
HOUSE BILL 1068

State of Washington

61st Legislature

2009 Regular Session

By Representatives Pedersen and Rodne; by request of Washington State Bar Association

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1 AN ACT Relating to the Washington business corporation act;
2 amending RCW 23B.01.410, 23B.02.020, 23B.02.050, 23B.02.060,
3 23B.06.020, 23B.06.040, 23B.06.210, 23B.06.220, 23B.06.260, 23B.06.310,
4 23B.06.400, 23B.07.030, 23B.07.040, 23B.07.060, 23B.07.070, 23B.07.200,
5 23B.07.250, 23B.07.260, 23B.07.270, 23B.07.280, 23B.07.320, 23B.08.030,
6 23B.08.210, 23B.08.230, 23B.08.240, 23B.08.250, 23B.08.500, 23B.08.550,
7 23B.08.700, 23B.10.020, 23B.10.060, 23B.10.070, 23B.10.080, 23B.10.200,
8 23B.10.205, 23B.10.210, 23B.11.030, 23B.11.040, 23B.12.020, 23B.13.020,
9 23B.13.200, 23B.13.210, 23B.13.220, 23B.13.240, 23B.13.260, 23B.13.270,
10 23B.13.280, 23B.14.010, 23B.14.020, 23B.14.030, 23B.14.040, 23B.14.050,
11 23B.16.010, 23B.16.020, and 23B.19.040; and reenacting and amending RCW
12 23B.01.400.

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

14 **Sec. 1.** RCW 23B.01.400 and 2002 c 297 s 9 and 2002 c 296 s 1 are
15 each reenacted and amended to read as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this title.

18 (1) "Articles of incorporation" include amended and restated
19 articles of incorporation and articles of merger.

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

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

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

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

15 ((+5)) (6) "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 ((+6)) (7) "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 shareholders
26 in respect to any of its shares. A distribution may be in the form of
27 a declaration or payment of a dividend; a distribution in partial or
28 complete liquidation, or upon voluntary or involuntary dissolution; a
29 purchase, redemption, or other acquisition of shares; a distribution of
30 indebtedness; or otherwise.

31 ((+7)) (8) "Effective date of notice" has the meaning provided in
32 RCW 23B.01.410.

33 ((+8)) (9) "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.

1 ~~((9))~~ (10) "Electronically transmitted" means the initiation of
2 an electronic transmission.

3 ~~((10))~~ (11) "Employee" includes an officer but not a director.
4 A director may accept duties that make the director also an employee.

5 ~~((11))~~ (12) "Entity" includes a corporation and foreign
6 corporation, not-for-profit corporation, business trust, estate, trust,
7 partnership, limited liability company, association, joint venture, two
8 or more persons having a joint or common economic interest, the state,
9 United States, and a foreign governmental subdivision, agency, or
10 instrumentality, or any other legal or commercial entity.

11 ~~((12))~~ (13) "Execute," "executes," or "executed" means (a) signed
12 with respect to a written record or (b) electronically transmitted
13 along with sufficient information to determine the sender's identity
14 with respect to an electronic transmission, or (c) with respect to a
15 record to be filed with the secretary of state, in compliance with the
16 standards for filing with the office of the secretary of state as
17 prescribed by the secretary of state.

18 ~~((13))~~ (14) "Foreign corporation" means a corporation for profit
19 incorporated under a law other than the law of this state.

20 ~~((14))~~ (15) "Foreign limited partnership" means a partnership
21 formed under laws other than of this state and having as partners one
22 or more general partners and one or more limited partners.

23 ~~((15))~~ (16) "Governmental subdivision" includes authority,
24 county, district, and municipality.

25 ~~((16))~~ (17) "Includes" denotes a partial definition.

26 ~~((17))~~ (18) "Individual" includes the estate of an incompetent or
27 deceased individual.

28 ~~((18))~~ (19) "Limited partnership" or "domestic limited
29 partnership" means a partnership formed by two or more persons under
30 the laws of this state and having one or more general partners and one
31 or more limited partners.

32 ~~((19))~~ (20) "Means" denotes an exhaustive definition.

33 ~~((20))~~ (21) "Notice" has the meaning provided in RCW 23B.01.410.

34 ~~((21))~~ (22) "Person" means an individual, corporation, business
35 trust, estate, trust, partnership, limited liability company,
36 association, joint venture, government, governmental subdivision,
37 agency, or instrumentality, or any other legal or commercial entity.

