
SENATE BILL 6205

State of Washington

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By Senators Pedersen, O'Ban, Frockt, and Fain; by request of Washington State Bar Association

Read first time 01/12/16. Referred to Committee on Law & Justice.

1 AN ACT Relating to clarifying when a person is an acquiring
2 person of a target corporation with more than one class of voting
3 stock; and amending RCW 23B.19.020, 23B.19.030, and 23B.19.040.

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

5 **Sec. 1.** RCW 23B.19.020 and 2015 c 176 s 2147 are each amended to
6 read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Acquiring person" means a person or group of persons, other
10 than the target corporation or a subsidiary of the target
11 corporation, who ~~((beneficially owns))~~ is the beneficial owner of
12 voting shares entitled to cast votes comprising ten percent or more
13 of the ~~((outstanding voting shares))~~ voting power of the target
14 corporation~~((The))~~; provided, however, that the term "acquiring
15 person" does not include ~~((a))~~ any person who (a) beneficially owned
16 voting shares entitled to cast votes comprising ten percent or more
17 of the ~~((outstanding voting shares))~~ voting power of the target
18 corporation on March 23, 1988; (b) ~~((acquires its shares))~~ acquired
19 its voting shares of the target corporation solely by gift,
20 inheritance, or in a transaction in which no consideration is
21 exchanged; (c) equals or exceeds the ten percent threshold as a

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

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

27 (3) "Announcement date," when used in reference to any
28 significant business transaction, means the date of the first public
29 announcement of the final, definitive proposal for such a significant
30 business transaction.

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

1 (5) (~~("Beneficial ownership," when used with respect to any~~
2 ~~shares, means ownership by a person:~~

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

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

23 ~~(c) Who has any agreement, arrangement, or understanding, whether~~
24 ~~or not in writing, for the purpose of acquiring, holding, voting,~~
25 ~~except voting pursuant to a revocable proxy or consent as described~~
26 ~~in (b)(ii) of this subsection, or disposing of the shares with any~~
27 ~~other person who beneficially owns, or whose affiliates or associates~~
28 ~~beneficially own, directly or indirectly, the shares.)) (a)(i)~~
29 "Beneficial owner" when used with respect to any shares means a
30 person who individually or with or through any of its affiliates or
31 associates:

32 (A) Has or shares:

33 (I) The power to vote, or to direct the voting of, the shares,
34 directly or indirectly;

35 (II) The power to dispose, or to direct the disposition of, the
36 shares, directly or indirectly;

37 (III) The right to acquire the shares, whether the right is
38 exercisable immediately or only after the passage of time, pursuant
39 to any agreement, arrangement, or understanding, whether or not in

1 writing, or upon the exercise of conversion rights, exchange rights,
2 warrants or options, or otherwise; or

3 (IV) The right to vote the shares pursuant to any agreement,
4 arrangement, or understanding, whether or not in writing; or

5 (B) Has any agreement, arrangement, or understanding, whether or
6 not in writing, for the purpose of acquiring, holding, voting, or
7 disposing of the shares with any other person who beneficially owns,
8 or whose affiliates or associates beneficially own, directly or
9 indirectly, the shares.

10 (ii)(A) A person is not the beneficial owner of shares under
11 (a)(i)(A)(III) of this subsection with respect to shares tendered
12 pursuant to a tender or exchange offer made by the person or any of
13 the person's affiliates or associates until the tendered shares are
14 accepted for purchase or exchange.

15 (B) A person is not the beneficial owner of any shares under
16 (a)(i)(A)(IV) of this subsection if the agreement, arrangement, or
17 understanding to vote the shares arises solely from a revocable proxy
18 or consent given in response to a proxy or consent solicitation made
19 in accordance with the applicable rules and regulations under the
20 exchange act and is not then reportable on schedule 13D under the
21 exchange act, or any comparable or successor report.

