
SENATE BILL 5011

State of Washington

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By Senators Pedersen, Padden, Frockt, Fain, and Kuderer; by request of Washington State Bar Association

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1 AN ACT Relating to the business corporation act; amending RCW
2 23B.12.010, 23B.12.020, 23B.07.050, 23B.13.020, 23B.07.300,
3 23B.07.320, 23B.11.040, and 23B.19.020; reenacting and amending RCW
4 23B.01.400; adding a new section to chapter 23B.02 RCW; and adding a
5 new chapter to Title 23B RCW.

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

7 NEW SECTION. **Sec. 1.** DEFINITIONS. As used in this chapter:

8 (1) "Date of the defective corporate action" means the date the
9 defective corporate action was purported to have been taken, or, if
10 the exact date is unknown, the approximate date thereof.

11 (2) "Defective corporate action" means (a) any corporate action
12 purportedly taken that is, and at the time such corporate action was
13 purportedly taken would have been, within the power of the
14 corporation, but is void or voidable due to a failure of
15 authorization, and (b) an overissue.

16 (3) "Failure of authorization" means the failure to authorize,
17 approve, or otherwise effect a corporate action in compliance with
18 the provisions of this title, the articles of incorporation or bylaws
19 of the corporation, a corporate resolution, or any plan or agreement
20 to which the corporation is a party, if and to the extent such
21 failure would render such corporate action void or voidable.

1 (4) "Overissue" means the purported issuance of:

2 (a) Shares of a class or series in excess of the number of shares
3 of a class or series the corporation was authorized to issue in
4 accordance with RCW 23B.06.010 at the time of such purported
5 issuance; or

6 (b) Shares of any class or series that was not authorized for
7 issuance by the articles of incorporation at the time of such
8 purported issuance.

9 (5) "Putative shares" means the shares of any class or series of
10 the corporation (including shares issuable upon exercise of rights,
11 options, warrants, or other securities convertible into shares of the
12 corporation, or interests with respect thereto) that were purportedly
13 created or issued as a result of a defective corporate action, that:

14 (a) But for any failure of authorization would constitute valid
15 shares; or

16 (b) Cannot be determined by the board of directors to be valid
17 shares.

18 (6) "Valid shares" means the shares of any class or series of the
19 corporation that have been duly authorized and validly issued in
20 accordance with this title, including as a result of ratification or
21 validation in accordance with this chapter.

22 (7)(a) "Validation effective time," with respect to any defective
23 corporate action ratified or validated in accordance with this
24 chapter, means the later of:

25 (i) The time at which the ratification of the defective corporate
26 action is approved by shareholders, or if approval of shareholders is
27 not required, the time at which the notice required by section 5 of
28 this act becomes effective in accordance with RCW 23B.01.410; and

29 (ii) The time at which any articles of validation filed in
30 accordance with section 7 of this act become effective.

31 (b) The validation effective time will not be affected by the
32 commencement or pendency of any proceeding in accordance with section
33 8(1)(b) of this act or otherwise, unless otherwise ordered by the
34 court.

35 NEW SECTION. **Sec. 2.** DEFECTIVE CORPORATE ACTIONS. (1) A
36 defective corporate action is not void or voidable solely as a result
37 of a failure of authorization if ratified in accordance with section
38 3 of this act or validated in accordance with section 8 of this act.

1 (2) Ratification under section 3 of this act or validation under
2 section 8 of this act is not the exclusive means of ratifying or
3 validating any defective corporate action, and the absence or failure
4 of ratification or validation in accordance with this chapter does
5 not, of itself, affect the validity or effectiveness of any corporate
6 action properly ratified under common law or otherwise, nor does it
7 create a presumption that any such corporate action is or was a
8 defective corporate action or void or voidable.

9 NEW SECTION. **Sec. 3.** RATIFICATION OF DEFECTIVE CORPORATE
10 ACTIONS. (1) Except as otherwise required by subsection (2) of this
11 section, to ratify a defective corporate action under this chapter,
12 the board of directors must adopt a resolution stating:

13 (a) The defective corporate action to be ratified and, if the
14 defective corporate action involved the purported issuance of
15 putative shares, the number and class or series of putative shares
16 purportedly issued;

17 (b) The date of the defective corporate action and, if the
18 defective corporate action involved the purported issuance of
19 putative shares, the date or dates on which the putative shares were
20 purportedly issued;

21 (c) The nature of the failure of authorization with respect to
22 the defective corporate action to be ratified; and

23 (d) That the ratification of the defective corporate action is
24 approved.

25 (2) To ratify a defective corporate action under this chapter
26 involving the election of the initial board of directors of the
27 corporation under RCW 23B.02.050(1)(b), a majority of the persons
28 who, at the time of the ratification, are exercising the powers of
29 directors must adopt a resolution stating:

30 (a) The name of the person or persons who first purportedly
31 approved corporate action as initial directors of the corporation;

32 (b) The earlier of the date on which that person or those persons
33 first purportedly approved corporate action or purportedly were
34 elected as initial directors; and

35 (c) That the ratification of the election of that person or those
36 persons as the initial directors of the corporation is approved.

37 (3) If any provision of this title, the articles of incorporation
38 or bylaws, any corporate resolution, or any plan or agreement to
39 which the corporation is a party at the time the resolution required

1 by subsection (1) of this section is adopted, would have required
2 shareholder approval of the defective corporate action to be
3 ratified, either on the date of the defective corporate action or at
4 the time the resolution required by subsection (1) of this section is
5 adopted, for the ratification of the defective corporate action to be
6 approved:

7 (a) The board of directors must submit the ratification of the
8 defective corporate action for approval by the shareholders in
9 accordance with section 4 of this act;

10 (b) The board of directors must recommend the ratification of the
11 defective corporate action to the shareholders unless (i) the board
12 of directors determines that because of conflict of interest or other
13 special circumstances it should make no recommendation or (ii) RCW
14 23B.08.245 applies, and in either case the board of directors
15 communicates the basis for so proceeding to the shareholders; and

16 (c) The shareholders entitled to vote must approve the
17 ratification of the defective corporate action as provided in section
18 4 of this act.

19 NEW SECTION. **Sec. 4.** QUORUM AND VOTING REQUIREMENTS FOR
20 RATIFICATION. (1) The quorum and voting requirements applicable to
21 the adoption by the board of directors of the resolution required by
22 section 3(1) of this act are the quorum and voting requirements that
23 would be applicable if the defective corporate action was being
24 approved at the time the resolution required by section 3(1) of this
25 act is adopted.

26 (2) Except as provided in subsection (3) of this section, the
27 quorum and voting requirements applicable to the approval by
28 shareholders of the ratification of the defective corporate action
29 required by section 3(3) of this act are the quorum and voting
30 requirements that would be applicable if the defective corporate
31 action was being approved at the time the ratification of the
32 defective corporate action is approved.

33 (3) The approval by shareholders of the ratification of a
34 defective corporate action under this chapter involving the election
35 of directors requires that the votes cast within a voting group
36 favoring such ratification exceed the votes cast within the voting
37 group opposing such ratification at a meeting at which a quorum is
38 present.

1 (4) Putative shares on the record date for determining the
2 shareholders entitled to vote on any matter submitted to shareholders
3 in accordance with section 3(3) of this act (and without giving
4 effect to any ratification of a defective corporate action involving
5 the purported issuance of putative shares that would become valid
6 shares as a result of the approval of such matter) are neither
7 entitled to vote nor to be counted for quorum purposes in any vote to
8 approve the ratification of any defective corporate action.

