

2 **SSB 6169** - H COMM AMD **ADOPTED 2-28-96**

3 By Committee on Law & Justice

4

5 Strike everything after the enacting clause and insert the  
6 following:

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

9 The definitions in this section apply throughout this chapter.

10 (1) "Acquiring person" means a person or group of persons, other  
11 than the target corporation or a subsidiary of the target corporation,  
12 who beneficially owns ten percent or more of the outstanding voting  
13 shares of the target corporation. The term "acquiring person" does not  
14 include a person who (a) beneficially (~~owns~~) owned ten percent or  
15 more of the outstanding voting shares of the target corporation on  
16 March 23, 1988; (b) acquires its shares by gift, inheritance, or in a  
17 transaction in which no consideration is exchanged; (~~or~~) (c) exceeds  
18 the ten percent threshold as a result of action taken solely by the  
19 target corporation, such as redemption of shares, unless that person,  
20 by its own action, acquires additional shares of the target  
21 corporation; (d) beneficially was the owner of ten percent or more of  
22 the outstanding voting shares prior to the time the target corporation  
23 had a class of voting shares registered with the securities and  
24 exchange commission pursuant to section 12 or 15 of the exchange act;  
25 or (e) beneficially was the owner of ten percent or more of the  
26 outstanding voting shares prior to the time the target corporation  
27 amended its articles of incorporation to provide that the corporation  
28 shall be subject to the provisions of this chapter. An agent, bank,  
29 broker, nominee, or trustee for another person, if the other person is  
30 not an acquiring person, who acts in good faith and not for the purpose  
31 of circumventing this chapter, is not an acquiring person. For the  
32 purpose of determining whether a person is an acquiring person, the  
33 number of voting shares of the target corporation that are outstanding  
34 shall include shares beneficially owned by the person through  
35 application of subsection (4) of this section, but shall not include  
36 any other unissued voting shares of the target corporation which may be

1 issuable pursuant to any agreement, arrangement, or understanding; or  
2 upon exercise of conversion rights, warrants, or options; or otherwise.

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

5 (3) "Announcement date," when used in reference to any significant  
6 business transaction, means the date of the first public announcement  
7 of the final, definitive proposal for such a significant business  
8 transaction.

9 (4) "Associate" means (a) a domestic or foreign corporation or  
10 organization of which a person is an officer, director, member, or  
11 partner or in which a person performs a similar function; (b) a direct  
12 or indirect beneficial owner of ten percent or more of any class of  
13 equity securities of a person; (c) a trust or estate in which a person  
14 has a beneficial interest or as to which a person serves as trustee or  
15 in a similar fiduciary capacity; and (d) ~~((if having the same residence~~  
16 ~~as a person, the person's relative, spouse, or spouse's relative))~~ the  
17 spouse or a parent or sibling of a person or a child, grandchild,  
18 sibling, parent, or spouse of any thereof, of a person or an individual  
19 having the same home as a person.

20 ~~((+4))~~ (5) "Beneficial ownership," when used with respect to any  
21 shares, means ownership by a person:

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

24 (b) Who, individually or with or through any of its affiliates or  
25 associates, has (i) the right to acquire the shares, whether the right  
26 is exercisable immediately or only after the passage of time, pursuant  
27 to any agreement, arrangement, or understanding, whether or not in  
28 writing, or upon the exercise of conversion rights, exchange rights,  
29 warrants or options, or otherwise. A person is not the beneficial  
30 owner of shares tendered pursuant to a tender or exchange offer made by  
31 the person or any of the person's affiliates or associates until the  
32 tendered shares are accepted for purchase or exchange; or (ii) the  
33 right to vote the shares pursuant to any agreement, arrangement, or  
34 understanding, whether or not in writing. A person is not the  
35 beneficial owner of any shares under (b)(ii) of this subsection if the  
36 agreement, arrangement, or understanding to vote the shares arises  
37 solely from a revocable proxy or consent given in response to a proxy  
38 or consent solicitation made in accordance with the applicable rules  
39 and regulations under the exchange act and is not then reportable on

1 schedule 13D under the exchange act, or any comparable or successor  
2 report; or

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

9 ~~((+5+))~~ (6) "Common shares" means any shares other than preferred  
10 shares.

11 (7) "Consummation date," with respect to any significant business  
12 transaction, means the date of consummation of such a significant  
13 business transaction, or, in the case of a significant business  
14 transaction as to which a shareholder vote is taken, the later of the  
15 business day prior to the vote or twenty days prior to the date of  
16 consummation of such a significant business transaction.

