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**SUBSTITUTE SENATE BILL 6169**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Smith, Johnson, Newhouse and Winsley)

Read first time 01/26/96.

1 AN ACT Relating to amending provisions regarding significant  
2 business transactions in the Washington business corporation act;  
3 amending RCW 23B.19.020, 23B.19.030, 23B.19.040, 23B.01.400, and  
4 23B.02.020; and repealing RCW 23B.17.020.

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

6 **Sec. 1.** RCW 23B.19.020 and 1989 c 165 s 198 are each amended to  
7 read as follows:

8 The definitions in this section apply throughout this chapter.

9 (1) "Acquiring person" means a person or group of persons, other  
10 than the target corporation or a subsidiary of the target corporation,  
11 who beneficially owns ten percent or more of the outstanding voting  
12 shares of the target corporation. The term "acquiring person" does not  
13 include a person who (a) beneficially (~~owns~~) owned ten percent or  
14 more of the outstanding voting shares of the target corporation on  
15 March 23, 1988; (b) acquires its shares by gift, inheritance, or in a  
16 transaction in which no consideration is exchanged; (~~or~~) (c) exceeds  
17 the ten percent threshold as a result of action taken solely by the  
18 target corporation, such as redemption of shares, unless that person,  
19 by its own action, acquires additional shares of the target

1 corporation; (d) beneficially was the owner of ten percent or more of  
2 the outstanding voting shares prior to the time the target corporation  
3 had a class of voting shares registered with the securities and  
4 exchange commission pursuant to section 12 or 15 of the exchange act;  
5 or (e) beneficially was the owner of ten percent or more of the  
6 outstanding voting shares prior to the time the target corporation  
7 amended its articles of incorporation to provide that the corporation  
8 shall be subject to the provisions of this chapter. An agent, bank,  
9 broker, nominee, or trustee for another person, if the other person is  
10 not an acquiring person, who acts in good faith and not for the purpose  
11 of circumventing this chapter, is not an acquiring person. For the  
12 purpose of determining whether a person is an acquiring person, the  
13 number of voting shares of the target corporation that are outstanding  
14 shall include shares beneficially owned by the person through  
15 application of subsection (4) of this section, but shall not include  
16 any other unissued voting shares of the target corporation which may be  
17 issuable pursuant to any agreement, arrangement, or understanding; or  
18 upon exercise of conversion rights, warrants, or options; or otherwise.

19 (2) "Affiliate" means a person who directly or indirectly controls,  
20 or is controlled by, or is under common control with, a person.

21 (3) "Announcement date," when used in reference to any significant  
22 business transaction, means the date of the first public announcement  
23 of the final, definitive proposal for such a significant business  
24 transaction.

25 (4) "Associate" means (a) a domestic or foreign corporation or  
26 organization of which a person is an officer, director, member, or  
27 partner or in which a person performs a similar function; (b) a direct  
28 or indirect beneficial owner of ten percent or more of any class of  
29 equity securities of a person; (c) a trust or estate in which a person  
30 has a beneficial interest or as to which a person serves as trustee or  
31 in a similar fiduciary capacity; and (d) ~~((if having the same residence~~  
32 ~~as a person, the person's relative, spouse, or spouse's relative))~~ the  
33 spouse or a parent or sibling of a person or a child, grandchild,  
34 sibling, parent, or spouse of any thereof, of a person or an individual  
35 having the same home as a person.

36 ~~((+4))~~ (5) "Beneficial ownership," when used with respect to any  
37 shares, means ownership by a person:

38 (a) Who, individually or with or through any of its affiliates or  
39 associates, beneficially owns such shares, directly or indirectly; or

1 (b) Who, individually or with or through any of its affiliates or  
2 associates, has (i) the right to acquire the shares, whether the right  
3 is exercisable immediately or only after the passage of time, pursuant  
4 to any agreement, arrangement, or understanding, whether or not in  
5 writing, or upon the exercise of conversion rights, exchange rights,  
6 warrants or options, or otherwise. A person is not the beneficial  
7 owner of shares tendered pursuant to a tender or exchange offer made by  
8 the person or any of the person's affiliates or associates until the  
9 tendered shares are accepted for purchase or exchange; or (ii) the  
10 right to vote the shares pursuant to any agreement, arrangement, or  
11 understanding, whether or not in writing. A person is not the  
12 beneficial owner of any shares under (b)(ii) of this subsection if the  
13 agreement, arrangement, or understanding to vote the shares arises  
14 solely from a revocable proxy or consent given in response to a proxy  
15 or consent solicitation made in accordance with the applicable rules  
16 and regulations under the exchange act and is not then reportable on  
17 schedule 13D under the exchange act, or any comparable or successor  
18 report; or

19 (c) Who has any agreement, arrangement, or understanding, whether  
20 or not in writing, for the purpose of acquiring, holding, voting,  
21 except voting pursuant to a revocable proxy or consent as described in  
22 (b)(ii) of this subsection, or disposing of the shares with any other  
23 person who beneficially owns, or whose affiliates or associates  
24 beneficially own, directly or indirectly, the shares.

25 ~~((+5))~~ (6) "Common shares" means any shares other than preferred  
26 shares.