9 (5) If the ratification of a defective corporate action involving
10 the purported issuance of putative shares would result in an
11 overissue, in addition to the approval required by section 3 of this
12 act, the board of directors and shareholders must approve an
13 amendment to the articles of incorporation in accordance with chapter
14 23B.10 RCW to increase the number of shares of a class or series that
15 the corporation is authorized to issue or to create a class or series
16 of shares that the corporation is authorized to issue so there would
17 be no overissue.

18 NEW SECTION. **Sec. 5.** NOTICE OF RATIFICATION OR VALIDATION. (1)

19 If the ratification of a defective corporate action does not require
20 approval of the shareholders under section 3(3) of this act:

21 (a) The corporation shall notify, promptly after the adoption of
22 the resolution described in section 3 (1) or (2) of this act, each
23 holder of valid shares and putative shares, whether or not entitled
24 to vote, as of the date of the adoption of that resolution by the
25 board of directors, that the ratification of a defective corporate
26 action has been approved by the board of directors pursuant to
27 section 3 of this act. This notice must also be given to each person
28 who was a holder of valid shares or putative shares, whether or not
29 entitled to vote, as of the date of the defective corporate action,
30 other than to those persons whose identities or addresses for notice
31 cannot be determined from the records of the corporation.

32 (b) The notice specified in (a) of this subsection must contain
33 or be accompanied by (i) a copy of the resolution adopted by the
34 board of directors in accordance with section 3 (1) or (2) of this
35 act, or (ii) the information required by section 3 (1)(a) through (d)
36 or (2)(a) through (c) of this act, as applicable. This notice must
37 also include a statement that any action before a court to determine
38 whether the ratification of the defective corporate action complied

1 with the requirements imposed by this chapter must be brought within
2 sixty days from the validation effective time.

3 (2) If the ratification of a defective corporate action requires
4 approval of the shareholders under section 3(3) of this act, and if
5 the approval of the shareholders is to be given at a meeting:

6 (a) The corporation shall notify each holder of valid shares and
7 putative shares, whether or not entitled to vote, as of the record
8 date for the meeting, of the proposed meeting of shareholders at
9 which the ratification is to be submitted for approval in accordance
10 with RCW 23B.07.050. This notice must also be given to each person
11 who was a holder of valid shares or putative shares, whether or not
12 entitled to vote, as of the date of the defective corporate action,
13 other than to those persons whose identities or addresses for notice
14 cannot be determined from the records of the corporation; and

15 (b) The notice specified in (a) of this subsection must state
16 that the purpose, or one of the purposes, of the meeting is to
17 consider ratification of a defective corporate action and must
18 contain or be accompanied by (i) a copy of the resolution adopted by
19 the board of directors in accordance with section 3(1) of this act,
20 or (ii) the information required by section 3(1) (a) through (d) of
21 this act. This notice must also include a statement that any action
22 before a court to determine whether the ratification of the defective
23 corporate action complied with the requirements imposed by this
24 chapter must be brought within sixty days from the validation
25 effective time.

26 (3) If the ratification of a defective corporate action requires
27 approval of the shareholders under section 3(3) of this act, and if
28 the approval of the shareholders is to be without a meeting or a vote
29 in accordance with RCW 23B.07.040:

30 (a) The corporation or the person soliciting consents shall give
31 the notice required under RCW 23B.07.040(3)(a) and the corporation
32 shall give the notice required under RCW 23B.07.040(3)(b) to each
33 holder of valid shares and putative shares, whether or not entitled
34 to vote, as of the record date for the shareholder consent. These
35 notices must also be given to each person who was a holder of valid
36 shares or putative shares, whether or not entitled to vote, as of the
37 date of the defective corporate action, other than to those persons
38 whose identities or addresses for notice cannot be determined from
39 the records of the corporation; and

1 (b) The notices specified in (a) of this subsection must describe
2 the ratification of the defective corporate action being approved and
3 must contain or be accompanied by (i) a copy of the resolution
4 adopted by the board of directors in accordance with section 3 (1) or
5 (2) of this act, or (ii) the information required by section 3 (1)(a)
6 through (d) or (2)(a) through (c) of this act, as applicable. These
7 notices must also include a statement that any action before a court
8 to determine whether the ratification of the defective corporate
9 action complied with the requirements imposed by this chapter must be
10 brought within sixty days from the validation effective time.

11 (4) If a defective corporate action is validated in accordance
12 with section 8 of this act:

13 (a) The corporation shall notify, promptly after the validation,
14 each holder of valid shares and putative shares, whether or not
15 entitled to vote, as of the date of the validation, that the
16 validation of a defective corporate action has taken place pursuant
17 to section 8 of this act. This notice must also be given to each
18 person who was a holder of valid shares or putative shares, whether
19 or not entitled to vote, as of the date of the defective corporate
20 action, other than to those persons whose identities or addresses for
21 notice cannot be determined from the records of the corporation.

22 (b) The notice specified in (a) of this subsection must contain
23 or be accompanied by a copy of the information required by section
24 8(2) of this act.

25 (5) Any notice required by this section may be given in any
26 manner permitted by RCW 23B.01.410 and, for any corporation subject
27 to the reporting requirements of section 13 or 15(d) of the
28 securities exchange act of 1934, as amended, may be given by filing
29 or furnishing the notice with the United States securities and
30 exchange commission.

31 NEW SECTION. **Sec. 6.** EFFECT OF RATIFICATION OR VALIDATION. From
32 and after the validation effective time:

33 (1) Each defective corporate action ratified in accordance with
34 section 3 of this act or validated in accordance with section 8 of
35 this act:

36 (a) Is not void or voidable as a result of the failure of
37 authorization identified (i) in the resolution adopted by the board
38 of directors in accordance with section 3 (1) or (2) of this act, or
39 (ii) by the court in accordance with section 8(2) of this act; and

1 (b) Is deemed to be a valid corporate action taken on the date of
2 the defective corporate action;

3 (2) The issuance of each putative share or fraction of a putative
4 share purportedly issued pursuant to a defective corporate action
5 identified in the resolution adopted by the board of directors in
6 accordance with section 3(1) of this act or by the court in
7 accordance with section 8(2) of this act is not void or voidable as a
8 result of the failure of authorization identified in that resolution
9 or by that court, and each such putative share or fraction of a
10 putative share is deemed to be an identical valid share or fraction
11 of a valid share issued at the time it was purportedly issued; and

12 (3) Any corporate action taken subsequent to the date of the
13 defective corporate action ratified or validated in accordance with
14 this chapter in reliance on that defective corporate action having
15 been validly taken, and any subsequent defective corporate action
16 resulting directly or indirectly from that original defective
17 corporate action, is deemed to be valid as of the time that corporate
18 action was taken.