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

30 ~~((+6+))~~ (9) "Domestic corporation" means an issuer of voting shares  
31 which is organized under chapter 23B.02 RCW or any predecessor  
32 provision.

33 (10) "Exchange act" means the federal securities exchange act of  
34 1934, as amended.

35 ~~((+7+))~~ (11) "Market value," in the case of property other than  
36 cash or shares, means the fair market value of the property on the date  
37 in question as determined by the board of directors of the target  
38 corporation in good faith.

1       (~~(8)~~) (12) "Person" means an individual, domestic or foreign  
2 corporation, partnership, trust, unincorporated association, or other  
3 entity; an affiliate or associate of any such person; or any two or  
4 more persons acting as a partnership, syndicate, or other group for the  
5 purpose of acquiring, holding, or dispersing of securities of a  
6 domestic or foreign corporation.

7       (~~(9)~~) (13) "Preferred shares" means any class or series of shares  
8 of a target corporation which under the bylaws or articles of  
9 incorporation of such a corporation is entitled to receive payment of  
10 dividends prior to any payment of dividends on some other class or  
11 series of shares, or is entitled in the event of any voluntary  
12 liquidation, dissolution, or winding up of the target corporation to  
13 receive payment or distribution of a preferential amount before any  
14 payments or distributions are received by some other class or series of  
15 shares.

16       (14) "Shares" means any:

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

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

24       (15) "Significant business transaction" means:

25       (a) A merger, share exchange, or consolidation of a target  
26 corporation or a subsidiary of a target corporation with (i) an  
27 acquiring person, or (ii) any other domestic or foreign corporation  
28 which is, or after the merger, share exchange, or consolidation would  
29 be, an affiliate or associate of the acquiring person;

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

1 more of the earning power or net income, determined on a consolidated  
2 basis, of the target corporation;

3 (c) The termination, while the corporation has an acquiring person  
4 and as a result of the acquiring person's acquisition of ten percent or  
5 more of the shares of the corporation, of five percent or more of the  
6 employees of the target corporation or its subsidiaries employed in  
7 this state, whether at one time or over the five-year period following  
8 the share acquisition (~~((date))~~) time. For the purposes of (c) of this  
9 subsection, a termination other than an employee's death or disability  
10 or bona fide voluntary retirement, transfer, resignation, termination  
11 for cause under applicable common law principles, or leave of absence  
12 shall be presumed to be a termination resulting from the acquiring  
13 person's acquisition of shares, which presumption (~~((may be rebutted by~~  
14 ~~clear and convincing evidence))~~) is rebuttable. A bona fide voluntary  
15 transfer of employees between the target corporation and its  
16 subsidiaries or between its subsidiaries is not a termination for the  
17 purposes of (c) of this subsection;

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

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

35 (f) A reclassification of securities, including, without  
36 limitation, any (~~((stock))~~) shares split, (~~((stock))~~) shares dividend, or  
37 other distribution of (~~((stock))~~) shares in respect of stock, or any  
38 reverse (~~((stock))~~) shares split, or recapitalization of a target  
39 corporation, or a merger or consolidation of a target corporation with

1 a subsidiary of the target corporation, or any other transaction,  
2 whether or not with or into or otherwise involving an acquiring person,  
3 proposed by, or pursuant to an agreement, arrangement, or  
4 understanding, whether or not in writing, with an acquiring person or  
5 an affiliate or associate of an acquiring person, that has the effect,  
6 directly or indirectly, of increasing the proportionate share of the  
7 outstanding shares of a class or series of voting shares or securities  
8 convertible into voting shares of a target corporation or a subsidiary  
9 of the target corporation that is directly or indirectly owned by an  
10 acquiring person or an affiliate or associate of an acquiring person,  
11 except as a result of immaterial changes due to fractional share  
12 adjustments; or

13 (g) A receipt by an acquiring person or an affiliate or associate  
14 of an acquiring person of the benefit, directly or indirectly, except  
15 proportionately as a shareholder of a target corporation, of loans,  
16 advances, guarantees, pledges, or other financial assistance or tax  
17 credits or other tax advantages provided by or through a target  
18 corporation(~~(; or~~

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

21 ~~((10))~~ (16) "Share acquisition ((date)) time" means the ((date  
22 ~~on))~~ time at which a person first becomes an acquiring person of a  
23 target corporation.