27 (7) "Consummation date," with respect to any significant business  
28 transaction, means the date of consummation of such a significant  
29 business transaction, or, in the case of a significant business  
30 transaction as to which a shareholder vote is taken, the later of the  
31 business day prior to the vote or twenty days prior to the date of  
32 consummation of such a significant business transaction.

33 (8) "Control," "controlling," "controlled by," and "under common  
34 control with," means the possession, directly or indirectly, of the  
35 power to direct or cause the direction of the management and policies  
36 of a person, whether through the ownership of voting shares, by  
37 contract, or otherwise. A person's beneficial ownership of ten percent  
38 or more of a domestic or foreign corporation's outstanding voting  
39 shares shall create a rebuttable presumption that such person has

1 control of such corporation. However, a person does not have control  
2 of a domestic or foreign corporation if the person holds voting shares,  
3 in good faith and not for the purpose of circumventing this chapter, as  
4 an agent, bank, broker, nominee, custodian, or trustee for one or more  
5 beneficial owners who do not individually or as a group have control of  
6 such corporation.

7 ~~((+6))~~ (9) "Domestic corporation" means an issuer of voting shares  
8 which is organized under chapter 23B.02 RCW or any predecessor  
9 provision.

10 (10) "Exchange act" means the federal securities exchange act of  
11 1934, as amended.

12 ~~((+7))~~ (11) "Market value," in the case of property other than  
13 cash or shares, means the fair market value of the property on the date  
14 in question as determined by the board of directors of the target  
15 corporation in good faith.

16 ~~((+8))~~ (12) "Person" means an individual, domestic or foreign  
17 corporation, partnership, trust, unincorporated association, or other  
18 entity; an affiliate or associate of any such person; or any two or  
19 more persons acting as a partnership, syndicate, or other group for the  
20 purpose of acquiring, holding, or dispersing of securities of a  
21 domestic or foreign corporation.

22 ~~((+9))~~ (13) "Preferred shares" means any class or series of shares  
23 of a target corporation which under the bylaws or articles of  
24 incorporation of such a corporation is entitled to receive payment of  
25 dividends prior to any payment of dividends on some other class or  
26 series of shares, or is entitled in the event of any voluntary  
27 liquidation, dissolution, or winding up of the target corporation to  
28 receive payment or distribution of a preferential amount before any  
29 payments or distributions are received by some other class or series of  
30 shares.

31 (14) "Shares" means any:

32 (a) Shares or similar security, any certificate of interest, any  
33 participation in any profit sharing agreement, any voting trust  
34 certificate, or any certificate of deposit for shares; and

35 (b) Security convertible, with or without consideration, into  
36 shares, or any warrant, call, or other option or privilege of buying  
37 shares without being bound to do so, or any other security carrying any  
38 right to acquire, subscribe to, or purchase shares.

39 (15) "Significant business transaction" means:

1 (a) A merger, share exchange, or consolidation of a target  
2 corporation or a subsidiary of a target corporation with (i) an  
3 acquiring person, or (ii) any other domestic or foreign corporation  
4 which is, or after the merger, share exchange, or consolidation would  
5 be, an affiliate or associate of the acquiring person;

6 (b) A sale, lease, exchange, mortgage, pledge, transfer, or other  
7 disposition or encumbrance, whether in one transaction or a series of  
8 transactions, to or with an acquiring person or an affiliate or  
9 associate of an acquiring person of assets of a target corporation or  
10 a subsidiary of a target corporation (i) having an aggregate market  
11 value equal to five percent or more of the aggregate market value of  
12 all the assets, determined on a consolidated basis, of the target  
13 corporation, (ii) having an aggregate market value equal to five  
14 percent or more of the aggregate market value of all the outstanding  
15 shares of the target corporation, or (iii) representing five percent or  
16 more of the earning power or net income, determined on a consolidated  
17 basis, of the target corporation;

18 (c) The termination, while the corporation has an acquiring person  
19 and as a result of the acquiring person's acquisition of ten percent or  
20 more of the shares of the corporation, of five percent or more of the  
21 employees of the target corporation or its subsidiaries employed in  
22 this state, whether at one time or over the five-year period following  
23 the share acquisition ((date)) time. For the purposes of (c) of this  
24 subsection, a termination other than an employee's death or disability  
25 or bona fide voluntary retirement, transfer, resignation, termination  
26 for cause under applicable common law principles, or leave of absence  
27 shall be presumed to be a termination resulting from the acquiring  
28 person's acquisition of shares, which presumption ((may be rebutted by  
29 clear and convincing evidence)) is rebuttable. A bona fide voluntary  
30 transfer of employees between the target corporation and its  
31 subsidiaries or between its subsidiaries is not a termination for the  
32 purposes of (c) of this subsection;

33 (d) The issuance, transfer, or redemption by a target corporation  
34 or a subsidiary of a target corporation, whether in one transaction or  
35 a series of transactions, of shares or of options, warrants, or rights  
36 to acquire shares of a target corporation or a subsidiary of a target  
37 corporation to or beneficially owned by an acquiring person or an  
38 affiliate or associate of an acquiring person except pursuant to the  
39 exercise of warrants or rights to purchase shares offered, or a

1 dividend, distribution, or redemption paid or made pro rata to, all  
2 shareholders or holders of options, warrants, or rights to acquire  
3 shares of the target corporation, and except for involuntary  
4 redemptions permitted by the target corporation's charter or by the law  
5 of this state or the state of incorporation;