19 NEW SECTION. **Sec. 7.** FILINGS. (1) If a defective corporate
20 action ratified or validated under this chapter would have required
21 under any other section of this title a record to be filed with the
22 secretary of state, then, whether or not a record was previously
23 filed in respect of that defective corporate action and in lieu of
24 filing the record otherwise required by this title, the corporation
25 shall deliver to the secretary of state for filing articles of
26 validation setting forth:

27 (a) The defective corporate action that was ratified or validated
28 and, if the defective corporate action involved the purported
29 issuance of putative shares, the number and class or series of
30 putative shares purportedly issued;

31 (b) The date of the defective corporate action that was ratified
32 or validated and, if the defective corporate action involved the
33 purported issuance of putative shares, the date or dates on which the
34 putative shares were purportedly issued;

35 (c) The nature of the failure of authorization with respect to
36 the defective corporate action that was ratified or validated;

37 (d) A statement that the defective corporate action was (i)
38 ratified in accordance with section 3 of this act, including the date
39 on which the board of directors ratified the defective corporate

1 action and the date, if any, on which the shareholders approved the
2 ratification of the defective corporate action, or (ii) validated in
3 accordance with section 8 of this act, including the date on which
4 the court validated the defective corporate action; and

5 (e) The information required by subsection (2) of this section.

6 (2) The articles of validation must also contain the following
7 information:

8 (a) If the corporation previously filed a record in respect of a
9 defective corporate action that was ratified or validated and no
10 changes to that record are required to give effect to the
11 ratification or validation of the defective corporate action in
12 accordance with section 4(5) of this act, the corporation shall (i)
13 describe the record, together with any articles of correction
14 thereto, including its filing date, in the articles of validation,
15 and (ii) attach a copy of the record, together with any articles of
16 correction thereto, to the articles of validation;

17 (b) If the corporation previously filed a record in respect of a
18 defective corporate action that was ratified or validated and any
19 change to that record is required to give effect to the ratification
20 or validation of the defective corporate action in accordance with
21 section 4(5) of this act, the corporation shall (i) describe the
22 previously filed record, together with any articles of correction
23 thereto, including its filing date, (ii) attach a copy of the record
24 containing all of the information required to be included under the
25 applicable section or sections of this title to give effect to the
26 defective corporate action that was ratified or validated to the
27 articles of validation, and (iii) state the date and time that the
28 record is deemed to have become effective; or

29 (c) If the corporation did not previously file a record in
30 respect of a defective corporate action that was ratified or
31 validated and that defective corporate action would have required a
32 filing under any other section of this title, the corporation shall
33 (i) attach a copy of a record containing all of the information
34 required to be included under the applicable section or sections of
35 this title to give effect to the defective corporate action that was
36 ratified or validated to the articles of validation, and (ii) state
37 the date and time that the record is deemed to have become effective.

38 (3) Articles of validation that comply with this section
39 supersede any other record in respect of a defective corporate action

1 that was ratified in accordance with section 3 of this act or
2 validated in accordance with section 8 of this act.

3 NEW SECTION. **Sec. 8.** PROCEEDINGS TO VALIDATE OR CHALLENGE
4 RATIFICATION OF DEFECTIVE CORPORATE ACTIONS. (1) Upon application by
5 the corporation, any successor entity to the corporation, a director
6 of the corporation, or any shareholder of the corporation, including
7 any person who was a shareholder of the corporation as of the date of
8 a defective corporate action, the superior courts may:

9 (a) Validate any defective corporate action that has not been
10 ratified in accordance with section 3 of this act; or

11 (b) Determine that any ratification of a defective corporate
12 action under section 3 of this act is not valid or effective because
13 it failed to comply with the procedural requirements imposed by this
14 chapter.

15 (2) In connection with a proceeding under subsection (1)(a) of
16 this section, the court shall identify the defective corporate action
17 to be validated, including the information required under section 3
18 (1)(a) through (c) or (2)(a) and (b) of this act, as applicable, and
19 may make such findings or orders as it deems proper under the
20 circumstances. In determining whether to validate a defective
21 corporate action under subsection (1)(a) of this section, the court
22 may consider the following:

23 (a) Whether the defective corporate action was originally
24 approved or effectuated with the belief that the approval or
25 effectuation was in compliance with the provisions of this title, the
26 articles of incorporation or bylaws of the corporation, and any
27 corporate resolution or plan or agreement of or to which the
28 corporation is a party that would be relevant in determining whether
29 there was a failure of authorization;

30 (b) Whether the corporation and board of directors has treated
31 the defective corporate action as a valid action or transaction;

32 (c) Whether any person has acted in reliance on the public record
33 that the defective corporate action was valid or would be harmed by
34 the failure to validate the defective corporate action;

35 (d) Whether any person would be harmed by the validation of the
36 defective corporate action, excluding any harm that would have
37 resulted if the defective corporate action had been valid when
38 approved or effectuated; and

1 (e) Any other factors or considerations that the court deems
2 proper in the circumstances.

3 (3) The court shall stay any proceeding brought under subsection
4 (1)(a) of this section during any ratification process under section
5 3 of this act involving the defective corporate action that is the
6 subject of the proceeding until the earlier of:

7 (a) The validation effective time; and

8 (b)(i) If shareholder approval is not required for ratification,
9 the date on which the board of directors votes, but fails to ratify,
10 the defective corporate action, (ii) if shareholder approval is
11 required for ratification in accordance with section 4 of this act
12 and is to be given at a meeting, the date on which the shareholders
13 vote, but fail to ratify, the defective corporate action, or (iii) if
14 shareholder approval is required for ratification in accordance with
15 section 4 of this act and is to be given without a meeting, sixty
16 days after the date of execution indicated on the earliest dated
17 shareholder consent approving the ratification that is delivered to
18 the corporation, even though that shareholder consent may not have
19 been delivered to the corporation on that date, if consents executed
20 by a sufficient number of shareholders to approve the ratification
21 are not delivered to the corporation during that sixty-day period.

22 (4) Notwithstanding any other provision of this section or
23 otherwise under applicable law, any proceeding asserting a claim
24 under subsection (1)(b) of this section must be brought within sixty
25 days after the validation effective time, except that this subsection
26 will not apply to any person to whom notice of the ratification was
27 required to have been given pursuant to section 5 of this act, but to
28 whom such notice was not given. Claims under subsection (1)(b) of
29 this section are to be the exclusive basis for challenging the
30 validity or effectiveness of a defective corporate action ratified
31 under section 3 of this act.

32 (5) Service of process on the corporation for any proceeding
33 under this section may be made in any manner provided by statute of
34 this state or by rule of the court for service on the corporation,
35 and no other party need be joined in order for the court to
36 adjudicate the matter. In a proceeding commenced by the corporation,
37 the court may require notice of the proceeding to be provided to
38 other persons specified by the court and permit such other persons to
39 intervene in the proceeding.

1 (6) For purposes of this section, "shareholder" includes a
2 beneficial owner whose shares are held in a voting trust or held by a
3 nominee on behalf of the beneficial owner.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 23B.02
5 RCW to read as follows:

6 FORUM SELECTION PROVISIONS. (1) The articles of incorporation or
7 bylaws may contain provisions that require any or all internal
8 corporate proceedings to be commenced and maintained exclusively in
9 any specified court or courts of this state and, if so specified, in
10 any additional courts in this state or in any other jurisdictions
11 with which the corporation has a reasonable relationship.

12 (2) A provision permitted under subsection (1) of this section:

13 (a) May not confer jurisdiction on any court, over any person, or
14 of any proceeding; and

15 (b) May not (i) prohibit commencing or maintaining an internal
16 corporate proceeding in the courts of this state or (ii) require
17 claims asserted in an internal corporate proceeding to be determined
18 by arbitration.

19 (3) If the court or courts of this state specified in a provision
20 permitted under subsection (1) of this section do not have
21 jurisdiction, but any other court or courts specified in the
22 provision do have jurisdiction, then the internal corporate
23 proceeding may be commenced and maintained:

24 (a) In any court of this state that has jurisdiction; or

25 (b) In any other court specified in the provision that has
26 jurisdiction.