1 ~~((+22+))~~ (23) "Principal office" means the office, in or out of
2 this state, so designated in the annual report where the principal
3 executive offices of a domestic or foreign corporation are located.

4 ~~((+23+))~~ (24) "Proceeding" includes civil suit and criminal,
5 administrative, and investigatory action.

6 ~~((+24+))~~ (25) "Public company" means a corporation that has a class
7 of shares registered with the federal securities and exchange
8 commission pursuant to section 12 or 15 of the securities exchange act
9 of 1934, or section 8 of the investment company act of 1940, or any
10 successor statute.

11 ~~((+25+))~~ (26) "Record" means information inscribed on a tangible
12 medium or contained in an electronic transmission.

13 ~~((+26+))~~ (27) "Record date" means the date established under
14 chapter 23B.07 RCW on which a corporation determines the identity of
15 its shareholders and their shareholdings for purposes of this title.
16 The determinations shall be made as of the close of business on the
17 record date unless another time for doing so is specified when the
18 record date is fixed.

19 ~~((+27+))~~ (28) "Secretary" means the corporate officer to whom the
20 board of directors has delegated responsibility under RCW 23B.08.400(3)
21 for custody of the minutes of the meetings of the board of directors
22 and of the shareholders and for authenticating records of the
23 corporation.

24 ~~((+28+))~~ (29) "Shares" means the units into which the proprietary
25 interests in a corporation are divided.

26 ~~((+29+))~~ (30) "Shareholder" means the person in whose name shares
27 are registered in the records of a corporation or the beneficial owner
28 of shares to the extent of the rights granted by a nominee certificate
29 on file with a corporation.

30 ~~((+30+))~~ (31) "State," when referring to a part of the United
31 States, includes a state and commonwealth, and their agencies and
32 governmental subdivisions, and a territory and insular possession, and
33 their agencies and governmental subdivisions, of the United States.

34 ~~((+31+))~~ (32) "Subscriber" means a person who subscribes for shares
35 in a corporation, whether before or after incorporation.

36 ~~((+32+))~~ (33) "Tangible medium" means a writing, copy of a writing,
37 or facsimile, or a physical reproduction, each on paper or on other
38 tangible material.

1 (~~(33)~~) (34) "United States" includes a district, authority,
2 bureau, commission, department, and any other agency of the United
3 States.

4 (~~(34)~~) (35) "Voting group" means all shares of one or more
5 classes or series that under the articles of incorporation or this
6 title are entitled to vote and be counted together collectively on a
7 matter at a meeting of shareholders. All shares entitled by the
8 articles of incorporation or this title to vote generally on the matter
9 are for that purpose a single voting group.

10 (~~(35)~~) (36) "Writing" does not include an electronic
11 transmission.

12 (~~(36)~~) (37) "Written" means embodied in a tangible medium.

13 **Sec. 2.** RCW 23B.01.410 and 2008 c 59 s 1 are each amended to read
14 as follows:

15 (1) Notice under this title must be provided in the form of a
16 record, except that oral notice of any meeting of the board of
17 directors may be given if expressly authorized by the articles of
18 incorporation or bylaws.

19 (2) Permissible means of transmission.

20 (a) Oral notice. Oral notice may be communicated in person, by
21 telephone, wire, or wireless equipment which does not transmit a
22 facsimile of the notice, or by any electronic means which does not
23 create a record. If these forms of oral notice are impracticable, oral
24 notice may be communicated by radio, television, or other form of
25 public broadcast communication.

26 (b) Notice provided in a tangible medium. Notice may be provided
27 in a tangible medium and be transmitted by mail, private carrier, or
28 personal delivery; telegraph or teletype; or telephone, wire, or
29 wireless equipment which transmits a facsimile of the notice. If these
30 forms of notice in a tangible medium are impracticable, notice in a
31 tangible medium may be transmitted by an advertisement in a newspaper
32 of general circulation in the area where published.

33 (c) Notice provided in an electronic transmission.

34 (i) Notice may be provided in an electronic transmission and be
35 electronically transmitted.

36 (ii) Notice to shareholders or directors in an electronic
37 transmission is effective only with respect to shareholders and

1 directors that have consented, in the form of a record, to receive
2 electronically transmitted notices under this title and designated in
3 the consent the address, location, or system to which these notices may
4 be electronically transmitted and with respect to a notice that
5 otherwise complies with any other requirements of this title and
6 applicable federal law.