6 (e) ~~The ((adoption of a plan or proposal for the sale of assets,))~~  
7 liquidation(~~(7)~~) or dissolution of a target corporation proposed by, or  
8 pursuant to an agreement, arrangement, or understanding, whether or not  
9 in writing, with an acquiring person or an affiliate or associate of an  
10 acquiring person;

11 (f) A reclassification of securities, including, without  
12 limitation, any ~~((stock))~~ shares split, ~~((stock))~~ shares dividend, or  
13 other distribution of ~~((stock))~~ shares in respect of stock, or any  
14 reverse ~~((stock))~~ shares split, or recapitalization of a target  
15 corporation, or a merger or consolidation of a target corporation with  
16 a subsidiary of the target corporation, or any other transaction,  
17 whether or not with or into or otherwise involving an acquiring person,  
18 proposed by, or pursuant to an agreement, arrangement, or  
19 understanding, whether or not in writing, with an acquiring person or  
20 an affiliate or associate of an acquiring person, that has the effect,  
21 directly or indirectly, of increasing the proportionate share of the  
22 outstanding shares of a class or series of voting shares or securities  
23 convertible into voting shares of a target corporation or a subsidiary  
24 of the target corporation that is directly or indirectly owned by an  
25 acquiring person or an affiliate or associate of an acquiring person,  
26 except as a result of immaterial changes due to fractional share  
27 adjustments; or

28 (g) A receipt by an acquiring person or an affiliate or associate  
29 of an acquiring person of the benefit, directly or indirectly, except  
30 proportionately as a shareholder of a target corporation, of loans,  
31 advances, guarantees, pledges, or other financial assistance or tax  
32 credits or other tax advantages provided by or through a target  
33 corporation(~~(7)~~ or

34 ~~(h) An agreement, contract, or other arrangement providing for any  
35 of the transactions in this subsection)).~~

36 ~~((10))~~ (16) "Share acquisition ~~((date))~~ time" means the ~~((date  
37 on))~~ time at which a person first becomes an acquiring person of a  
38 target corporation.

1       (~~(11)~~) (17) "Subsidiary" means a domestic or foreign corporation  
2 that has a majority of its outstanding voting shares owned, directly or  
3 indirectly, by another domestic or foreign corporation.

4       (~~(12)~~) (18) "Tangible assets" means tangible real and personal  
5 property of all kinds. It shall also include leasehold interests in  
6 tangible real and personal property.

7       (~~(13)~~) (19) "Target corporation" means:

8       (a) Every domestic corporation (~~(organized under chapter 23B.02 RCW~~  
9 ~~or any predecessor provision if, as of the share acquisition date, the~~  
10 ~~corporation's principal executive office is located in the state and~~  
11 ~~either a majority of the corporation's employees, together with those~~  
12 ~~of its subsidiaries, are residents of the state or the corporation,~~  
13 ~~together with its subsidiaries, employs more than one thousand~~  
14 ~~residents of the state)), if:~~

15       (i) The corporation has a class of voting shares registered with  
16 the securities and exchange commission pursuant to section 12 or 15 of  
17 the exchange act; or

18       (ii) The corporation's articles of incorporation have been amended  
19 to provide that such a corporation shall be subject to the provisions  
20 of this section, if the corporation did not have a class of voting  
21 shares registered with the securities and exchange commission pursuant  
22 to section 12 or 15 of the exchange act on the effective date of that  
23 amendment; and

24       (b) Every foreign corporation required to have a certificate of  
25 authority to transact business in this state pursuant to chapter 23B.15  
26 RCW, ~~if((, as of the share acquisition date))):~~

27       (i) The corporation has a class of voting shares registered with  
28 the securities and exchange commission pursuant to section 12 or 15 of  
29 the exchange act;

30       (ii) The corporation's principal executive office is located in the  
31 state;

32       (~~(ii)~~) (iii) The corporation has: (A) More than ten percent of  
33 its shareholders of record resident in the state; or (B) more than ten  
34 percent of its shares owned of record by state residents; or (C) one  
35 thousand or more shareholders of record resident in the state;

36       (~~(iii)~~) (iv) A majority of the corporation's employees, together  
37 with those of its subsidiaries, are residents of the state or the  
38 corporation, together with its subsidiaries, employs more than one  
39 thousand residents of the state; and

1       (~~(iv)~~) (v) A majority of the corporation's tangible assets,  
2 together with those of its subsidiaries, measured by market value, are  
3 located in the state or the corporation, together with its  
4 subsidiaries, has more than fifty million dollars' worth of tangible  
5 assets located in the state.

6       For purposes of this subsection, the record date for determining  
7 the percentages and numbers of shareholders and shares shall be the  
8 last shareholder record date before the event requiring that the  
9 determination be made. A shareholder record date shall be determined  
10 pursuant to (~~RCW 23B.07.070 for a domestic corporation and~~) the  
11 comparable provision to RCW 23B.07.070 of the law of the state in which  
12 a foreign corporation is incorporated. If a shareholder record date  
13 has not been fixed by the board of directors within the preceding four  
14 months, the determination shall be made as of the end of the (~~domestic~~  
15 ~~or foreign~~) corporation's most recent fiscal quarter.