27 (4) If no court specified in a provision permitted under
28 subsection (1) of this section has jurisdiction, then the internal
29 corporate proceeding may be commenced and maintained in any court
30 that has jurisdiction.

31 (5) For purposes of this section, "internal corporate proceeding"
32 means (a) any proceeding asserting a claim based on a violation of a
33 duty under the laws of this state by a current or former director,
34 officer, or shareholder in such capacity, (b) any proceeding
35 commenced or maintained in the right of the corporation, (c) any
36 proceeding asserting a claim arising pursuant to any provision of the
37 act or the corporation's articles of incorporation or bylaws, or (d)
38 any proceeding asserting a claim concerning the internal affairs of

1 the corporation that is not included in (a) through (c) of this
2 subsection.

3 **Sec. 10.** RCW 23B.12.010 and 2006 c 52 s 4 are each amended to
4 read as follows:

5 SALE OR OTHER DISPOSITION OF ASSETS IN THE USUAL AND REGULAR
6 COURSE OF BUSINESS AND MORTGAGE OR PLEDGE OF ASSETS—ASSIGNMENT FOR
7 BENEFIT OF CREDITORS. (1) A corporation may on the terms and
8 conditions and for the consideration determined by the board of
9 directors:

10 (a) Sell, lease, exchange, or otherwise dispose of all, or
11 substantially all, of its property and assets in the usual and
12 regular course of its business; or

13 (b) Mortgage, pledge, dedicate to the repayment of indebtedness,
14 whether with or without recourse, or otherwise encumber any or all of
15 its property and assets whether or not any of these actions are in
16 the usual and regular course of its business.

17 (2) Unless the articles of incorporation require it, approval by
18 the shareholders of a transaction described in subsection (1) of this
19 section is not required.

20 (3) A dedication of a corporation's property and assets to the
21 repayment of its creditors may be effected by the board of directors
22 through an assignment for the benefit of creditors in accordance with
23 chapter 7.08 RCW or by obtaining the appointment of a general
24 receiver in accordance with chapter 7.60 RCW, and the assumption of
25 control over the corporation's property and assets by an assignee for
26 the benefit of creditors or by a general receiver relieves the
27 directors of any further duties with respect to the liquidation of
28 the corporation's property and assets or the application of any
29 property and assets or proceeds toward satisfaction of the claims of
30 creditors.

31 **Sec. 11.** RCW 23B.12.020 and 2011 c 328 s 7 are each amended to
32 read as follows:

33 SALE OR OTHER DISPOSITION OF ASSETS OTHER THAN IN THE USUAL AND
34 REGULAR COURSE OF BUSINESS. (1) A corporation may sell, lease,
35 exchange, or otherwise dispose of all, or substantially all, of its
36 property and assets, otherwise than in the usual and regular course
37 of business, on the terms and conditions and for the consideration
38 determined by the corporation's board of directors(~~(, if the board of~~

1 ~~directors proposes and its shareholders approve the proposed~~
2 ~~transaction)).~~ Except as provided in subsection (8) of this section,
3 a transaction described in this subsection requires approval of the
4 corporation's shareholders.

5 (2) For a transaction to be approved by a corporation's
6 shareholders:

7 (a) The board of directors must submit the proposed transaction
8 to the shareholders for their approval;

9 (b) The board of directors must recommend the proposed
10 transaction to the shareholders unless (i) the board of directors
11 determines that because of conflict of interest or other special
12 circumstances it should make no recommendation or (ii) RCW 23B.08.245
13 applies, and in either case the board of directors communicates the
14 basis for so proceeding to the shareholders; and

15 ~~((b))~~ (c) The shareholders entitled to vote must approve the
16 transaction.

17 (3) The board of directors may condition its submission of the
18 proposed transaction on any basis, including the affirmative vote of
19 holders of a specified percentage of shares held by any group of
20 shareholders not otherwise entitled under this title or the articles
21 of incorporation to vote as a separate voting group on the proposed
22 transaction.

23 (4) If the approval of the shareholders is to be given at a
24 meeting, the corporation shall notify each shareholder, whether or
25 not entitled to vote, of the proposed shareholders' meeting at which
26 the proposed transaction is to be submitted for approval in
27 accordance with RCW 23B.07.050. The notice must ~~((also))~~ state that
28 the purpose, or one of the purposes, of the meeting is to consider
29 the sale, lease, exchange, or other disposition of all, or
30 substantially all, of the property and assets of the corporation and
31 contain or be accompanied by a description of the transaction.

32 (5) In addition to any other voting conditions imposed by the
33 board of directors under subsection (3) of this section, the
34 transaction must be approved by two-thirds of the voting group
35 comprising all the votes entitled to be cast on the transaction, and
36 of each other voting group entitled under the articles of
37 incorporation to vote separately on the transaction, unless
38 shareholder approval is not required under subsection (8) of this
39 section. The articles of incorporation may require a greater or
40 lesser vote than provided in this subsection, or a greater or lesser

1 vote by any separate voting groups provided for in the articles of
2 incorporation, so long as the required vote is not less than a
3 majority of all the votes entitled to be cast on the transaction and
4 of each other voting group entitled to vote separately on the
5 transaction.

6 (6) After a sale, lease, exchange, or other disposition of
7 property (~~(is)~~) and assets has been approved as required by this
8 section, the transaction may be abandoned, subject to any contractual
9 rights, without further shareholder approval, in a manner determined
10 by the board of directors.

11 (7) A transaction that constitutes a distribution is governed by
12 RCW 23B.06.400 and not by this section.

13 (8) Unless the articles of incorporation otherwise require,
14 approval by the shareholders of a parent corporation is not required
15 for the transfer of any or all of the parent corporation's property
16 and assets to one or more subsidiary corporations or other entities
17 all of the shares or interests of which are owned, directly or
18 indirectly, by the parent corporation.

19 (9) The sale, lease, exchange, or other disposition of all, or
20 substantially all, the assets of one or more subsidiaries of a
21 corporation, if not in the usual and regular course of business as
22 conducted by that subsidiary or those subsidiaries, is to be treated
23 as a disposition by the parent corporation within the meaning of
24 subsection (1) of this section if the subsidiary or subsidiaries
25 constitute all, or substantially all, the assets of the parent
26 corporation.

27 **Sec. 12.** RCW 23B.01.400 and 2015 c 176 s 2148 and 2015 c 20 s 1
28 are each reenacted and amended to read as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply throughout this title.

31 (1) "Articles of incorporation" include amended and restated
32 articles of incorporation and articles of merger.

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

35 (3) "Conspicuous" means so prepared that a reasonable person
36 against whom the record is to operate should have noticed it. For
37 example, printing in italics or boldface or contrasting color, or
38 typing in capitals or underlined, is conspicuous.

1 (4) "Controlling interest" means ownership of an entity's
2 outstanding shares or interests in such number as to entitle the
3 holder at the time to elect a majority of the entity's directors or
4 other governors without regard to voting power which may thereafter
5 exist upon a default, failure, or other contingency.

6 (5) "Corporate action" means any resolution, act, policy,
7 contract, transaction, plan, adoption or amendment of articles of
8 incorporation or bylaws, or other matter approved by or submitted for
9 approval to a corporation's incorporators, board of directors or a
10 committee thereof, or shareholders.

