

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1042

Chapter 45, Laws of 2007

60th Legislature
2007 Regular Session

SIGNIFICANT BUSINESS TRANSACTIONS--SHARE ACQUISITION

EFFECTIVE DATE: 07/22/07

Passed by the House January 29, 2007
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 4, 2007
Yeas 46 Nays 0

BRAD OWEN

President of the Senate

Approved April 17, 2007, 9:10 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1042** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

April 17, 2007

**Secretary of State
State of Washington**

HOUSE BILL 1042

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Representatives Rodne, Pedersen, Moeller and Lantz

Prefiled 12/28/2006. Read first time 01/08/2007. Referred to
Committee on Judiciary.

1 AN ACT Relating to business transactions; and amending RCW
2 23B.19.040.

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

4 **Sec. 1.** RCW 23B.19.040 and 1997 c 19 s 3 are each amended to read
5 as follows:

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

10 (i) It is exempted by RCW 23B.19.030 ((~~or unless~~));

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

15 (iii) At or subsequent to the acquiring person's share acquisition
16 time, such significant business transaction is approved by a majority
17 of the members of the board of directors of the target corporation and
18 authorized at an annual or special meeting of shareholders, and not by

1 written consent, by the affirmative vote of at least two-thirds of the
2 outstanding voting shares, except shares beneficially owned by or under
3 the voting control of the acquiring person.

4 (b) If a good faith proposal for a significant business transaction
5 is made in writing to the board of directors of the target corporation
6 prior to the significant business transaction or prior to the share
7 acquisition time, the board of directors shall respond in writing,
8 within thirty days or such shorter period, if any, as may be required
9 by the exchange act setting forth its reasons for its decision
10 regarding the proposal. If a good faith proposal to purchase shares is
11 made in writing to the board of directors of the target corporation,
12 the board of directors, unless it responds affirmatively in writing
13 within thirty days or a shorter period, if any, as may be required by
14 the exchange act shall be deemed to have disapproved such share
15 purchase.

16 (2) Except for a significant business transaction approved under
17 subsection (1) of this section or exempted by RCW 23B.19.030, in
18 addition to any other requirement, a target corporation shall not
19 engage at any time in any significant business transaction described in
20 RCW 23B.19.020(15) (a) or (e) with any acquiring person of such a
21 corporation other than a significant business transaction that either
22 meets all of the conditions of (a), (b), and (c) of this subsection or
23 meets the conditions of (d) of this subsection:

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

29 (i) The highest per share price paid by such an acquiring person at
30 a time when the person was the beneficial owner, directly or
31 indirectly, of five percent or more of the outstanding voting shares of
32 a target corporation, for any shares of common shares of the same class
33 or series acquired by it: (A) Within the five-year period immediately
34 prior to the announcement date with respect to a significant business
35 transaction; or (B) within the five-year period immediately prior to,
36 or in, the transaction in which the acquiring person became an
37 acquiring person, whichever is higher plus, in either case, interest
38 compounded annually from the earliest date on which the highest per

1 share acquisition price was paid through the consummation date at the
2 rate for one-year United States treasury obligations from time to time
3 in effect; less the aggregate amount of any cash dividends paid, and
4 the market value of any dividends paid other than in cash, per share of
5 common shares since the earliest date, up to the amount of the
6 interest; and

7 (ii) The market value per share of common shares on the
8 announcement date with respect to a significant business transaction or
9 on the date of the acquiring person's share acquisition time, whichever
10 is higher; plus interest compounded annually from such a date through
11 the consummation date at the rate for one-year United States treasury
12 obligations from time to time in effect; less the aggregate amount of
13 any cash dividends paid, and the market value of any dividends paid
14 other than in cash, per share of common shares since the date, up to
15 the amount of the interest.

16 (b) The aggregate amount of the cash and the market value as of the
17 consummation date of consideration other than cash to be received per
18 share by holders of outstanding shares of any class or series of
19 shares, other than common shares, of the target corporation is at least
20 equal to the highest of the following, whether or not the acquiring
21 person has previously acquired any shares of such a class or series of
22 shares:

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

1 (ii) The highest preferential amount per share to which the holders
2 of shares of the same class or series of shares are entitled in the
3 event of any voluntary liquidation, dissolution, or winding up of the
4 target corporation, plus the aggregate amount of any dividends declared
5 or due as to which the holders are entitled prior to payment of
6 dividends on some other class or series of shares, unless the aggregate
7 amount of the dividends is included in the preferential amount; and

8 (iii) The market value per share of the same class or series of
9 shares on the announcement date with respect to a significant business
10 transaction or on the date of the acquiring person's share acquisition
11 time, whichever is higher; plus interest compounded annually from such
12 a date through the consummation date at the rate for one-year United
13 States treasury obligations from time to time in effect; less the
14 aggregate amount of any cash dividends paid and the market value of any
15 dividends paid other than in cash, per share of the same class or
16 series of shares since the date, up to the amount of the interest.

17 (c) The consideration to be received by holders of a particular
18 class or series of outstanding shares, including common shares, of the
19 target corporation in a significant business transaction is in cash or
20 in the same form as the acquiring person has used to acquire the
21 largest number of shares of the same class or series of shares
22 previously acquired by the person, and the consideration shall be
23 distributed promptly.

24 (d) The significant business transaction is approved at an annual
25 meeting of shareholders, or special meeting of shareholders called for
26 such a purpose, no earlier than five years after the acquiring person's
27 share acquisition time, by a majority of the votes entitled to be
28 counted within each voting group entitled to vote separately on the
29 transaction. The votes of all outstanding shares entitled to vote
30 under this title or the articles of incorporation shall be entitled to
31 be counted under this subsection except that the votes of shares as to
32 which an acquiring person has beneficial ownership or voting control
33 may not be counted to determine whether shareholders have approved a
34 transaction for purposes of this subsection. The votes of shares as to
35 which an acquiring person has beneficial ownership or voting control
36 shall, however, be counted in determining whether a transaction is
37 approved under other sections of this title and for purposes of
38 determining a quorum.

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

6 (4) A significant business transaction that is made in violation of
7 subsection (1) or (2) of this section and that is not exempt under RCW
8 23B.19.030 is void.

Passed by the House January 29, 2007.

Passed by the Senate April 4, 2007.

Approved by the Governor April 17, 2007.

Filed in Office of Secretary of State April 17, 2007.