16       The residence of each shareholder is presumed to be the address  
17 appearing in the records of the (~~domestic or foreign~~) corporation.  
18 Shares held of record by brokers or nominees shall be disregarded for  
19 purposes of calculating the percentages and numbers specified in this  
20 subsection. Shares of a (~~domestic or foreign~~) corporation allocated  
21 to the account of an employee or former employee or beneficiaries of  
22 employees or former employees of a (~~domestic or foreign~~) corporation  
23 and held in a plan that is qualified under section 401(a) of the  
24 federal internal revenue code of 1986, as amended, and is a defined  
25 contribution plan within the meaning of section 414(i) of the code  
26 shall be deemed, for the purposes of this subsection, to be held of  
27 record by the employee to whose account such shares are allocated.

28       A domestic or foreign corporation shall be deemed to be a target  
29 corporation if the domestic or foreign corporation's failure to satisfy  
30 the requirements of this subsection is caused by the action of, or is  
31 the result of a proposal by, an acquiring person or affiliate or  
32 associate of an acquiring person.

33       (20) "Voting shares" means shares of a corporation entitled to vote  
34 generally in the election of directors.

35       **Sec. 2.** RCW 23B.19.030 and 1989 c 165 s 199 are each amended to  
36 read as follows:

37       This chapter does not apply to(~~+~~

1       ~~(1) A significant business transaction of a target corporation that~~  
2 ~~does not have a class of voting stock registered with the securities~~  
3 ~~and exchange commission pursuant to section 12 of the exchange act [15~~  
4 ~~U.S.C. Sec. 78L]; or~~

5       ~~(2))~~ a significant business transaction of a target corporation  
6 with an acquiring person of the target corporation which became an  
7 acquiring person inadvertently, if the acquiring person ~~((+a))~~ (1) as  
8 soon as practicable, divests itself of a sufficient amount of the  
9 voting shares of the target corporation so that it no longer is the  
10 beneficial owner, directly or indirectly, of ten percent or more of the  
11 outstanding voting shares of the target corporation, and ~~((+b))~~ (2)  
12 would not at any time within the five-year period preceding the  
13 announcement date ~~((of the first public announcement))~~ of the  
14 significant business transaction have been an acquiring person but for  
15 the inadvertent acquisition.

16       **Sec. 3.** RCW 23B.19.040 and 1989 c 165 s 200 are each amended to  
17 read as follows:

18       (1)(a) Notwithstanding ~~((any provision of this title))~~ anything to  
19 the contrary contained in this title, except under subsection (2) of  
20 this section and RCW 23B.19.030, a target corporation shall not engage  
21 in any significant business transaction for a period of five years  
22 following the acquiring person's share acquisition ~~((date))~~ time unless  
23 the significant business transaction or the purchase of shares made by  
24 the acquiring person ~~((on the share acquisition date))~~ is approved  
25 prior to the acquiring person's share acquisition ~~((date))~~ time by a  
26 majority of the members of the board of directors of the target  
27 corporation.

28       (b) If a good faith proposal for a significant business transaction  
29 is made in writing to the board of directors of the target corporation  
30 prior to the significant business transaction or prior to the share  
31 acquisition ~~((date))~~ time, the board of directors shall respond in  
32 writing, within thirty days or such shorter period, if any, as may be  
33 required by the exchange act setting forth its reasons for its decision  
34 regarding the proposal. If a good faith proposal to purchase shares is  
35 made in writing to the board of directors of the target corporation,  
36 the board of directors, unless it responds affirmatively in writing  
37 within thirty days or a shorter period, if any, as may be required by

1 the exchange act shall be deemed to have disapproved such share  
2 purchase.

3 (2) Notwithstanding anything to the contrary contained in this  
4 title, except under subsection (1) of this section and RCW 23B.19.030,  
5 a target corporation shall not engage at any time in any significant  
6 business transaction with any acquiring person of such a corporation  
7 other than a significant business transaction that meets all of the  
8 following conditions:

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

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

30 (ii) The market value per share of common shares on the  
31 announcement date with respect to a significant business transaction or  
32 on the date of the acquiring person's share acquisition time, whichever  
33 is higher; plus interest compounded annually from such a date through  
34 the consummation date at the rate for one-year United States treasury  
35 obligations from time to time in effect; less the aggregate amount of  
36 any cash dividends paid, and the market value of any dividends paid  
37 other than in cash, per share of common shares since the date, up to  
38 the amount of the interest.

1       (b) The aggregate amount of the cash and the market value as of the  
2 consummation date of consideration other than cash to be received per  
3 share by holders of outstanding shares of any class or series of  
4 shares, other than common shares, of the target corporation is at least  
5 equal to the highest of the following, whether or not the acquiring  
6 person has previously acquired any shares of such a class or series of  
7 shares:

8       (i) The highest per share price paid by an acquiring person at a  
9 time when the person was the beneficial owner, directly or indirectly,  
10 of five percent or more of the outstanding voting shares of a resident  
11 domestic corporation, for any shares of the same class or series of  
12 shares acquired by it: (A) Within the five-year period immediately  
13 prior to the announcement date with respect to a significant business  
14 transaction; or (B) within the five-year period immediately prior to,  
15 or in, the transaction in which the interested shareholder became an  
16 interested shareholder, whichever is higher; plus, in either case,  
17 interest compounded annually from the earliest date on which the  
18 highest per share acquisition price was paid through the consummation  
19 date at the rate for one-year United States treasury obligations from  
20 time to time in effect; less the aggregate amount of any cash  
21 dividends paid, and the market value of any dividends paid other than  
22 in cash, per share of the same class or series of shares since the  
23 earliest date, up to the amount of the interest;