11 ~~((+5))~~ (6) "Corporation" or "domestic corporation" means a
12 corporation for profit, including a social purpose corporation, which
13 is not a foreign corporation, incorporated under or subject to the
14 provisions of this title.

15 ~~((+6))~~ (7) "Deliver" includes (a) mailing, (b) for purposes of
16 delivering a demand, consent, notice, or waiver to the corporation or
17 one of its officers, directors, or shareholders, transmission by
18 facsimile equipment, and (c) for purposes of delivering a demand,
19 consent, notice, or waiver to the corporation or one of its officers,
20 directors, or shareholders under RCW 23B.01.410 or chapter 23B.07,
21 23B.08, 23B.11, 23B.13, 23B.14, or 23B.16 RCW delivery by electronic
22 transmission.

23 ~~((+7))~~ (8) "Distribution" means a direct or indirect transfer of
24 money or other property, except its own shares, or incurrence of
25 indebtedness by a corporation to or for the benefit of its
26 shareholders in respect to any of its shares. A distribution may be
27 in the form of a declaration or payment of a dividend; a distribution
28 in partial or complete liquidation, or upon voluntary or involuntary
29 dissolution; a purchase, redemption, or other acquisition of shares;
30 a distribution of indebtedness; or otherwise.

31 ~~((+8))~~ (9) "Effective date of notice" has the meaning provided
32 in RCW 23B.01.410.

33 ~~((+9))~~ (10) "Electronic transmission" means an electronic
34 communication (a) not directly involving the physical transfer of a
35 record in a tangible medium and (b) that may be retained, retrieved,
36 and reviewed by the sender and the recipient thereof, and that may be
37 directly reproduced in a tangible medium by such a sender and
38 recipient.

39 ~~((+10))~~ (11) "Electronically transmitted" means the initiation
40 of an electronic transmission.

1 ~~((11))~~ (12) "Employee" includes an officer but not a director.
2 A director may accept duties that make the director also an employee.
3 ~~((12))~~ (13) "Entity" includes a corporation and foreign
4 corporation, not-for-profit corporation, business trust, estate,
5 trust, partnership, limited liability company, association, joint
6 venture, two or more persons having a joint or common economic
7 interest, the state, United States, and a foreign governmental
8 subdivision, agency, or instrumentality, or any other legal or
9 commercial entity.
10 ~~((13))~~ (14) "Execute," "executes," or "executed" means (a)
11 signed with respect to a written record or (b) electronically
12 transmitted along with sufficient information to determine the
13 sender's identity with respect to an electronic transmission, or (c)
14 with respect to a record to be filed with the secretary of state, in
15 compliance with the standards for filing with the office of the
16 secretary of state as prescribed by the secretary of state.
17 ~~((14))~~ (15) "Foreign corporation" means a corporation for
18 profit incorporated under a law other than the law of this state.
19 ~~((15))~~ (16) "Foreign limited partnership" means a partnership
20 formed under laws other than of this state and having as partners one
21 or more general partners and one or more limited partners.
22 ~~((16))~~ (17) "General social purpose" means the general social
23 purpose for which a social purpose corporation is organized as set
24 forth in the articles of incorporation of the corporation in
25 accordance with RCW 23B.25.040(1)(c).
26 ~~((17))~~ (18) "Governmental subdivision" includes authority,
27 county, district, and municipality.
28 ~~((18))~~ (19) "Governor" has the meaning given that term in RCW
29 23.95.105.
30 (20) "Includes" denotes a partial definition.
31 ~~((19))~~ (21) "Individual" includes the estate of an incompetent
32 or deceased individual.
33 ~~((20))~~ (22) "Limited partnership" or "domestic limited
34 partnership" means a partnership formed by two or more persons under
35 the laws of this state and having one or more general partners and
36 one or more limited partners.
37 ~~((21))~~ (23) "Means" denotes an exhaustive definition.
38 ~~((22))~~ (24) "Notice" has the meaning provided in RCW
39 23B.01.410.

1 ~~((23))~~ (25) "Person" means an individual, corporation, business
2 trust, estate, trust, partnership, limited liability company,
3 association, joint venture, government, governmental subdivision,
4 agency, or instrumentality, or any other legal or commercial entity.

5 ~~((24))~~ (26) "Principal office" means the office, in or out of
6 this state, so designated in the annual report where the principal
7 executive offices of a domestic or foreign corporation are located.

8 ~~((25))~~ (27) "Proceeding" includes civil suit and criminal,
9 administrative, and investigatory action.

10 ~~((26))~~ (28) "Public company" means a corporation that has a
11 class of shares registered with the federal securities and exchange
12 commission pursuant to section 12 or 15 of the securities exchange
13 act of 1934, or section 8 of the investment company act of 1940, or
14 any successor statute.

15 ~~((27))~~ (29) "Qualified director" means (a) with respect to a
16 director's conflicting interest transaction as defined in RCW
17 23B.08.700, any director who does not have either (i) a conflicting
18 interest respecting the transaction, or (ii) a familial, financial,
19 professional, or employment relationship with a second director who
20 does have a conflicting interest respecting the transaction, which
21 relationship would, in the circumstances, reasonably be expected to
22 exert an influence on the first director's judgment when voting on
23 the transaction; (b) with respect to RCW 23B.08.735, a qualified
24 director under (a) of this subsection if the business opportunity
25 were a director's conflicting interest transaction; and (c) with
26 respect to RCW 23B.02.020(5)(k), a director who is not a director (i)
27 to whom the limitation or elimination of the duty of an officer to
28 offer potential business opportunities to the corporation would
29 apply, or (ii) who has a familial, financial, professional, or
30 employment relationship with another officer to whom the limitation
31 or elimination would apply, which relationship would, in the
32 circumstances, reasonably be expected to exert an influence on the
33 director's judgment when voting on the limitation or elimination.

34 ~~((28))~~ (30) "Record" means information inscribed on a tangible
35 medium or contained in an electronic transmission.

36 ~~((29))~~ (31) "Record date" means the date established under
37 chapter 23B.07 RCW on which a corporation determines the identity of
38 its shareholders and their shareholdings for purposes of this title.
39 The determinations shall be made as of the close of business on the

1 record date unless another time for doing so is specified when the
2 record date is fixed.

3 ~~((+30+))~~ (32) "Registered office" means the address of the
4 corporation's registered agent.

5 ~~((+31+))~~ (33) "Secretary" means the corporate officer to whom the
6 board of directors has delegated responsibility under RCW
7 23B.08.400(3) for custody of the minutes of the meetings of the board
8 of directors and of the shareholders and for authenticating records
9 of the corporation.

10 ~~((+32+))~~ (34) "Shareholder" means the person in whose name shares
11 are registered in the records of a corporation or the beneficial
12 owner of shares to the extent of the rights granted by a nominee
13 certificate on file with a corporation.

14 ~~((+33+))~~ (35) "Shares" means the units into which the proprietary
15 interests in a corporation are divided.

16 ~~((+34+))~~ (36) "Social purpose" includes any general social
17 purpose and any specific social purpose.

18 ~~((+35+))~~ (37) "Social purpose corporation" means a corporation
19 that has elected to be governed as a social purpose corporation under
20 chapter 23B.25 RCW.

21 ~~((+36+))~~ (38) "Specific social purpose" means the specific social
22 purpose or purposes for which a social purpose corporation is
23 organized as set forth in the articles of incorporation of the
24 corporation in accordance with RCW 23B.25.040(2)(a).