7 (A) Notice to shareholders or directors for this purpose includes
8 material that this title requires to accompany the notice.

9 (B) A shareholder or director who has consented to receipt of
10 electronically transmitted notices may revoke this consent by
11 delivering a revocation to the corporation in the form of a record.

12 (C) The consent of any shareholder or director is revoked if (I)
13 the corporation is unable to electronically transmit two consecutive
14 notices given by the corporation in accordance with the consent, and
15 (II) this inability becomes known to the secretary of the corporation,
16 the transfer agent, or any other person responsible for giving the
17 notice. The inadvertent failure by the corporation to treat this
18 inability as a revocation does not invalidate any meeting or other
19 corporate action.

20 (iii) Notice to shareholders or directors who have consented to
21 receipt of electronically transmitted notices may be provided by (A)
22 posting the notice on an electronic network and (B) delivering to the
23 shareholder or director a separate record of the posting, together with
24 comprehensible instructions regarding how to obtain access to the
25 posting on the electronic network.

26 (iv) Notice to a domestic or foreign corporation, authorized to
27 transact business in this state, in an electronic transmission is
28 effective only with respect to a corporation that has designated in a
29 record an address, location, or system to which the notices may be
30 electronically transmitted.

31 (d) Materials accompanying notice to shareholders of public
32 companies. Notwithstanding anything to the contrary in this section or
33 any other section of this title, if this title requires that a notice
34 to shareholders be accompanied by certain material, a public company
35 may satisfy such a requirement, whether or not a shareholder has
36 consented to receive electronically transmitted notice, by (i) posting
37 the material on an electronic network (either separate from, or in
38 combination or as part of, any other materials the public company has

1 posted on the electronic network in compliance with applicable federal
2 law) at or prior to the time that the notice is delivered to the public
3 company's shareholders entitled to receive the notice, and (ii)
4 delivering to the public company's shareholders entitled to receive the
5 notice a separate record of the posting (which record may accompany, or
6 be contained in, the notice), together with comprehensible instructions
7 regarding how to obtain access to the posting on the electronic
8 network. In such a case, the material is deemed to have been delivered
9 to the public company's shareholders at the time the notice to the
10 shareholders is effective under this section. A public company that
11 elects pursuant to this section to post on an electronic network any
12 material required by this title to accompany a notice to shareholders
13 is required, at its expense, to provide a copy of the material in a
14 tangible medium (alone or in combination or as part of any other
15 materials the public company has posted on the electronic network in
16 compliance with federal law) to any shareholder entitled to such a
17 notice who so requests.

18 (3) Effective time and date of notice.

19 (a) Oral notice. Oral notice is effective when received.

20 (b) Notice provided in a tangible medium.

21 (i) Notice in a tangible medium, if in a comprehensible form, is
22 effective at the earliest of the following:

23 (A) If expressly authorized by the articles of incorporation or
24 bylaws, and if notice is sent to the person's address, telephone
25 number, or other number appearing on the records of the corporation,
26 when dispatched by telegraph, teletype, or facsimile equipment;

27 (B) When received;

28 (C) Except as provided in (b)(ii) of this subsection, five days
29 after its deposit in the United States mail, as evidenced by the
30 postmark, if mailed with first-class postage, prepaid and correctly
31 addressed; or

32 (D) On the date shown on the return receipt, if sent by registered
33 or certified mail, return receipt requested, and the receipt is signed
34 by or on behalf of the addressee.

35 (ii) Notice in a tangible medium by a domestic or foreign
36 corporation to its shareholder, if in a comprehensible form and
37 correctly addressed to the shareholder's address shown in the
38 corporation's current record of shareholders, is effective:

1 (A) When mailed, if mailed with first-class postage prepaid; and

2 (B) When dispatched, if prepaid, by air courier.

3 (iii) Notice in a tangible medium to a domestic or foreign
4 corporation, authorized to transact business in this state, may be
5 addressed to the corporation's registered agent at its registered
6 office or to the corporation or its secretary at its principal office
7 shown in its most recent annual report, or in the case of a foreign
8 corporation that has not yet delivered its annual report in its
9 application for a certificate of authority.

