under other sections of this title and for purposes of  
38 determining a quorum.

1           (3) Subsection (2) of this section does not apply to a target  
2 corporation that on June 6, 1996, had a provision in its articles of  
3 incorporation, adopted under RCW 23B.17.020(3)(d), expressly electing  
4 not to be covered under RCW 23B.17.020, which is repealed by section 6,  
5 chapter 155, Laws of 1996.

6           (4) A significant business transaction that is made in violation of  
7 subsection (1) or (2) of this section and that is not exempt under RCW  
8 23B.19.030 is void.

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