25 ~~((+37+))~~ (39) "State," when referring to a part of the United
26 States, includes a state and commonwealth, and their agencies and
27 governmental subdivisions, and a territory and insular possession,
28 and their agencies and governmental subdivisions, of the United
29 States.

30 ~~((+38+))~~ (40) "Subscriber" means a person who subscribes for
31 shares in a corporation, whether before or after incorporation.

32 ~~((+39+))~~ (41) "Subsidiary" means an entity in which the
33 corporation has a controlling interest.

34 (42) "Tangible medium" means a writing, copy of a writing, or
35 facsimile, or a physical reproduction, each on paper or on other
36 tangible material.

37 ~~((+40+))~~ (43) "United States" includes a district, authority,
38 bureau, commission, department, and any other agency of the United
39 States.

1 (~~(41)~~) (44) "Voting group" means all shares of one or more
2 classes or series that under the articles of incorporation or this
3 title are entitled to vote and be counted together collectively on a
4 matter at a meeting of shareholders. All shares entitled by the
5 articles of incorporation or this title to vote generally on the
6 matter are for that purpose a single voting group.

7 (~~(42)~~) (45) "Writing" does not include an electronic
8 transmission.

9 (~~(43)~~) (46) "Written" means embodied in a tangible medium.

10 **Sec. 13.** RCW 23B.07.050 and 1989 c 165 s 64 are each amended to
11 read as follows:

12 (1) A corporation shall notify shareholders of the date, time,
13 and place of each annual and special shareholders' meeting. Such
14 notice shall be given no fewer than ten nor more than sixty days
15 before the meeting date, except that notice of a shareholders'
16 meeting to act on an amendment to the articles of incorporation, a
17 plan of merger or share exchange, a proposed (~~sale of~~) disposition
18 of property and assets pursuant to RCW 23B.12.020, or the dissolution
19 of the corporation shall be given no fewer than twenty nor more than
20 sixty days before the meeting date. Unless this title or the articles
21 of incorporation require otherwise, the corporation is required to
22 give notice only to shareholders entitled to vote at the meeting.

23 (2) Unless this title or the articles of incorporation require
24 otherwise, notice of an annual meeting need not include a description
25 of the purpose or purposes for which the meeting is called.

26 (3) Notice of a special meeting must include a description of the
27 purpose or purposes for which the meeting is called.

28 (4) Unless the bylaws require otherwise, if an annual or special
29 shareholders' meeting is adjourned to a different date, time, or
30 place, notice need not be given of the new date, time, or place if
31 the new date, time, or place is announced at the meeting before
32 adjournment. If a new record date for the adjourned meeting is or
33 must be fixed under RCW 23B.07.070, however, notice of the adjourned
34 meeting must be given under this section to persons who are
35 shareholders as of the new record date.

36 **Sec. 14.** RCW 23B.13.020 and 2014 c 83 s 15 are each amended to
37 read as follows:

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

4 (a) A plan of merger, which has become effective, to which the
5 corporation is a party (i) if shareholder approval was required for
6 the merger by RCW 23B.11.030, 23B.11.080, or the articles of
7 incorporation, and the shareholder was entitled to vote on the
8 merger, or (ii) if the corporation was a subsidiary and the plan of
9 merger provided for the merger of the subsidiary with its parent
10 under RCW 23B.11.040;

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

14 (c) A sale (~~((or))~~), lease, exchange, or other disposition, which
15 has become effective, of all, or substantially all, of the property
16 and assets of the corporation other than in the usual and regular
17 course of business, if the shareholder was entitled to vote on the
18 sale (~~((or))~~), lease, exchange, or other disposition, including a
19 ~~((sale))~~ disposition in dissolution, but not including a ~~((sale))~~
20 disposition pursuant to court order or a ~~((sale))~~ disposition for
21 cash pursuant to a plan by which all or substantially all of the net
22 proceeds of the ~~((sale))~~ disposition will be distributed to the
23 shareholders within one year after the date of ~~((sale))~~ the
24 disposition;

25 (d) An amendment of the articles of incorporation, whether or not
26 the shareholder was entitled to vote on the amendment, if the
27 amendment effects a redemption or cancellation of all of the
28 shareholder's shares in exchange for cash or other consideration
29 other than shares of the corporation;

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

31 (f) Any corporate action approved pursuant to a shareholder vote
32 to the extent the articles of incorporation, bylaws, or a resolution
33 of the board of directors provides that voting or nonvoting
34 shareholders are entitled to dissent and obtain payment for their
35 shares; or

36 (g) A plan of entity conversion in the case of a conversion of a
37 domestic corporation to a foreign corporation, which has become
38 effective, to which the domestic corporation is a party as the
39 converting entity, if: (i) The shareholder was entitled to vote on
40 the plan; and (ii) the shareholder does not receive shares in the

1 surviving entity that have terms as favorable to the shareholder in
2 all material respects and that represent at least the same percentage
3 interest of the total voting rights of the outstanding shares of the
4 surviving entity as the shares held by the shareholder before the
5 conversion.

6 (2) A shareholder entitled to dissent and obtain payment for the
7 shareholder's shares under this chapter may not challenge the
8 corporate action creating the shareholder's entitlement unless the
9 action fails to comply with the procedural requirements imposed by
10 this title, RCW 25.10.831 through 25.10.886, the articles of
11 incorporation, or the bylaws, or is fraudulent with respect to the
12 shareholder or the corporation.

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

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

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

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

21 **Sec. 15.** RCW 23B.07.300 and 1989 c 165 s 77 are each amended to
22 read as follows:

23 (1) One or more shareholders may create a voting trust,
24 conferring on a trustee the right to vote or otherwise act for them,
25 by signing an agreement setting out the provisions of the trust,
26 which may include anything consistent with its purpose, and
27 transferring their shares to the trustee. When a voting trust
28 agreement is signed, the trustee shall prepare a list of the names
29 and addresses of all voting trust beneficial owners (~~(of beneficial~~
30 ~~interests in the trust)~~), together with the number and class of
31 shares each voting trust beneficial owner (~~(of a beneficial~~
32 ~~interest)~~) transferred to the trust, and deliver copies of the list
33 and agreement to the corporation's principal office.

34 (2) A voting trust becomes effective on the date the first shares
35 subject to the trust are registered in the trustee's name. (~~(A voting~~
36 ~~trust is valid for not more than ten years after its effective date~~
37 ~~unless extended under subsection (3) of this section.)~~)

38 (3) (~~(All or some of the parties to a voting trust may extend it~~
39 ~~for additional terms of not more than ten years each by signing an~~

1 ~~extension agreement and obtaining the voting trustee's written~~
2 ~~consent to the extension. An extension is valid only until the~~
3 ~~earlier of ten years from the date the first shareholder signs the~~
4 ~~extension agreement or the date of expiration of the extension. The~~
5 ~~voting trustee must deliver copies of the extension agreement and~~
6 ~~list of beneficial owners to the corporation's principal office. An~~
7 ~~extension agreement binds only those parties signing it.)) Limits, if~~
8 any, on the duration of a voting trust are to be as set forth in the
9 voting trust agreement. A voting trust that became effective when
10 this section limited the term of a voting trust to ten years will
11 remain governed by the provisions of this section then in effect
12 relating to the duration of voting trusts, unless the voting trust
13 agreement is amended to provide otherwise by unanimous agreement of
14 the parties to that agreement.