10 (c) Notice provided in an electronic transmission. Notice provided
11 in an electronic transmission, if in comprehensible form, is effective
12 when it: (i) Is electronically transmitted to an address, location, or
13 system designated by the recipient for that purpose; or (ii) has been
14 posted on an electronic network and a separate record of the posting
15 has been delivered to the recipient together with comprehensible
16 instructions regarding how to obtain access to the posting on the
17 electronic network.

18 (4) If this title prescribes notice requirements for particular
19 circumstances, those requirements govern. If articles of incorporation
20 or bylaws prescribe notice requirements, not inconsistent with this
21 section or other provisions of this title, those requirements govern.

22 **Sec. 3.** RCW 23B.02.020 and 2002 c 297 s 11 are each amended to
23 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

15 (f) If more than one class of shares is authorized, all shares of
16 a class must have preferences, limitations, and relative rights
17 identical to those of other shares of the same class under RCW
18 23B.06.010;

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

23 (h) The board of directors must (~~authorize~~) approve any issuance
24 of shares under RCW 23B.06.210;

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

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

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

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

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

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

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

6 (p) Corporate action may be (~~taken~~) approved by shareholders by
7 unanimous consent of all shareholders entitled to vote on the corporate
8 action, unless the approval of a lesser number of shareholders is
9 permitted as provided in RCW 23B.07.040, which shareholder consent
10 shall be in the form of a record;

11 (q) Unless this title requires otherwise, the corporation is
12 required to give notice only to shareholders entitled to vote at a
13 meeting and the notice for an annual meeting need not include the
14 purpose for which the meeting is called under RCW 23B.07.050;

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

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

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

25 (u) Corporate action on a matter, other than election of directors,
26 by a voting group is approved if the votes cast within the voting group
27 favoring the corporate action exceed the votes cast opposing the
28 corporate action, unless this title requires a greater number of
29 affirmative votes under RCW 23B.07.250;

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

33 (w) Directors are elected by cumulative voting under RCW
34 23B.07.280;

35 (x) Directors are elected by a plurality of votes cast by shares
36 entitled to vote under RCW 23B.07.280, except as otherwise provided in
37 the articles of incorporation or a bylaw adopted pursuant to RCW
38 23B.10.205;

1 (y) A corporation must have a board of directors under RCW
2 23B.08.010;

3 (z) All corporate powers must be exercised by or under the
4 authority of, and the business and affairs of the corporation managed
5 under the direction of, its board of directors under RCW 23B.08.010;

6 (aa) The shareholders may remove one or more directors with or
7 without cause under RCW 23B.08.080;

8 (bb) A vacancy on the board of directors may be filled by the
9 shareholders or the board of directors under RCW 23B.08.100;

10 (cc) A corporation shall indemnify a director who was wholly
11 successful in the defense of any proceeding to which the director was
12 a party because the director is or was a director of the corporation
13 against reasonable expenses incurred by the director in connection with
14 the proceeding under RCW 23B.08.520;

15 (dd) A director of a corporation who is a party to a proceeding may
16 apply for indemnification of reasonable expenses incurred by the
17 director in connection with the proceeding to the court conducting the
18 proceeding or to another court of competent jurisdiction under RCW
19 23B.08.540;

20 (ee) An officer of the corporation who is not a director is
21 entitled to mandatory indemnification under RCW 23B.08.520, and is
22 entitled to apply for court-ordered indemnification under RCW
23 23B.08.540, in each case to the same extent as a director under RCW
24 23B.08.570;

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

28 (gg) A corporation may indemnify and advance expenses to an
29 officer, employee, or agent who is not a director to the extent,
30 consistent with law, that may be provided by its articles of
31 incorporation, bylaws, general or specific (~~action~~) approval of its
32 board of directors, or contract under RCW 23B.08.570;

33 (hh) A corporation's board of directors may adopt certain
34 amendments to the corporation's articles of incorporation without
35 shareholder (~~action~~) approval under RCW 23B.10.020;

36 (ii) Unless this title or the board of directors requires a greater
37 vote or a vote by voting groups, an amendment to the corporation's
38 articles of incorporation must be approved by each voting group

1 entitled to vote on the proposed amendment by two-thirds, or, in the
2 case of a public company, a majority, of all the votes entitled to be
3 cast by that voting group under RCW 23B.10.030;

4 (jj) A corporation's board of directors may amend or repeal the
5 corporation's bylaws unless this title reserves this power exclusively
6 to the shareholders in whole or in part, or unless the shareholders in
7 amending or repealing a bylaw provide expressly that the board of
8 directors may not amend or repeal that bylaw under RCW 23B.10.200;

