

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1148

Chapter 97, Laws of 2013

63rd Legislature
2013 Regular Session

BUSINESS CORPORATION ACT--DISSENTERS' RIGHTS

EFFECTIVE DATE: 07/28/13

Passed by the House February 27, 2013
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 15, 2013
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved May 1, 2013, 1:50 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1148** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 1, 2013

**Secretary of State
State of Washington**

HOUSE BILL 1148

Passed Legislature - 2013 Regular Session

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Pedersen, Rodne, Goodman, and Ryu; by request of Washington State Bar Association

Read first time 01/17/13. Referred to Committee on Judiciary.

1 AN ACT Relating to dissenters' rights under the Washington business
2 corporation act; amending RCW 23B.13.220 and 23B.13.230; and reenacting
3 and amending RCW 23B.13.020.

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

5 **Sec. 1.** RCW 23B.13.020 and 2009 c 189 s 41 and 2009 c 188 s 1404
6 are each reenacted and amended to read as follows:

7 (1) A shareholder is entitled to dissent from, and obtain payment
8 of the fair value of the shareholder's shares in the event of, any of
9 the following corporate actions:

10 (a) A plan of merger, which has become effective, to which the
11 corporation is a party (i) if shareholder approval was required for the
12 merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation,
13 and the shareholder was entitled to vote on the merger, or (ii) if the
14 corporation was a subsidiary (~~(that has been merged)~~) and the plan of
15 merger provided for the merger of the subsidiary with its parent under
16 RCW 23B.11.040;

17 (b) A plan of share exchange, which has become effective, to which
18 the corporation is a party as the corporation whose shares have been
19 acquired, if the shareholder was entitled to vote on the plan;

1 (c) A sale or exchange, which has become effective, of all, or
2 substantially all, of the property of the corporation other than in the
3 usual and regular course of business, if the shareholder was entitled
4 to vote on the sale or exchange, including a sale in dissolution, but
5 not including a sale pursuant to court order or a sale for cash
6 pursuant to a plan by which all or substantially all of the net
7 proceeds of the sale will be distributed to the shareholders within one
8 year after the date of sale;

9 (d) An amendment of the articles of incorporation, whether or not
10 the shareholder was entitled to vote on the amendment, if the amendment
11 effects a redemption or cancellation of all of the shareholder's shares
12 in exchange for cash or other consideration other than shares of the
13 corporation; ((~~or~~))

14 (e) Any action described in RCW 23B.25.120; or

15 (f) Any corporate action approved pursuant to a shareholder vote to
16 the extent the articles of incorporation, bylaws, or a resolution of
17 the board of directors provides that voting or nonvoting shareholders
18 are entitled to dissent and obtain payment for their shares.

19 (2) A shareholder entitled to dissent and obtain payment for the
20 shareholder's shares under this chapter may not challenge the corporate
21 action creating the shareholder's entitlement unless the action fails
22 to comply with the procedural requirements imposed by this title, RCW
23 25.10.831 through 25.10.886, the articles of incorporation, or the
24 bylaws, or is fraudulent with respect to the shareholder or the
25 corporation.

26 (3) The right of a dissenting shareholder to obtain payment of the
27 fair value of the shareholder's shares shall terminate upon the
28 occurrence of any one of the following events:

29 (a) The proposed corporate action is abandoned or rescinded;

30 (b) A court having jurisdiction permanently enjoins or sets aside
31 the corporate action; or

32 (c) The shareholder's demand for payment is withdrawn with the
33 written consent of the corporation.

34 **Sec. 2.** RCW 23B.13.220 and 2009 c 189 s 44 are each amended to
35 read as follows:

36 (1) If proposed corporate action creating dissenters' rights under
37 RCW 23B.13.020 is approved at a shareholders' meeting, the corporation

1 shall within ten days after the effective date of the corporate action
2 deliver to all shareholders who satisfied the requirements of RCW
3 23B.13.210(1) a notice in compliance with subsection ~~((+3+))~~ (5) of
4 this section.

5 (2) If proposed corporate action creating dissenters' rights under
6 RCW 23B.13.020 is approved without a vote of shareholders in accordance
7 with RCW 23B.07.040, the notice delivered pursuant to RCW
8 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW
9 23B.13.210(2) shall comply with subsection ~~((+3+))~~ (5) of this section.

10 (3) In the case of proposed corporate action creating dissenters'
11 rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten
12 days after the effective date of the corporate action deliver to all
13 shareholders of the subsidiary other than the parent a notice in
14 compliance with subsection (5) of this section.

15 (4) In the case of proposed corporate action creating dissenters'
16 rights under RCW 23B.13.020(1)(d) that, pursuant to RCW
17 23B.10.020(4)(b), is not required to be approved by the shareholders of
18 the corporation, the corporation shall within ten days after the
19 effective date of the corporate action deliver to all shareholders
20 entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance
21 with subsection (5) of this section.

22 (5) Any notice under subsection (1) ~~((+3+))~~, (2), (3), or (4) of
23 this section must:

24 (a) State where the payment demand must be sent and where and when
25 certificates for certificated shares must be deposited;

26 (b) Inform holders of uncertificated shares to what extent transfer
27 of the shares will be restricted after the payment demand is received;

28 (c) Supply a form for demanding payment that includes the date of
29 the first announcement to news media or to shareholders of the terms of
30 the proposed corporate action and requires that the person asserting
31 dissenters' rights certify whether or not the person acquired
32 beneficial ownership of the shares before that date;

33 (d) Set a date by which the corporation must receive the payment
34 demand, which date may not be fewer than thirty nor more than sixty
35 days after the date the notice in subsection (1) ~~((+3+))~~, (2), (3), or
36 (4) of this section is delivered; and

37 (e) Be accompanied by a copy of this chapter.

1 **Sec. 3.** RCW 23B.13.230 and 2002 c 297 s 39 are each amended to
2 read as follows:

3 (1) A shareholder sent a notice described in RCW 23B.13.220 must
4 demand payment, certify whether the shareholder acquired beneficial
5 ownership of the shares before the date required to be set forth in the
6 notice pursuant to RCW 23B.13.220(~~(+2)~~) (5)(c), and deposit the
7 shareholder's certificates, all in accordance with the terms of the
8 notice.

9 (2) The shareholder who demands payment and deposits the
10 shareholder's share certificates under subsection (1) of this section
11 retains all other rights of a shareholder until the proposed corporate
12 action is effected.

13 (3) A shareholder who does not demand payment or deposit the
14 shareholder's share certificates where required, each by the date set
15 in the notice, is not entitled to payment for the shareholder's shares
16 under this chapter.

Passed by the House February 27, 2013.
Passed by the Senate April 15, 2013.
Approved by the Governor May 1, 2013.
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