24       (ii) The highest preferential amount per share to which the holders  
25 of shares of the same class or series of shares are entitled in the  
26 event of any voluntary liquidation, dissolution, or winding up of the  
27 target corporation, plus the aggregate amount of any dividends declared  
28 or due as to which the holders are entitled prior to payment of  
29 dividends on some other class or series of shares, unless the aggregate  
30 amount of the dividends is included in the preferential amount; and

31       (iii) The market value per share of the same class or series of  
32 shares on the announcement date with respect to a significant business  
33 transaction or on the date of the acquiring person's share acquisition  
34 time, whichever is higher; plus interest compounded annually from such  
35 a date through the consummation date at the rate for one-year United  
36 States treasury obligations from time to time in effect; less the  
37 aggregate amount of any cash dividends paid and the market value of any  
38 dividends paid other than in cash, per share of the same class or  
39 series of shares since the date, up to the amount of the interest.

1       (c) The consideration to be received by holders of a particular  
2 class or series of outstanding shares, including common shares, of the  
3 target corporation in a business combination is in cash or in the same  
4 form as the acquiring person has used to acquire the largest number of  
5 shares of the same class or series of shares previously acquired by the  
6 person, and the consideration shall be distributed promptly.

7       (3) Subsection (2) of this section does not apply to a target  
8 corporation that on the effective date of this act had a provision in  
9 its articles of incorporation, adopted under RCW 23B.17.020(3)(d),  
10 expressly electing not to be covered under RCW 23B.17.020, which is  
11 repealed by section 6 of this act.

12       ~~(4) A ((target corporation that engages in a)) significant business~~  
13 ~~transaction that ((violates)) is made in violation of subsection (1) or~~  
14 ~~(2) of this section and that is not exempt under RCW ((23B.19.010 shall~~  
15 ~~have its certificate of incorporation or certificate of authority to~~  
16 ~~transact business in this state revoked under RCW 23B.14.200 or~~  
17 ~~23B.15.300 for domestic or foreign target corporations, respectively.~~  
18 ~~In addition, such significant transaction shall be)) 23B.19.030 is~~  
19 ~~void.~~

20       **Sec. 4.** RCW 23B.01.400 and 1995 c 47 s 1 are each amended to read  
21 as follows:

22       Unless the context clearly requires otherwise, the definitions in  
23 this section apply throughout this title.

24       (1) "Articles of incorporation" include amended and restated  
25 articles of incorporation and articles of merger.

26       (2) "Authorized shares" means the shares of all classes a domestic  
27 or foreign corporation is authorized to issue.

28       (3) "Conspicuous" means so written that a reasonable person against  
29 whom the writing is to operate should have noticed it. For example,  
30 printing in italics or boldface or contrasting color, or typing in  
31 capitals or underlined, is conspicuous.

32       (4) "Corporation" or "domestic corporation" means a corporation for  
33 profit, which is not a foreign corporation, incorporated under or  
34 subject to the provisions of this title.

35       (5) "Deliver" includes (a) mailing and (b) for purposes of  
36 delivering a demand, consent, or waiver to the corporation or one of  
37 its officers, transmission by facsimile equipment.

1 (6) "Distribution" means a direct or indirect transfer of money or  
2 other property, except its own shares, or incurrence of indebtedness by  
3 a corporation to or for the benefit of its shareholders in respect to  
4 any of its shares. A distribution may be in the form of a declaration  
5 or payment of a dividend; a distribution in partial or complete  
6 liquidation, or upon voluntary or involuntary dissolution; a purchase,  
7 redemption, or other acquisition of shares; a distribution of  
8 indebtedness; or otherwise.

9 (7) "Effective date of notice" has the meaning provided in RCW  
10 23B.01.410.

11 (8) "Employee" includes an officer but not a director. A director  
12 may accept duties that make the director also an employee.

13 (9) "Entity" includes a corporation and foreign corporation, not-  
14 for-profit corporation, profit and not-for-profit unincorporated  
15 association, business trust, estate, partnership, trust, and two or  
16 more persons having a joint or common economic interest, and the state,  
17 United States, and a foreign government.

18 (10) "Foreign corporation" means a corporation for profit  
19 incorporated under a law other than the law of this state.

20 (11) "Foreign limited partnership" means a partnership formed under  
21 laws other than of this state and having as partners one or more  
22 general partners and one or more limited partners.

23 (12) "Governmental subdivision" includes authority, county,  
24 district, and municipality.

25 (13) "Includes" denotes a partial definition.

26 (14) "Individual" includes the estate of an incompetent or deceased  
27 individual.

28 (15) "Limited partnership" or "domestic limited partnership" means  
29 a partnership formed by two or more persons under the laws of this  
30 state and having one or more general partners and one or more limited  
31 partners.

32 (16) "Means" denotes an exhaustive definition.

