

CERTIFICATION OF ENROLLMENT

**SENATE BILL 5011**

Chapter 28, Laws of 2017

65th Legislature  
2017 Regular Session

BUSINESS CORPORATION ACT

EFFECTIVE DATE: 7/23/2017

Passed by the Senate February 1, 2017  
Yeas 49 Nays 0

CYRUS HABIB

**President of the Senate**

Passed by the House April 5, 2017  
Yeas 97 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Approved April 17, 2017 11:18 AM

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 5011** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

**Secretary**

FILED

April 17, 2017

**Secretary of State  
State of Washington**

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SENATE BILL 5011

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Passed Legislature - 2017 Regular Session

State of Washington

65th Legislature

2017 Regular Session

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

Prefiled 12/21/16. Read first time 01/09/17. Referred to Committee on Law & Justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (a) The validation effective time; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 16 (a) The proposed corporate action is abandoned or rescinded;
- 17 (b) A court having jurisdiction permanently enjoins or sets aside  
18 the corporate action; or
- 19 (c) The shareholder's demand for payment is withdrawn with the  
20 written consent of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (A) Has or shares:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (15) "Shares" means any:

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

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

18 (16) "Significant business transaction" means:

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

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

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

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

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

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

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



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

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

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

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

15 (19) "Target corporation" means:

16 (a) Every domestic corporation, if:

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

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

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

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

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

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

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

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

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

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

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

28 A domestic or foreign corporation shall be deemed to be a target  
29 corporation if the domestic or foreign corporation's failure to  
30 satisfy the requirements of this subsection is caused by the action  
31 of, or is the result of a proposal by, an acquiring person or  
32 affiliate or associate of an acquiring person.

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

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

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

Passed by the Senate February 1, 2017.  
Passed by the House April 5, 2017.  
Approved by the Governor April 17, 2017.  
Filed in Office of Secretary of State April 17, 2017.

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