24 ~~((11))~~ (17) "Subsidiary" means a domestic or foreign corporation  
25 that has a majority of its outstanding voting shares owned, directly or  
26 indirectly, by another domestic or foreign corporation.

27 ~~((12))~~ (18) "Tangible assets" means tangible real and personal  
28 property of all kinds. It shall also include leasehold interests in  
29 tangible real and personal property.

30 ~~((13))~~ (19) "Target corporation" means:

31 (a) Every domestic corporation (~~(organized under chapter 23B.02 RCW~~  
32 ~~or any predecessor provision if, as of the share acquisition date, the~~  
33 ~~corporation's principal executive office is located in the state and~~  
34 ~~either a majority of the corporation's employees, together with those~~  
35 ~~of its subsidiaries, are residents of the state or the corporation,~~  
36 ~~together with its subsidiaries, employs more than one thousand~~  
37 ~~residents of the state)), if:~~

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

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

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

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

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

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

22        ~~((iii))~~ (iv) A majority of the corporation's employees, together  
23 with those of its subsidiaries, are residents of the state or the  
24 corporation, together with its subsidiaries, employs more than one  
25 thousand residents of the state; and

26        ~~((iv))~~ (v) A majority of the corporation's tangible assets,  
27 together with those of its subsidiaries, measured by market value, are  
28 located in the state or the corporation, together with its  
29 subsidiaries, has more than fifty million dollars' worth of tangible  
30 assets located in the state.

31        For purposes of this subsection, the record date for determining  
32 the percentages and numbers of shareholders and shares shall be the  
33 last shareholder record date before the event requiring that the  
34 determination be made. A shareholder record date shall be determined  
35 pursuant to (~~RCW 23B.07.070 for a domestic corporation and~~) the  
36 comparable provision to RCW 23B.07.070 of the law of the state in which  
37 a foreign corporation is incorporated. If a shareholder record date  
38 has not been fixed by the board of directors within the preceding four

1 months, the determination shall be made as of the end of the ((domestic  
2 or foreign)) corporation's most recent fiscal quarter.

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

15 A domestic or foreign corporation shall be deemed to be a target  
16 corporation if the domestic or foreign corporation's failure to satisfy  
17 the requirements of this subsection is caused by the action of, or is  
18 the result of a proposal by, an acquiring person or affiliate or  
19 associate of an acquiring person.

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

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

24 This chapter does not apply to((+)

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

29 ~~(2))~~ a significant business transaction of a target corporation  
30 with an acquiring person of the target corporation which became an  
31 acquiring person inadvertently, if the acquiring person ((+a)) (1) as  
32 soon as practicable, divests itself of a sufficient amount of the  
33 voting shares of the target corporation so that it no longer is the  
34 beneficial owner, directly or indirectly, of ten percent or more of the  
35 outstanding voting shares of the target corporation, and ((+b)) (2)  
36 would not at any time within the five-year period preceding the  
37 announcement date ((of the first public announcement)) of the

1 significant business transaction have been an acquiring person but for  
2 the inadvertent acquisition.

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

5 (1)(a) Notwithstanding (~~(any provision of this title)~~) anything to  
6 the contrary contained in this title, except under subsection (2) of  
7 this section and RCW 23B.19.030, a target corporation shall not engage  
8 in any significant business transaction for a period of five years  
9 following the acquiring person's share acquisition (~~(date)~~) time unless  
10 the significant business transaction or the purchase of shares made by  
11 the acquiring person (~~(on the share acquisition date)~~) is approved  
12 prior to the acquiring person's share acquisition (~~(date)~~) time by a  
13 majority of the members of the board of directors of the target  
14 corporation.

15 (b) If a good faith proposal for a significant business transaction  
16 is made in writing to the board of directors of the target corporation  
17 prior to the significant business transaction or prior to the share  
18 acquisition (~~(date)~~) time, the board of directors shall respond in  
19 writing, within thirty days or such shorter period, if any, as may be  
20 required by the exchange act setting forth its reasons for its decision  
21 regarding the proposal. If a good faith proposal to purchase shares is  
22 made in writing to the board of directors of the target corporation,  
23 the board of directors, unless it responds affirmatively in writing  
24 within thirty days or a shorter period, if any, as may be required by  
25 the exchange act shall be deemed to have disapproved such share  
26 purchase.

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

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

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

17       (ii) The market value per share of common shares on the  
18 announcement date with respect to a significant business transaction or  
19 on the date of the acquiring person's share acquisition time, whichever  
20 is higher; plus interest compounded annually from such a date through  
21 the consummation date at the rate for one-year United States treasury  
22 obligations from time to time in effect; less the aggregate amount of  
23 any cash dividends paid, and the market value of any dividends paid  
24 other than in cash, per share of common shares since the date, up to  
25 the amount of the interest.