33 (17) "Notice" has the meaning provided in RCW 23B.01.410.

34 (18) "Person" includes an individual and an entity.

35 (19) "Principal office" means the office, in or out of this state,  
36 so designated in the annual report where the principal executive  
37 offices of a domestic or foreign corporation are located.

38 (20) "Proceeding" includes civil suit and criminal, administrative,  
39 and investigatory action.

1 (21) "Public company" means a corporation that has a class of  
2 shares registered with the federal securities and exchange commission  
3 pursuant to section 12 or 15 of the securities exchange act of 1934, or  
4 section 8 of the investment company act of 1940, or any successor  
5 statute(~~(, and that has more than three hundred holders of record of~~  
6 ~~its shares)~~).

7 (22) "Record date" means the date established under chapter 23B.07  
8 RCW on which a corporation determines the identity of its shareholders  
9 and their shareholdings for purposes of this title. The determinations  
10 shall be made as of the close of business on the record date unless  
11 another time for doing so is specified when the record date is fixed.

12 (23) "Secretary" means the corporate officer to whom the board of  
13 directors has delegated responsibility under RCW 23B.08.400(3) for  
14 custody of the minutes of the meetings of the board of directors and of  
15 the shareholders and for authenticating records of the corporation.

16 (24) "Shares" means the units into which the proprietary interests  
17 in a corporation are divided.

18 (25) "Shareholder" means the person in whose name shares are  
19 registered in the records of a corporation or the beneficial owner of  
20 shares to the extent of the rights granted by a nominee certificate on  
21 file with a corporation.

22 (26) "State," when referring to a part of the United States,  
23 includes a state and commonwealth, and their agencies and governmental  
24 subdivisions, and a territory and insular possession, and their  
25 agencies and governmental subdivisions, of the United States.

26 (27) "Subscriber" means a person who subscribes for shares in a  
27 corporation, whether before or after incorporation.

28 (28) "United States" includes a district, authority, bureau,  
29 commission, department, and any other agency of the United States.

30 (29) "Voting group" means all shares of one or more classes or  
31 series that under the articles of incorporation or this title are  
32 entitled to vote and be counted together collectively on a matter at a  
33 meeting of shareholders. All shares entitled by the articles of  
34 incorporation or this title to vote generally on the matter are for  
35 that purpose a single voting group.

36 **Sec. 5.** RCW 23B.02.020 and 1994 c 256 s 27 are each amended to  
37 read as follows:

38 (1) The articles of incorporation must set forth:

1 (a) A corporate name for the corporation that satisfies the  
2 requirements of RCW 23B.04.010;

3 (b) The number of shares the corporation is authorized to issue in  
4 accordance with RCW 23B.06.010 and 23B.06.020;

5 (c) The street address of the corporation's initial registered  
6 office and the name of its initial registered agent at that office in  
7 accordance with RCW 23B.05.010; and

8 (d) The name and address of each incorporator in accordance with  
9 RCW 23B.02.010.

10 (2) The articles of incorporation or bylaws must either specify  
11 the number of directors or specify the process by which the number of  
12 directors will be fixed, unless the articles of incorporation dispense  
13 with a board of directors pursuant to RCW 23B.08.010.

14 (3) Unless its articles of incorporation provide otherwise, a  
15 corporation is governed by the following provisions:

16 (a) The board of directors may adopt bylaws to be effective only in  
17 an emergency as provided by RCW 23B.02.070;

18 (b) A corporation has the purpose of engaging in any lawful  
19 business under RCW 23B.03.010;

20 (c) A corporation has perpetual existence and succession in its  
21 corporate name under RCW 23B.03.020;

22 (d) A corporation has the same powers as an individual to do all  
23 things necessary or convenient to carry out its business and affairs,  
24 including itemized powers under RCW 23B.03.020;

25 (e) All shares are of one class and one series, have unlimited  
26 voting rights, and are entitled to receive the net assets of the  
27 corporation upon dissolution under RCW 23B.06.010 and 23B.06.020;

28 (f) If more than one class of shares is authorized, all shares of  
29 a class must have preferences, limitations, and relative rights  
30 identical to those of other shares of the same class under RCW  
31 23B.06.010;

32 (g) If the board of directors is authorized to designate the number  
33 of shares in a series, the board may, after the issuance of shares in  
34 that series, reduce the number of authorized shares of that series  
35 under RCW 23B.06.020;

36 (h) The board of directors must authorize any issuance of shares  
37 under RCW 23B.06.210;

38 (i) Shares may be issued pro rata and without consideration to  
39 shareholders under RCW 23B.06.230;

1 (j) Shares of one class or series may not be issued as a share  
2 dividend with respect to another class or series, unless there are no  
3 outstanding shares of the class or series to be issued, or a majority  
4 of votes entitled to be cast by such class or series approve as  
5 provided in RCW 23B.06.230;

6 (k) A corporation may issue rights, options, or warrants for the  
7 purchase of shares of the corporation under RCW 23B.06.240;

8 (l) A shareholder has, and may waive, a preemptive right to acquire  
9 the corporation's unissued shares as provided in RCW 23B.06.300;

10 (m) Shares of a corporation acquired by it may be reissued under  
11 RCW 23B.06.310;

12 (n) The board may authorize and the corporation may make  
13 distributions not prohibited by statute under RCW 23B.06.400;