22 (C) A person is not the beneficial owner of any shares under
23 (a)(i)(B) of this subsection if the agreement, arrangement, or
24 understanding for the purpose of voting the shares arises solely from
25 a revocable proxy or consent given in response to a proxy or consent
26 solicitation made in accordance with the applicable rules and
27 regulations under the exchange act and is not then reportable on
28 schedule 13D under the exchange act, or any comparable or successor
29 report.

30 (b) The terms "beneficial ownership," "beneficially own," and
31 "beneficially owned" have meanings correlative to the meaning of
32 "beneficial owner."

33 (6) "Common shares" means any shares other than preferred shares.

34 (7) "Consummation date," with respect to any significant business
35 transaction, means the date of consummation of such a significant
36 business transaction, or, in the case of a significant business
37 transaction as to which a shareholder vote is taken, the later of the
38 business day prior to the vote or twenty days prior to the date of
39 consummation of such a significant business transaction.

1 (8) "Control," "controlling," "controlled by," and "under common
2 control with," means the possession, directly or indirectly, of the
3 power to direct or cause the direction of the management and policies
4 of a person, whether through the ownership of voting shares, by
5 contract, or otherwise. A person's beneficial ownership of (~~ten~~
6 ~~percent or more of a domestic or foreign corporation's outstanding~~
7 ~~voting shares~~) voting shares entitled to cast votes comprising ten
8 percent or more of the voting power of a domestic or foreign
9 corporation shall create a rebuttable presumption that such person
10 has control of such corporation. However, a person does not have
11 control of a domestic or foreign corporation if the person holds
12 voting shares, in good faith and not for the purpose of circumventing
13 this chapter, as an agent, bank, broker, nominee, custodian, or
14 trustee for one or more beneficial owners who do not individually or
15 as a group have control of such corporation.

16 (9) "Domestic corporation" means an issuer of voting shares which
17 is organized under chapter 23B.02 RCW or any predecessor provision.

18 (10) "Exchange act" means the federal securities exchange act of
19 1934, as amended.

20 (11) "Market value," in the case of property other than cash or
21 shares, means the fair market value of the property on the date in
22 question as determined by the board of directors of the target
23 corporation in good faith.

24 (12) "Person" means an individual, domestic or foreign
25 corporation, partnership, trust, unincorporated association, or other
26 entity; an affiliate or associate of any such person; or any two or
27 more persons acting as a partnership, syndicate, or other group for
28 the purpose of acquiring, holding, or dispersing of securities of a
29 domestic or foreign corporation.

30 (13) "Preferred shares" means any class or series of shares of a
31 target corporation which under the bylaws or articles of
32 incorporation of such a corporation is entitled to receive payment of
33 dividends prior to any payment of dividends on some other class or
34 series of shares, or is entitled in the event of any voluntary
35 liquidation, dissolution, or winding up of the target corporation to
36 receive payment or distribution of a preferential amount before any
37 payments or distributions are received by some other class or series
38 of shares.

39 (14) "Share acquisition time" means the time at which a person
40 first becomes an acquiring person of a target corporation.

1 (15) "Shares" means any:

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

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

9 (~~(15)~~) (16) "Significant business transaction" means:

10 (a) A merger, share exchange, or consolidation of a target
11 corporation or a subsidiary of a target corporation with (i) an
12 acquiring person, or (ii) any other domestic or foreign corporation
13 which is, or after the merger, share exchange, or consolidation would
14 be, an affiliate or associate of the acquiring person;

15 (b) A sale, lease, exchange, mortgage, pledge, transfer, or other
16 disposition or encumbrance, whether in one transaction or a series of
17 transactions, to or with an acquiring person or an affiliate or
18 associate of an acquiring person of assets of a target corporation or
19 a subsidiary of a target corporation (i) having an aggregate market
20 value equal to five percent or more of the aggregate market value of
21 all the assets, determined on a consolidated basis, of the target
22 corporation, (ii) having an aggregate market value equal to five
23 percent or more of the aggregate market value of all the outstanding
24 shares of the target corporation, or (iii) representing five percent
25 or more of the earning power or net income, determined on a
26 consolidated basis, of the target corporation;