9 (kk) Unless this title or the board of directors require a greater
10 vote or a vote by voting groups, a plan of merger or share exchange
11 must be approved by each voting group entitled to vote on the merger or
12 share exchange by two-thirds of all the votes entitled to be cast by
13 that voting group under RCW 23B.11.030;

14 (ll) Approval by the shareholders of the sale, lease, exchange, or
15 other disposition of all, or substantially all, the corporation's
16 property in the usual and regular course of business is not required
17 under RCW 23B.12.010;

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

22 (nn) Unless the board of directors requires a greater vote or a
23 vote by voting groups, a sale, lease, exchange, or other disposition of
24 all or substantially all of the corporation's property, other than in
25 the usual and regular course of business, must be approved by each
26 voting group entitled to vote on such transaction by two-thirds of all
27 votes entitled to be cast by that voting group under RCW 23B.12.020;
28 and

29 (oo) Unless the board of directors requires a greater vote or a
30 vote by voting groups, a proposal to dissolve must be approved by each
31 voting group entitled to vote on the dissolution by two-thirds of all
32 votes entitled to be cast by that voting group under RCW 23B.14.020.

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

35 (a) The board of directors may (~~authorize~~) approve the issuance
36 of some or all of the shares of any or all of the corporation's classes
37 or series without certificates under RCW 23B.06.260;

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

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

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

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

13 (f) Corporate action permitted or required by this title to be
14 taken at a board of directors' meeting may be (~~taken~~) approved
15 without a meeting if (~~action is taken~~) approved by all members of the
16 board under RCW 23B.08.210;

17 (g) Regular meetings of the board of directors may be held without
18 notice of the date, time, place, or purpose of the meeting under RCW
19 23B.08.220;

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

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

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

29 (k) A board of directors may create one or more committees and
30 appoint members of the board of directors to serve on them under RCW
31 23B.08.250; and

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

37 (5) The articles of incorporation may contain the following
38 provisions:

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

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

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

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

8 (e) Provisions not inconsistent with law defining, limiting, and
9 regulating the powers of the corporation, its board of directors, and
10 shareholders;

11 (f) Provisions authorizing (~~(shareholder)~~) corporate action to be
12 (~~(taken)~~) approved by consent of less than all of the shareholders
13 entitled to vote on the corporate action, in accordance with RCW
14 23B.07.040;

15 (g) If the articles of incorporation authorize dividing shares into
16 classes, the election of all or a specified number of directors may be
17 effected by the holders of one or more authorized classes of shares
18 under RCW 23B.08.040;

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

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

26 (j) A director's personal liability to the corporation or its
27 shareholders for monetary damages for conduct as a director may be
28 eliminated or limited under RCW 23B.08.320.

29 (6) The articles of incorporation or the bylaws may contain the
30 following provisions:

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

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

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

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

5 (e) If the corporation is registered as an investment company under
6 the investment company act of 1940, a provision establishing terms of
7 directors which terms may be longer than one year as provided in RCW
8 23B.05.050.

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

11 **Sec. 4.** RCW 23B.02.050 and 2002 c 297 s 13 are each amended to
12 read as follows:

13 (1) After incorporation:

14 (a) If initial directors are named in the articles of
15 incorporation, the initial directors shall hold an organizational
16 meeting, at the call of a majority of the directors, to complete the
17 organization of the corporation by appointing officers, adopting
18 bylaws, and carrying on any other business brought before the meeting;

19 (b) If initial directors are not named in the articles, the
20 incorporator or incorporators shall hold an organizational meeting at
21 the call of a majority of the incorporators:

22 (i) To elect directors and complete the organization of the
23 corporation; or

24 (ii) To elect a board of directors who shall complete the
25 organization of the corporation.

26 (2) Corporate action required or permitted by this title to be
27 (~~taken~~) approved by incorporators at an organizational meeting may be
28 (~~taken~~) approved without a meeting if the (~~action-taken~~) approval
29 is evidenced by the consent of each of the incorporators in the form of
30 a record describing the corporate action (~~taken~~) so approved and
31 executed by each incorporator.

32 (3) An organizational meeting may be held in or out of this state.

33 (4) A corporation's initial report containing the information
34 described in RCW 23B.16.220(1) must be delivered to the secretary of
35 state within one hundred twenty days of the date on which the
36 corporation's articles of incorporation were filed.