14 (o) The preferential rights upon dissolution of certain  
15 shareholders will be considered a liability for purposes of  
16 determining the validity of a distribution under RCW 23B.06.400;

17 (p) Unless this title requires otherwise, the corporation is  
18 required to give notice only to shareholders entitled to vote at a  
19 meeting and the notice for an annual meeting need not include the  
20 purpose for which the meeting is called under RCW 23B.07.050;

21 (q) A corporation that is a public company shall hold a special  
22 meeting of shareholders if the holders of at least ten percent of the  
23 votes entitled to be cast on any issue proposed to be considered at the  
24 meeting demand a meeting under RCW 23B.07.020;

25 (r) Subject to statutory exceptions, each outstanding share,  
26 regardless of class, is entitled to one vote on each matter voted on at  
27 a shareholders' meeting under RCW 23B.07.210;

28 (s) A majority of the votes entitled to be cast on a matter by a  
29 voting group constitutes a quorum, unless the title provides otherwise  
30 under RCW 23B.07.250 and 23B.07.270;

31 (t) Action on a matter, other than election of directors, by a  
32 voting group is approved if the votes cast within the voting group  
33 favoring the action exceed the votes cast opposing the action, unless  
34 this title requires a greater number of affirmative votes under RCW  
35 23B.07.250;

36 (u) All shares of one or more classes or series that are entitled  
37 to vote will be counted together collectively on any matter at a  
38 meeting of shareholders under RCW 23B.07.260;

1 (v) Directors are elected by cumulative voting under RCW  
2 23B.07.280;

3 (w) Directors are elected by a plurality of votes cast by shares  
4 entitled to vote under RCW 23B.07.280;

5 (x) A corporation must have a board of directors under RCW  
6 23B.08.010;

7 (y) All corporate powers must be exercised by or under the  
8 authority of, and the business and affairs of the corporation managed  
9 under the direction of, its board of directors under RCW 23B.08.010;

10 (z) The shareholders may remove one or more directors with or  
11 without cause under RCW 23B.08.080;

12 (aa) A vacancy on the board of directors may be filled by the  
13 shareholders or the board of directors under RCW 23B.08.100;

14 (bb) A corporation shall indemnify a director who was wholly  
15 successful in the defense of any proceeding to which the director was  
16 a party because the director is or was a director of the corporation  
17 against reasonable expenses incurred by the director in connection with  
18 the proceeding under RCW 23B.08.520;

19 (cc) A director of a corporation who is a party to a proceeding  
20 may apply for indemnification of reasonable expenses incurred by the  
21 director in connection with the proceeding to the court conducting the  
22 proceeding or to another court of competent jurisdiction under RCW  
23 23B.08.540;

24 (dd) An officer of the corporation who is not a director is  
25 entitled to mandatory indemnification under RCW 23B.08.520, and is  
26 entitled to apply for court-ordered indemnification under RCW  
27 23B.08.540, in each case to the same extent as a director under RCW  
28 23B.08.570;

29 (ee) The corporation may indemnify and advance expenses to an  
30 officer, employee, or agent of the corporation who is not a director to  
31 the same extent as to a director under RCW 23B.08.570;

32 (ff) A corporation may indemnify and advance expenses to an  
33 officer, employee, or agent who is not a director to the extent,  
34 consistent with law, that may be provided by its articles of  
35 incorporation, bylaws, general or specific action of its board of  
36 directors, or contract under RCW 23B.08.570;

37 (gg) A corporation's board of directors may adopt certain  
38 amendments to the corporation's articles of incorporation without  
39 shareholder action under RCW 23B.10.020;

1 (hh) Unless the title or the board of directors require a greater  
2 vote or a vote by voting groups, an amendment to the corporation's  
3 articles of incorporation must be approved by each voting group  
4 entitled to vote on the proposed amendment by two-thirds, or, in the  
5 case of a public company, a majority, of all the votes entitled to be  
6 cast by that voting group under RCW 23B.10.030;

7 (ii) A corporation's board of directors may amend or repeal the  
8 corporation's bylaws unless this title reserves this power exclusively  
9 to the shareholders in whole or in part, or unless the shareholders in  
10 amending or repealing a bylaw provide expressly that the board of  
11 directors may not amend or repeal that bylaw under RCW 23B.10.200;

12 (jj) Unless this title or the board of directors require a greater  
13 vote or a vote by voting groups, a plan of merger or share exchange  
14 must be approved by each voting group entitled to vote on the merger or  
15 share exchange by two-thirds of all the votes entitled to be cast by  
16 that voting group under RCW 23B.11.030;

17 (kk) Approval by the shareholders of the sale, lease, exchange, or  
18 other disposition of all, or substantially all, the corporation's  
19 property in the usual and regular course of business is not required  
20 under RCW 23B.12.010;

21 (ll) Approval by the shareholders of the mortgage, pledge,  
22 dedication to the repayment of indebtedness, or other encumbrance of  
23 any or all of the corporation's property, whether or not in the usual  
24 and regular course of business, is not required under RCW 23B.12.010;