27 (c) The termination, while the corporation has an acquiring
28 person and as a result of the acquiring person's acquisition of ten
29 percent or more of the shares of the corporation, of five percent or
30 more of the employees of the target corporation or its subsidiaries
31 employed in this state, whether at one time or over the five-year
32 period following the share acquisition time. For the purposes of (c)
33 of this subsection, a termination other than an employee's death or
34 disability or bona fide voluntary retirement, transfer, resignation,
35 termination for cause under applicable common law principles, or
36 leave of absence shall be presumed to be a termination resulting from
37 the acquiring person's acquisition of shares, which presumption is
38 rebuttable. A bona fide voluntary transfer of employees between the
39 target corporation and its subsidiaries or between its subsidiaries
40 is not a termination for the purposes of (c) of this subsection;

1 (d) The issuance, transfer, or redemption by a target corporation
2 or a subsidiary of a target corporation, whether in one transaction
3 or a series of transactions, of shares or of options, warrants, or
4 rights to acquire shares of a target corporation or a subsidiary of a
5 target corporation to or beneficially owned by an acquiring person or
6 an affiliate or associate of an acquiring person except pursuant to
7 the exercise of warrants or rights to purchase shares offered, or a
8 dividend, distribution, or redemption paid or made pro rata to, all
9 shareholders or holders of options, warrants, or rights to acquire
10 shares of the target corporation, and except for involuntary
11 redemptions permitted by the target corporation's charter or by the
12 law of this state or the state of incorporation;

13 (e) The liquidation or dissolution of a target corporation
14 proposed by, or pursuant to an agreement, arrangement, or
15 understanding, whether or not in writing, with an acquiring person or
16 an affiliate or associate of an acquiring person;

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

34 (g) A receipt by an acquiring person or an affiliate or associate
35 of an acquiring person of the benefit, directly or indirectly, except
36 proportionately as a shareholder of a target corporation, of loans,
37 advances, guarantees, pledges, or other financial assistance or tax
38 credits or other tax advantages provided by or through a target
39 corporation.

1 (~~(16) "Share acquisition time" means the time at which a person~~
2 ~~first becomes an acquiring person of a target corporation.~~)

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

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

9 (19) "Target corporation" means:

10 (a) Every domestic corporation, if:

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

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

20 (b) Every foreign corporation required to register to transact
21 business in this state pursuant to chapter 23B.15 RCW and, Article 5
22 of chapter 23.95 RCW, if:

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

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

28 (iii) The corporation has: (A) More than ten percent of its
29 shareholders of record resident in the state; or (B) more than ten
30 percent of its shares owned of record by state residents; or (C) one
31 thousand or more shareholders of record resident in the state;

32 (iv) A majority of the corporation's employees, together with
33 those of its subsidiaries, are residents of the state or the
34 corporation, together with its subsidiaries, employs more than one
35 thousand residents of the state; and

36 (v) A majority of the corporation's tangible assets, together
37 with those of its subsidiaries, measured by market value, are located
38 in the state or the corporation, together with its subsidiaries, has
39 more than fifty million dollars' worth of tangible assets located in
40 the state.

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

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

21 A domestic or foreign corporation shall be deemed to be a target
22 corporation if the domestic or foreign corporation's failure to
23 satisfy the requirements of this subsection is caused by the action
24 of, or is the result of a proposal by, an acquiring person or
25 affiliate or associate of an acquiring person.

26 (20) "Voting power" means the total number of votes entitled to
27 be cast by all of the outstanding voting shares of a corporation.

28 (21) "Voting shares" means shares of all classes of a corporation
29 entitled to vote generally in the election of directors.

30 **Sec. 2.** RCW 23B.19.030 and 1996 c 155 s 2 are each amended to
31 read as follows:

32 This chapter does not apply to a significant business transaction
33 of a target corporation with an acquiring person of the target
34 corporation which became an acquiring person inadvertently, if the
35 acquiring person (1) as soon as practicable, divests itself of a
36 sufficient amount of the voting shares of the target corporation so
37 that it no longer is the beneficial owner, directly or indirectly, of
38 (~~ten percent or more of the outstanding voting shares~~) voting
39 shares entitled to cast votes comprising ten percent or more of the

1 voting power of the target corporation, and (2) would not at any time
2 within the five-year period preceding the announcement date of the
3 significant business transaction have been an acquiring person but
4 for the inadvertent acquisition.