1 **Sec. 5.** RCW 23B.02.060 and 1989 c 165 s 31 are each amended to
2 read as follows:

3 (1) The incorporators or board of directors of a corporation shall
4 adopt initial bylaws for the corporation.

5 (2) The articles of incorporation or bylaws must either specify
6 the number of directors or specify the process by which the number of
7 directors will be fixed, unless the articles of incorporation dispense
8 with a board of directors pursuant to RCW 23B.08.010;

9 (3) Unless its articles of incorporation or its bylaws provide
10 otherwise, a corporation is governed by the following provisions:

11 (a) The board of directors may (~~authorize~~) approve the issuance
12 of some or all of the shares of any or all of the corporation's classes
13 or series without certificates under RCW 23B.06.260;

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

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

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

22 (e) Members of the board of directors may participate in a meeting
23 of the board by means of a conference telephone or similar
24 communication equipment under RCW 23B.08.200;

25 (f) Corporate action permitted or required by this title to be
26 (~~taken~~) approved at a board of directors' meeting may be (~~taken~~)
27 approved without a meeting if the corporate action is (~~taken~~)
28 approved by all members of the board under RCW 23B.08.210;

29 (g) Regular meetings of the board of directors may be held without
30 notice of the date, time, place, or purpose of the meeting under RCW
31 23B.08.220;

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

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

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

4 (k) A board of directors may create one or more committees and
5 appoint members of the board of directors to serve on them under RCW
6 23B.08.250; and

7 (l) Unless approved by shareholders, a corporation may indemnify,
8 or make advances to, a director only for reasonable expenses incurred
9 in the defense of any proceeding to which the director was a party
10 because of being a director to the extent such action is consistent
11 with RCW 23B.08.500 through 23B.08.580 under RCW 23B.08.590.

12 (4) The bylaws of a corporation may contain any provision, not in
13 conflict with law or the articles of incorporation, for managing the
14 business and regulating the affairs of the corporation, including but
15 not limited to the following:

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

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

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

23 **Sec. 6.** RCW 23B.06.020 and 1998 c 104 s 2 are each amended to read
24 as follows:

25 (1) If the articles of incorporation so provide, the board of
26 directors may determine, in whole or part, the preferences,
27 limitations, voting powers, and relative rights, within the limits set
28 forth in RCW 23B.06.010(1)(b) and this section of (a) any class of
29 shares before the issuance of any shares of that class, or (b) one or
30 more series within a class, and designate the number of shares within
31 that series, before the issuance of any shares of that series.

32 (2) Each series of a class must be given a distinguishing
33 designation.

34 (3) All shares of a series must have preferences, limitations,
35 voting powers, and relative rights identical with those of other shares
36 of the same series, except to the extent otherwise permitted by RCW
37 23B.06.010(1)(b). All shares of a series must have preferences,

1 limitations, voting powers, and relative rights identical with those of
2 shares of other series of the same class, except to the extent
3 otherwise provided in the description of the series.

4 (4) Before issuing any shares of a class or series created under
5 this section, the corporation must deliver to the secretary of state
6 for filing articles of amendment, which are effective without
7 shareholder (~~(action)~~) approval, that set forth:

8 (a) The name of the corporation;

9 (b) The text of the amendment determining the terms of the class or
10 series of shares;

11 (c) The date it was adopted; and

12 (d) The statement that the amendment was duly adopted by the board
13 of directors.

14 (5) Unless the articles of incorporation provide otherwise, the
15 board of directors may, after the issuance of shares of a series whose
16 number it is authorized to designate, amend the resolution establishing
17 the series to decrease, but not below the number of shares of such
18 series then outstanding, the number of authorized shares of that
19 series, by filing articles of amendment, which are effective without
20 shareholder (~~(action)~~) approval, in the manner provided in subsection
21 (4) of this section.

22 **Sec. 7.** RCW 23B.06.040 and 1989 c 165 s 47 are each amended to
23 read as follows:

24 (1) A corporation may:

25 (a) Issue fractions of a share or pay in money the value of
26 fractions of a share;

27 (b) Arrange for disposition of fractional shares by the
28 shareholders;

29 (c) Issue scrip in registered or bearer form entitling the holder
30 to receive a full share upon surrendering enough scrip to equal a full
31 share.