25 (mm) Unless the board of directors requires a greater vote or a  
26 vote by voting groups, a sale, lease, exchange, or other disposition of  
27 all or substantially all of the corporation's property, other than in  
28 the usual and regular course of business, must be approved by each  
29 voting group entitled to vote on such transaction by two-thirds of all  
30 votes entitled to be cast by that voting group under RCW 23B.12.020;  
31 and

32 (nn) Unless the board of directors requires a greater vote or a  
33 vote by voting groups, a proposal to dissolve must be approved by each  
34 voting group entitled to vote on the dissolution by two-thirds of all  
35 votes entitled to be cast by that voting group under RCW 23B.14.020(  
36 and

37 ~~(oo) A corporation with fewer than three hundred holders of record~~  
38 ~~of its shares does not require special approval of interested~~  
39 ~~shareholder transactions under RCW 23B.17.020)).~~

1 (4) Unless its articles of incorporation or its bylaws provide  
2 otherwise, a corporation is governed by the following provisions:

3 (a) The board of directors may authorize the issuance of some or  
4 all of the shares of any or all of the corporation's classes or series  
5 without certificates under RCW 23B.06.260;

6 (b) A corporation that is not a public company shall hold a special  
7 meeting of shareholders if the holders of at least ten percent of the  
8 votes entitled to be cast on any issue proposed to be considered at the  
9 meeting demand a meeting under RCW 23B.07.020;

10 (c) A director need not be a resident of this state or a  
11 shareholder of the corporation under RCW 23B.08.020;

12 (d) The board of directors may fix the compensation of directors  
13 under RCW 23B.08.110;

14 (e) Members of the board of directors may participate in a meeting  
15 of the board by any means of similar communication by which all  
16 directors participating can hear each other during the meeting under  
17 RCW 23B.08.200;

18 (f) Action permitted or required by this title to be taken at a  
19 board of directors' meeting may be taken without a meeting if action is  
20 taken by all members of the board under RCW 23B.08.210;

21 (g) Regular meetings of the board of directors may be held without  
22 notice of the date, time, place, or purpose of the meeting under RCW  
23 23B.08.220;

24 (h) Special meetings of the board of directors must be preceded by  
25 at least two days' notice of the date, time, and place of the meeting,  
26 and the notice need not describe the purpose of the special meeting  
27 under RCW 23B.08.220;

28 (i) A quorum of a board of directors consists of a majority of the  
29 number of directors under RCW 23B.08.240;

30 (j) If a quorum is present when a vote is taken, the affirmative  
31 vote of a majority of directors present is the act of the board of  
32 directors under RCW 23B.08.240;

33 (k) A board of directors may create one or more committees and  
34 appoint members of the board of directors to serve on them under RCW  
35 23B.08.250; and

36 (l) Unless approved by the shareholders, a corporation may  
37 indemnify, or make advances to, a director for reasonable expenses  
38 incurred in the defense of any proceeding to which the director was a

1 party because of being a director only to the extent such action is  
2 consistent with RCW 23B.08.500 through 23B.08.580.

3 (5) The articles of incorporation may contain the following  
4 provisions:

5 (a) The names and addresses of the individuals who are to serve as  
6 initial directors;

7 (b) The par value of any authorized shares or classes of shares;

8 (c) Provisions not inconsistent with law related to the management  
9 of the business and the regulation of the affairs of the corporation;

10 (d) Any provision that under this title is required or permitted  
11 to be set forth in the bylaws;

12 (e) Provisions not inconsistent with law defining, limiting, and  
13 regulating the powers of the corporation, its board of directors, and  
14 shareholders;

15 (f) If the articles of incorporation authorize dividing shares  
16 into classes, the election of all or a specified number of directors  
17 may be effected by the holders of one or more authorized classes of  
18 shares under RCW 23B.08.040;

19 (g) The terms of directors may be staggered under RCW 23B.08.060;

20 (h) Shares may be redeemable or convertible (i) at the option of  
21 the corporation, the shareholder, or another person, or upon the  
22 occurrence of a designated event; (ii) for cash, indebtedness,  
23 securities, or other property; or (iii) in a designated amount or in an  
24 amount determined in accordance with a designated formula or by  
25 reference to extrinsic data or events under RCW 23B.06.010; and

26 (i) A director's personal liability to the corporation or its  
27 shareholders for monetary damages for conduct as a director may be  
28 eliminated or limited under RCW 23B.08.320.

29 (6) The articles of incorporation or the bylaws may contain the  
30 following provisions:

31 (a) A restriction on the transfer or registration of transfer of  
32 the corporation's shares under RCW 23B.06.270;

33 (b) Shareholders may participate in a meeting of shareholders by  
34 any means of communication by which all persons participating in the  
35 meeting can hear each other under RCW 23B.07.080;

36 (c) A quorum of the board of directors may consist of as few as  
37 one-third of the number of directors under RCW 23B.08.240;

38 (d) If the corporation is registered as an investment company under  
39 the investment company act of 1940, a provision limiting the

1 requirement to hold an annual meeting of shareholders as provided in  
2 RCW 23B.07.010(2); and

3 (e) If the corporation is registered as an investment company under  
4 the investment company act of 1940, a provision establishing terms of  
5 directors which terms may be longer than one year as provided in RCW  
6 23B.05.050.

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

9 NEW SECTION. **Sec. 6.** RCW 23B.17.020 and 1989 c 165 s 189 are each  
10 repealed.

--- END ---