5 **Sec. 3.** RCW 23B.19.040 and 2009 c 189 s 56 are each amended to
6 read as follows:

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

11 (i) It is exempted by RCW 23B.19.030;

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

16 (iii) At or subsequent to the acquiring person's share
17 acquisition time, such significant business transaction is approved
18 by a majority of the members of the board of directors of the target
19 corporation and approved at an annual or special meeting of
20 shareholders, and not by written consent, by the affirmative vote of
21 at least two-thirds of the (~~outstanding voting shares~~) votes
22 entitled to be cast by the outstanding voting shares of the target
23 corporation, except shares beneficially owned by or under the voting
24 control of the acquiring person.

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

37 (2) Except for a significant business transaction approved under
38 subsection (1) of this section or exempted by RCW 23B.19.030, in
39 addition to any other requirement, a target corporation shall not

1 engage at any time in any significant business transaction described
2 in RCW 23B.19.020(~~(15)~~) (16) (a) or (e) with any acquiring person
3 of such a corporation other than a significant business transaction
4 that either meets all of the conditions of (a), (b), and (c) of this
5 subsection or meets the conditions of (d) of this subsection:

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

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

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

38 (b) The aggregate amount of the cash and the market value as of
39 the consummation date of consideration other than cash to be received
40 per share by holders of outstanding shares of any class or series of

1 shares, other than common shares, of the target corporation is at
2 least equal to the highest of the following, whether or not the
3 acquiring person has previously acquired any shares of such a class
4 or series of shares:

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

23 (ii) The highest preferential amount per share to which the
24 holders of shares of the same class or series of shares are entitled
25 in the event of any voluntary liquidation, dissolution, or winding up
26 of the target corporation, plus the aggregate amount of any dividends
27 declared or due as to which the holders are entitled prior to payment
28 of dividends on some other class or series of shares, unless the
29 aggregate amount of the dividends is included in the preferential
30 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
33 business transaction or on the date of the acquiring person's share
34 acquisition time, whichever is higher; plus interest compounded
35 annually from such a date through the consummation date at the rate
36 for one-year United States treasury obligations from time to time in
37 effect; less the aggregate amount of any cash dividends paid and the
38 market value of any dividends paid other than in cash, per share of
39 the same class or series of shares since the date, up to the amount
40 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
3 the target corporation in a significant business transaction is in
4 cash or in the same form as the acquiring person has used to acquire
5 the largest number of shares of the same class or series of shares
6 previously acquired by the person, and the consideration shall be
7 distributed promptly.

8 (d) The significant business transaction is approved at an annual
9 meeting of shareholders, or special meeting of shareholders called
10 for such a purpose, no earlier than five years after the acquiring
11 person's share acquisition time, by a majority of the votes entitled
12 to be counted within each voting group entitled to vote separately on
13 the transaction. The votes of all outstanding shares entitled to vote
14 under this title or the articles of incorporation shall be entitled
15 to be counted under this subsection except that the votes of shares
16 as to which an acquiring person has beneficial ownership or voting
17 control may not be counted to determine whether shareholders have
18 approved a transaction for purposes of this subsection. The votes of
19 shares as to which an acquiring person has beneficial ownership or
20 voting control shall, however, be counted in determining whether a
21 transaction is approved under other sections of this title and for
22 purposes of determining a quorum.

23 (3) Subsection (2) of this section does not apply to a target
24 corporation that on June 6, 1996, had a provision in its articles of
25 incorporation, adopted under RCW 23B.17.020(3)(d), expressly electing
26 not to be covered under RCW 23B.17.020, which is repealed by section
27 6, chapter 155, Laws of 1996.

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

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