15 **Sec. 16.** RCW 23B.07.320 and 2009 c 189 s 22 are each amended to
16 read as follows:

17 (1) An agreement among the shareholders of a corporation that is
18 not contrary to public policy and that complies with this section is
19 effective among the shareholders and the corporation even though it
20 is inconsistent with one or more other provisions of this title in
21 that it:

22 (a) Eliminates the board of directors or restricts the discretion
23 or powers of the board of directors;

24 (b) Governs the approval or making of distributions whether or
25 not in proportion to ownership of shares, subject to the limitations
26 in RCW 23B.06.400;

27 (c) Establishes who shall be directors or officers of the
28 corporation, or their terms of office or manner of selection or
29 removal;

30 (d) Governs, in general or in regard to specific matters, the
31 exercise or division of voting power by or between the shareholders
32 and directors or by or among any of them, including use of weighted
33 voting rights or director proxies;

34 (e) Establishes the terms and conditions of any agreement for the
35 transfer or use of property or the provision of services between the
36 corporation and any shareholder, director, officer, or employee of
37 the corporation or among any of them;

1 (f) Transfers to one or more shareholders or other persons all or
2 part of the authority to exercise the corporate powers or to manage
3 the business and affairs of the corporation;

4 (g) Provides a process by which a deadlock among directors or
5 shareholders may be resolved;

6 (h) Requires dissolution of the corporation at the request of one
7 or more shareholders or upon the occurrence of a specified event or
8 contingency; or

9 (i) Otherwise governs the exercise of the corporate powers or the
10 management of the business and affairs of the corporation or the
11 relationship among the shareholders, the directors, and the
12 corporation, or among any of them.

13 (2) An agreement authorized by this section shall be:

14 (a) Set forth in a written agreement that is signed by all
15 persons who are shareholders at the time of the agreement and is made
16 known to the corporation; and

17 (b) Subject to amendment only by all persons who are shareholders
18 at the time of the amendment, unless the agreement provides
19 otherwise(~~(; and~~

20 ~~(c) Valid for ten years, unless the agreement provides~~
21 ~~otherwise)).~~

22 (3) The existence of an agreement authorized by this section
23 shall be noted conspicuously on the front or back of each certificate
24 for outstanding shares or on the information statement required by
25 RCW 23B.06.260(2). If at the time of the agreement the corporation
26 has shares outstanding represented by certificates, the corporation
27 shall recall the outstanding certificates and issue substitute
28 certificates that comply with this subsection. The failure to note
29 the existence of the agreement on the certificate or information
30 statement shall not affect the validity of the agreement or any
31 action taken pursuant to it. Unless the agreement provides otherwise,
32 any person who acquires outstanding or newly issued shares in the
33 corporation after an agreement authorized by this section has been
34 effected, whether by purchase, gift, operation of law, or otherwise,
35 is deemed to have assented to the agreement and to be a party to the
36 agreement. A purchaser of shares who is aggrieved because he or she
37 at the time of purchase did not have actual or constructive knowledge
38 of the existence of the agreement may either: (a) Bring an action to
39 rescind the purchase within the earlier of ninety days after
40 discovery of the existence of the agreement or two years after the

1 purchase of the shares; or (b) continue to hold the shares subject to
2 the agreement but with a right of action for any damages resulting
3 from nondisclosure of the existence of the agreement. A purchaser
4 shall be deemed to have constructive knowledge of the existence of
5 the agreement if its existence is noted on the certificate or
6 information statement for the shares in compliance with this
7 subsection and, if the shares are not represented by a certificate,
8 the information statement is delivered to the purchaser at or prior
9 to the time of purchase of the shares.

10 (4) An agreement authorized by this section shall cease to be
11 effective when shares of the corporation are listed on a national
12 securities exchange or regularly traded in a market maintained by one
13 or more members of a national or affiliated securities association.

14 (5) An agreement authorized by this section that limits the
15 discretion or powers of the board of directors shall relieve the
16 directors of, and impose upon the person or persons in whom such
17 discretion or powers are vested, liability for acts or omissions
18 imposed by law on directors to the extent that the discretion or
19 powers of the directors are limited by the agreement.

20 (6) The existence or performance of an agreement authorized by
21 this section shall not be a ground for imposing personal liability on
22 any shareholder for the acts or debts of the corporation even if the
23 agreement or its performance treats the corporation as if it were a
24 partnership or results in failure to observe the corporate
25 formalities otherwise applicable to the matters governed by the
26 agreement.

27 (7) Incorporators or subscribers for shares may act as
28 shareholders with respect to an agreement authorized by this section
29 if no shares have been issued when the agreement is made.

30 (8) Limits, if any, on the duration of an agreement governed by
31 this section are to be as set forth in the agreement. An agreement
32 governed by this section that became effective when this section
33 limited the term of such an agreement to ten years unless the
34 agreement provided otherwise will remain governed by the provisions
35 of this section then in effect relating to the duration of agreements
36 among shareholders.

37 **Sec. 17.** RCW 23B.11.040 and 2009 c 189 s 39 are each amended to
38 read as follows:

1 (1) A parent corporation owning at least ninety percent of the
2 outstanding shares of each class of a subsidiary corporation may (a)
3 merge the subsidiary into itself without approval of the shareholders
4 of the parent or subsidiary, or (b) merge itself into the subsidiary
5 without approval of the shareholders of the subsidiary. A merger of a
6 parent corporation into its subsidiary otherwise will be governed by
7 the provisions of chapter 23B.11 RCW applicable to mergers generally.

8 (2) The board of directors of the parent shall approve a plan of
9 merger that sets forth:

10 (a) The names of the parent and subsidiary; and

11 (b) The manner and basis of converting the shares of the
12 subsidiary or parent corporation, as applicable, into shares,
13 obligations, or other securities of the ((parent)) surviving
14 corporation or any other corporation or into cash or other property
15 in whole or part.

16 (3) Within ten days after the corporate action becomes effective,
17 the ((parent)) surviving corporation shall deliver a notice to each
18 other shareholder of the subsidiary, which notice ((shall)) must
19 include a copy of the plan of merger.

20 (4) Articles of merger under this section may not contain
21 amendments to the articles of incorporation of the parent
22 corporation, except for amendments enumerated in RCW 23B.10.020.

23 **Sec. 18.** RCW 23B.19.020 and 2016 c 216 s 1 are each amended to
24 read as follows:

25 The definitions in this section apply throughout this chapter
26 unless the context clearly requires otherwise.

27 (1) "Acquiring person" means a person or group of persons, other
28 than the target corporation or a subsidiary of the target
29 corporation, who is the beneficial owner of voting shares entitled to
30 cast votes comprising ten percent or more of the voting power of the
31 target corporation; provided, however, that the term "acquiring
32 person" does not include any person who (a) beneficially owned voting
33 shares entitled to cast votes comprising ten percent or more of the
34 voting power of the target corporation on March 23, 1988; (b)
35 acquired its voting shares of the target corporation solely by gift,
36 inheritance, or in a transaction in which no consideration is
37 exchanged; (c) equals or exceeds the ten percent threshold as a
38 result of action taken solely by the target corporation, such as
39 redemption of shares, unless that person, by its own action, acquires

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

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

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

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

1 (5)(a)(i) "Beneficial owner" when used with respect to any shares
2 means a person who individually or with or through any of its
3 affiliates or associates:

4 (A) Has or shares:

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

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

9 (III) The right to acquire the shares, whether the right is
10 exercisable immediately or only after the passage of time, pursuant
11 to any agreement, arrangement, or understanding, whether or not in
12 writing, or upon the exercise of conversion rights, exchange rights,
13 warrants or options, or otherwise; or

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

16 (B) Has any agreement, arrangement, or understanding, whether or
17 not in writing, for the purpose of acquiring, holding, voting, or
18 disposing of the shares with any other person who beneficially owns,
19 or whose affiliates or associates beneficially own, directly or
20 indirectly, the shares.