26       (b) The aggregate amount of the cash and the market value as of the  
27 consummation date of consideration other than cash to be received per  
28 share by holders of outstanding shares of any class or series of  
29 shares, other than common shares, of the target corporation is at least  
30 equal to the highest of the following, whether or not the acquiring  
31 person has previously acquired any shares of such a class or series of  
32 shares:

33       (i) The highest per share price paid by an acquiring person at a  
34 time when the person was the beneficial owner, directly or indirectly,  
35 of five percent or more of the outstanding voting shares of a resident  
36 domestic corporation, for any shares of the same class or series of  
37 shares acquired by it: (A) Within the five-year period immediately  
38 prior to the announcement date with respect to a significant business  
39 transaction; or (B) within the five-year period immediately prior to,

1 or in, the transaction in which the acquiring person became an  
2 acquiring person, whichever is higher; plus, in either case, interest  
3 compounded annually from the earliest date on which the highest per  
4 share acquisition price was paid through the consummation date at the  
5 rate for one-year United States treasury obligations from time to time  
6 in effect; less the aggregate amount of any cash dividends paid, and  
7 the market value of any dividends paid other than in cash, per share of  
8 the same class or series of shares since the earliest date, up to the  
9 amount of the interest;

10 (ii) The highest preferential amount per share to which the holders  
11 of shares of the same class or series of shares are entitled in the  
12 event of any voluntary liquidation, dissolution, or winding up of the  
13 target corporation, plus the aggregate amount of any dividends declared  
14 or due as to which the holders are entitled prior to payment of  
15 dividends on some other class or series of shares, unless the aggregate  
16 amount of the dividends is included in the preferential amount; and

17 (iii) The market value per share of the same class or series of  
18 shares on the announcement date with respect to a significant business  
19 transaction or on the date of the acquiring person's share acquisition  
20 time, whichever is higher; plus interest compounded annually from such  
21 a date through the consummation date at the rate for one-year United  
22 States treasury obligations from time to time in effect; less the  
23 aggregate amount of any cash dividends paid and the market value of any  
24 dividends paid other than in cash, per share of the same class or  
25 series of shares since the date, up to the amount of the interest.

26 (c) The consideration to be received by holders of a particular  
27 class or series of outstanding shares, including common shares, of the  
28 target corporation in a business combination is in cash or in the same  
29 form as the acquiring person has used to acquire the largest number of  
30 shares of the same class or series of shares previously acquired by the  
31 person, and the consideration shall be distributed promptly.

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

37 (4) A ((target corporation that engages in a)) significant business  
38 transaction that ((violates)) is made in violation of subsection (1) or  
39 (2) of this section and that is not exempt under RCW ((23B.19.010 shall

1 ~~have its certificate of incorporation or certificate of authority to~~  
2 ~~transact business in this state revoked under RCW 23B.14.200 or~~  
3 ~~23B.15.300 for domestic or foreign target corporations, respectively.~~  
4 ~~In addition, such significant transaction shall be)) 23B.19.030 is~~  
5 void.

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

8 Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this title.

10 (1) "Articles of incorporation" include amended and restated  
11 articles of incorporation and articles of merger.

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

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

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

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

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

32 (7) "Effective date of notice" has the meaning provided in RCW  
33 23B.01.410.

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

36 (9) "Entity" includes a corporation and foreign corporation, not-  
37 for-profit corporation, profit and not-for-profit unincorporated  
38 association, business trust, estate, partnership, trust, and two or

1 more persons having a joint or common economic interest, and the state,  
2 United States, and a foreign government.

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

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

8 (12) "Governmental subdivision" includes authority, county,  
9 district, and municipality.

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

11 (14) "Individual" includes the estate of an incompetent or deceased  
12 individual.

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

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

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

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

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

23 (20) "Proceeding" includes civil suit and criminal, administrative,  
24 and investigatory action.

25 (21) "Public company" means a corporation that has a class of  
26 shares registered with the federal securities and exchange commission  
27 pursuant to section 12 or 15 of the securities exchange act of 1934, or  
28 section 8 of the investment company act of 1940, or any successor  
29 statute(~~(, and that has more than three hundred holders of record of~~  
30 ~~its shares)~~).