32 (2) Each certificate representing scrip must be conspicuously
33 labeled "scrip" and must contain the information required by RCW
34 23B.06.250(2).

35 (3) The holder of a fractional share is entitled to exercise the
36 rights of a shareholder, including the right to vote, to receive

1 dividends, and to participate in the assets of the corporation upon
2 liquidation. The holder of scrip is not entitled to any of these
3 rights unless the scrip provides for them.

4 (4) The board of directors may (~~authorize~~) approve the issuance
5 of scrip subject to any condition considered desirable, including:

6 (a) That the scrip will become void if not exchanged for full
7 shares before a specified date; and

8 (b) That the shares for which the scrip is exchangeable may be sold
9 and the proceeds paid to the scripholders.

10 **Sec. 8.** RCW 23B.06.210 and 1989 c 165 s 49 are each amended to
11 read as follows:

12 (1) The powers granted in this section to the board of directors
13 may be reserved to the shareholders by the articles of incorporation.

14 (2) Any issuance of shares must be (~~authorized~~) approved by the
15 board of directors. Shares may be issued for consideration consisting
16 of any tangible or intangible property or benefit to the corporation,
17 including cash, promissory notes, services performed, contracts for
18 services to be performed, or other securities of the corporation.

19 (3) A good faith determination by the board of directors that the
20 consideration received or to be received for the shares to be issued is
21 adequate is conclusive insofar as the adequacy of consideration relates
22 to whether the shares are validly issued, fully paid and nonassessable.
23 When the board of directors has made such a determination and the
24 corporation has received the consideration, the shares issued therefor
25 are fully paid and nonassessable.

26 (4) The corporation may place in escrow shares issued for a
27 contract for future services or benefits or a promissory note, or make
28 other arrangements to restrict the transfer of the shares, and may
29 credit distributions in respect to the shares against their purchase
30 price, until the services are performed, the benefits are received, or
31 the note is paid. If the services are not performed, the benefits are
32 not received, or the note is not paid, the shares escrowed or
33 restricted and the distributions credited may be canceled in whole or
34 part.

35 (5) Where it cannot be determined that outstanding shares are fully
36 paid and nonassessable, there shall be a conclusive presumption that

1 such shares are fully paid and nonassessable if the board of directors
2 makes a good faith determination that there is no substantial evidence
3 that the full consideration for such shares has not been paid.

4 **Sec. 9.** RCW 23B.06.220 and 1989 c 165 s 50 are each amended to
5 read as follows:

6 A purchaser from a corporation of its own shares is not liable to
7 the corporation or its creditors with respect to the shares except to
8 pay the consideration for which the shares were (~~authorized~~) approved
9 to be issued under RCW 23B.06.210 or specified in the subscription
10 agreement under RCW 23B.06.200.

11 **Sec. 10.** RCW 23B.06.260 and 2002 c 297 s 18 are each amended to
12 read as follows:

13 (1) Unless the articles of incorporation or bylaws provide
14 otherwise, the board of directors of a corporation may (~~authorize~~)
15 approve the issue of some or all of the shares of any or all of its
16 classes or series without certificates. The (~~authorization~~) approval
17 does not affect shares already represented by certificates until they
18 are surrendered to the corporation.

19 (2) Within a reasonable time after the issue or transfer of shares
20 without certificates, the corporation shall send the shareholder a
21 record containing the information required on certificates by RCW
22 23B.06.250 (2) and (3), and, if applicable, RCW 23B.06.270.

23 **Sec. 11.** RCW 23B.06.310 and 1989 c 165 s 58 are each amended to
24 read as follows:

25 (1) A corporation may acquire its own shares and shares so acquired
26 constitute authorized but unissued shares.

27 (2) If the articles of incorporation prohibit the reissue of
28 acquired shares, the number of authorized shares is reduced by the
29 number of shares acquired, effective upon amendment of the articles of
30 incorporation.

31 (3) The board of directors may adopt articles of amendment under
32 this section without shareholder (~~action~~) approval and deliver them
33 to the secretary of state for filing. The articles must set forth:

34 (a) The name of the corporation;

1 (b) The reduction in the number of authorized shares, itemized by
2 class and series; and

3 (c) The total number of authorized shares, itemized by class and
4 series, remaining after reduction of the shares.

