

CERTIFICATION OF ENROLLMENT

**SENATE BILL 6205**

Chapter 216, Laws of 2016

64th Legislature  
2016 Regular Session

CORPORATE MERGERS AND ACQUISITIONS--ACQUIRING PERSON--DEFINITION

EFFECTIVE DATE: 6/9/2016

Passed by the Senate February 15, 2016  
Yeas 47 Nays 0

BRAD OWEN

**President of the Senate**

Passed by the House March 3, 2016  
Yeas 91 Nays 6

FRANK CHOPP

**Speaker of the House of Representatives**

Approved April 1, 2016 4:46 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6205** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

**Secretary**

FILED

April 4, 2016

**Secretary of State  
State of Washington**

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SENATE BILL 6205

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Passed Legislature - 2016 Regular Session

State of Washington

64th Legislature

2016 Regular Session

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32           (A) Has or shares:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1        (15) "Shares" means any:

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

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

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

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

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

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

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

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

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

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



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

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

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

9       (19) "Target corporation" means:

10      (a) Every domestic corporation, if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (ii) The highest preferential amount per share to which the  
24 holders of shares of the same class or series of shares are entitled  
25 in the event of any voluntary liquidation, dissolution, or winding up  
26 of the target corporation, plus the aggregate amount of any dividends  
27 declared or due as to which the holders are entitled prior to payment  
28 of dividends on some other class or series of shares, unless the  
29 aggregate amount of the dividends is included in the preferential  
30 amount; and

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

1 (c) The consideration to be received by holders of a particular  
2 class or series of outstanding shares, including common shares, of  
3 the target corporation in a significant business transaction is in  
4 cash or in the same form as the acquiring person has used to acquire  
5 the largest number of shares of the same class or series of shares  
6 previously acquired by the person, and the consideration shall be  
7 distributed promptly.

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

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

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

Passed by the Senate February 15, 2016.

Passed by the House March 3, 2016.

Approved by the Governor April 1, 2016.

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