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

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

33 (C) A person is not the beneficial owner of any shares under
34 (a)(i)(B) of this subsection if the agreement, arrangement, or
35 understanding for the purpose of voting the shares arises solely from
36 a revocable proxy or consent given in response to a proxy or consent
37 solicitation made in accordance with the applicable rules and
38 regulations under the exchange act and is not then reportable on
39 schedule 13D under the exchange act, or any comparable or successor
40 report.

1 (b) The terms "beneficial ownership," "beneficially own," and
2 "beneficially owned" have meanings correlative to the meaning of
3 "beneficial owner."

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

5 (7) "Consummation date," with respect to any significant business
6 transaction, means the date of consummation of such a significant
7 business transaction, or, in the case of a significant business
8 transaction as to which a shareholder vote is taken, the later of the
9 business day prior to the vote or twenty days prior to the date of
10 consummation of such a significant business transaction.

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

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

27 (10) "Exchange act" means the federal securities exchange act of
28 1934, as amended.

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

33 (12) "Person" means an individual, domestic or foreign
34 corporation, partnership, trust, unincorporated association, or other
35 entity; an affiliate or associate of any such person; or any two or
36 more persons acting as a partnership, syndicate, or other group for
37 the purpose of acquiring, holding, or dispersing of securities of a
38 domestic or foreign corporation.

39 (13) "Preferred shares" means any class or series of shares of a
40 target corporation which under the bylaws or articles of

1 incorporation of such a corporation is entitled to receive payment of
2 dividends prior to any payment of dividends on some other class or
3 series of shares, or is entitled in the event of any voluntary
4 liquidation, dissolution, or winding up of the target corporation to
5 receive payment or distribution of a preferential amount before any
6 payments or distributions are received by some other class or series
7 of shares.

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

10 (15) "Shares" means any:

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

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

18 (16) "Significant business transaction" means:

19 (a) A merger, share exchange, or consolidation of a target
20 corporation or a subsidiary of a target corporation with (i) an
21 acquiring person, or (ii) any other domestic or foreign corporation
22 which is, or after the merger, share exchange, or consolidation would
23 be, an affiliate or associate of the acquiring person;

24 (b) A sale, lease, exchange, mortgage, pledge, transfer, or other
25 disposition or encumbrance, whether in one transaction or a series of
26 transactions, to or with an acquiring person or an affiliate or
27 associate of an acquiring person of assets of a target corporation or
28 a subsidiary of a target corporation (i) having an aggregate market
29 value equal to five percent or more of the aggregate market value of
30 all the assets, determined on a consolidated basis, of the target
31 corporation, (ii) having an aggregate market value equal to five
32 percent or more of the aggregate market value of all the outstanding
33 shares of the target corporation, or (iii) representing five percent
34 or more of the earning power or net income, determined on a
35 consolidated basis, of the target corporation;

36 (c) The termination, while the corporation has an acquiring
37 person and as a result of the acquiring person's acquisition of ten
38 percent or more of the shares of the corporation, of five percent or
39 more of the employees of the target corporation or its subsidiaries
40 employed in this state, whether at one time or over the five-year

1 period following the share acquisition time. For the purposes of (c)
2 of this subsection, a termination other than an employee's death or
3 disability or bona fide voluntary retirement, transfer, resignation,
4 termination for cause under applicable common law principles, or
5 leave of absence shall be presumed to be a termination resulting from
6 the acquiring person's acquisition of shares, which presumption is
7 rebuttable. A bona fide voluntary transfer of employees between the
8 target corporation and its subsidiaries or between its subsidiaries
9 is not a termination for the purposes of (c) of this subsection;

10 (d) The issuance, transfer, or redemption by a target corporation
11 or a subsidiary of a target corporation, whether in one transaction
12 or a series of transactions, of shares or of options, warrants, or
13 rights to acquire shares of a target corporation or a subsidiary of a
14 target corporation to or beneficially owned by an acquiring person or
15 an affiliate or associate of an acquiring person except pursuant to
16 the exercise of warrants or rights to purchase shares offered, or a
17 dividend, distribution, or redemption paid or made pro rata to, all
18 shareholders or holders of options, warrants, or rights to acquire
19 shares of the target corporation, and except for involuntary
20 redemptions permitted by the target corporation's charter or by the
21 law of this state or the state of incorporation;

22 (e) The liquidation or dissolution of a target corporation
23 proposed by, or pursuant to an agreement, arrangement, or
24 understanding, whether or not in writing, with an acquiring person or
25 an affiliate or associate of an acquiring person;

26 (f) A reclassification of securities, including, without
27 limitation, any shares split, shares dividend, or other distribution
28 of shares in respect of stock, or any reverse shares split, or
29 recapitalization of a target corporation, or a merger or
30 consolidation of a target corporation with a subsidiary of the target
31 corporation, or any other transaction, whether or not with or into or
32 otherwise involving an acquiring person, proposed by, or pursuant to
33 an agreement, arrangement, or understanding, whether or not in
34 writing, with an acquiring person or an affiliate or associate of an
35 acquiring person, that has the effect, directly or indirectly, of
36 increasing the proportionate share of the outstanding shares of a
37 class or series of voting shares or securities convertible into
38 voting shares of a target corporation or a subsidiary of the target
39 corporation that is directly or indirectly owned by an acquiring
40 person or an affiliate or associate of an acquiring person, except as

1 a result of immaterial changes due to fractional share adjustments;
2 or

3 (g) A receipt by an acquiring person or an affiliate or associate
4 of an acquiring person of the benefit, directly or indirectly, except
5 proportionately as a shareholder of a target corporation, of loans,
6 advances, guarantees, pledges, or other financial assistance or tax
7 credits or other tax advantages provided by or through a target
8 corporation.

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

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

15 (19) "Target corporation" means:

16 (a) Every domestic corporation, if:

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

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

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

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

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

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

38 (iv) A majority of the corporation's employees, together with
39 those of its subsidiaries, are residents of the state or the

1 corporation, together with its subsidiaries, employs more than one
2 thousand residents of the state; and

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

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

17 The residence of each shareholder is presumed to be the address
18 appearing in the records of the corporation. Shares held of record by
19 brokers or nominees shall be disregarded for purposes of calculating
20 the percentages and numbers specified in this subsection. Shares of a
21 corporation allocated to the account of an employee or former
22 employee or beneficiaries of employees or former employees of a
23 corporation and held in a plan that is qualified under section 401(a)
24 of the federal internal revenue code of 1986, as amended, and is a
25 defined contribution plan within the meaning of section 414(i) of the
26 code shall be deemed, for the purposes of this subsection, to be held
27 of 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
30 satisfy the requirements of this subsection is caused by the action
31 of, or is the result of a proposal by, an acquiring person or
32 affiliate or associate of an acquiring person.

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

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

1 NEW SECTION. **Sec. 19.** Sections 1 through 8 of this act
2 constitute a new chapter in Title 23B RCW.

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