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

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

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

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

7 (26) "State," when referring to a part of the United States,  
8 includes a state and commonwealth, and their agencies and governmental  
9 subdivisions, and a territory and insular possession, and their  
10 agencies and governmental subdivisions, of the United States.

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

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

15 (29) "Voting group" means all shares of one or more classes or  
16 series that under the articles of incorporation or this title are  
17 entitled to vote and be counted together collectively on a matter at a  
18 meeting of shareholders. All shares entitled by the articles of  
19 incorporation or this title to vote generally on the matter are for  
20 that purpose a single voting group.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (f) If more than one class of shares is authorized, all shares of  
14 a class must have preferences, limitations, and relative rights  
15 identical to those of other shares of the same class under RCW  
16 23B.06.010;

17 (g) If the board of directors is authorized to designate the number  
18 of shares in a series, the board may, after the issuance of shares in  
19 that series, reduce the number of authorized shares of that series  
20 under RCW 23B.06.020;

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

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

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

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

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

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

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

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

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

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

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

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

18 (t) Action on a matter, other than election of directors, by a  
19 voting group is approved if the votes cast within the voting group  
20 favoring the action exceed the votes cast opposing the action, unless  
21 this title requires a greater number of affirmative votes under RCW  
22 23B.07.250;

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

26 (v) Directors are elected by cumulative voting under RCW  
27 23B.07.280;

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

30 (x) A corporation must have a board of directors under RCW  
31 23B.08.010;

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

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

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

1 (bb) A corporation shall indemnify a director who was wholly  
2 successful in the defense of any proceeding to which the director was  
3 a party because the director is or was a director of the corporation  
4 against reasonable expenses incurred by the director in connection with  
5 the proceeding under RCW 23B.08.520;

6 (cc) A director of a corporation who is a party to a proceeding  
7 may apply for indemnification of reasonable expenses incurred by the  
8 director in connection with the proceeding to the court conducting the  
9 proceeding or to another court of competent jurisdiction under RCW  
10 23B.08.540;

11 (dd) An officer of the corporation who is not a director is  
12 entitled to mandatory indemnification under RCW 23B.08.520, and is  
13 entitled to apply for court-ordered indemnification under RCW  
14 23B.08.540, in each case to the same extent as a director under RCW  
15 23B.08.570;

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

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

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

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

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

38 (jj) Unless this title or the board of directors require a greater  
39 vote or a vote by voting groups, a plan of merger or share exchange

1 must be approved by each voting group entitled to vote on the merger or  
2 share exchange by two-thirds of all the votes entitled to be cast by  
3 that voting group under RCW 23B.11.030;

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

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

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

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

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

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

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

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

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

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

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

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

8 (g) Regular meetings of the board of directors may be held without  
9 notice of the date, time, place, or purpose of the meeting under RCW  
10 23B.08.220;

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

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

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

20 (k) A board of directors may create one or more committees and  
21 appoint members of the board of directors to serve on them under RCW  
22 23B.08.250; and

23 (l) Unless approved by the shareholders, a corporation may  
24 indemnify, or make advances to, a director for reasonable expenses  
25 incurred in the defense of any proceeding to which the director was a  
26 party because of being a director only to the extent such action is  
27 consistent with RCW 23B.08.500 through 23B.08.580.

28 (5) The articles of incorporation may contain the following  
29 provisions:

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

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

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

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

37 (e) Provisions not inconsistent with law defining, limiting, and  
38 regulating the powers of the corporation, its board of directors, and  
39 shareholders;

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

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

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

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

15 (6) The articles of incorporation or the bylaws may contain the  
16 following provisions:

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

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

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

24 (d) If the corporation is registered as an investment company under  
25 the investment company act of 1940, a provision limiting the  
26 requirement to hold an annual meeting of shareholders as provided in  
27 RCW 23B.07.010(2); and

28 (e) If the corporation is registered as an investment company under  
29 the investment company act of 1940, a provision establishing terms of  
30 directors which terms may be longer than one year as provided in RCW  
31 23B.05.050.

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

34 NEW SECTION. **Sec. 6.** RCW 23B.17.020 and 1989 c 165 s 189 are each  
35 repealed."

1 **SSB 6169** - H COMM AMD  
2 By Committee on Law & Justice

3  
4 On page 1, line 2 of the title, after "act;" strike the remainder  
5 of the title and insert "amending RCW 23B.19.020, 23B.19.030,  
6 23B.19.040, 23B.01.400, and 23B.02.020; and repealing RCW 23B.17.020."

--- END ---