5 **Sec. 12.** RCW 23B.06.400 and 2006 c 52 s 2 are each amended to read
6 as follows:

7 (1) A board of directors may (~~authorize~~) approve and the
8 corporation may make distributions to its shareholders subject to
9 restriction by the articles of incorporation and the limitation in
10 subsection (2) of this section.

11 (2) No distribution may be made if, after giving it effect:

12 (a) The corporation would not be able to pay its liabilities as
13 they become due in the usual course of business; or

14 (b) The corporation's total assets would be less than the sum of
15 its total liabilities plus, unless the articles of incorporation permit
16 otherwise, the amount that would be needed, if the corporation were to
17 be dissolved at the time of the distribution, to satisfy the
18 preferential rights upon dissolution of shareholders whose preferential
19 rights are superior to those receiving the distribution.

20 (3) For purposes of determinations under subsection (2) of this
21 section:

22 (a) The board of directors may base a determination that a
23 distribution is not prohibited under subsection (2) of this section
24 either on financial statements prepared on the basis of accounting
25 practices and principles that are reasonable in the circumstances or on
26 a fair valuation or other method that is reasonable in the
27 circumstances; and

28 (b) Indebtedness of a corporation, including indebtedness issued as
29 a distribution, is not considered a liability if its terms provide that
30 payment of principal and interest are made only if and to the extent
31 that payment of a distribution to shareholders could then be made under
32 this section.

33 (4) The effect of a distribution under subsection (2) of this
34 section is measured:

35 (a) In the case of a distribution of indebtedness, the terms of
36 which provide that payment of principal and interest are made only if
37 and to the extent that payment of a distribution to shareholders could

1 then be made under this section, each payment of principal or interest
2 is treated as a distribution, the effect of which is measured on the
3 date the payment is actually made; or

4 (b) In the case of any other distribution:

5 (i) If the distribution is by purchase, redemption, or other
6 acquisition of the corporation's shares, the effect of the distribution
7 is measured as of the earlier of the date any money or other property
8 is transferred or debt incurred by the corporation, or the date the
9 shareholder ceases to be a shareholder with respect to the acquired
10 shares;

11 (ii) If the distribution is of indebtedness other than that
12 described in subsection (4) (a) and (b)(i) of this section, the effect
13 of the distribution is measured as of the date the indebtedness is
14 distributed; and

15 (iii) In all other cases, the effect of the distribution is
16 measured as of the date the distribution is (~~authorized~~) approved if
17 payment occurs within one hundred twenty days after the date of
18 (~~authorization~~) approval, or the date the payment is made if it
19 occurs more than one hundred twenty days after the date of
20 (~~authorization~~) approval.

21 (5) A corporation's indebtedness to a shareholder incurred by
22 reason of a distribution made in accordance with this section is at
23 parity with the corporation's indebtedness to its general, unsecured
24 creditors except to the extent provided otherwise by agreement.

25 (6) In circumstances to which this section and related sections of
26 this title are applicable, such provisions supersede the applicability
27 of any other statutes of this state with respect to the legality of
28 distributions.

29 (7) A transfer of the assets of a dissolved corporation to a trust
30 or other successor entity of the type described in RCW 23B.14.030(4)
31 constitutes a distribution subject to subsection (2) of this section
32 only when and to the extent that the trust or successor entity
33 distributes assets to shareholders.

34 **Sec. 13.** RCW 23B.07.030 and 2002 c 297 s 22 are each amended to
35 read as follows:

36 (1) The superior court of the county in which the corporation's

1 registered office is located may, after notice to the corporation,
2 summarily order a meeting to be held:

3 (a) On application of any shareholder of the corporation entitled
4 to vote in the election of directors at an annual meeting, if an annual
5 meeting was not held within the earlier of six months after the end of
6 the corporation's fiscal year or fifteen months after its last annual
7 meeting or approval of corporate action by shareholder consent in lieu
8 of such a meeting; or

9 (b) On application of a shareholder who executed a demand for a
10 special meeting valid under RCW 23B.07.020, if:

11 (i) Notice of the special meeting was not given within thirty days
12 after the date the demand was delivered to the corporation's secretary;
13 or

14 (ii) The special meeting was not held in accordance with the
15 notice.

16 (2) The court may, after notice to the corporation, fix the time
17 and place of the meeting, determine the shares and shareholders
18 entitled to participate in the meeting, specify a record date for
19 determining shareholders entitled to notice of and to vote at the
20 meeting, prescribe the manner, form, and content of the meeting notice,
21 fix the quorum required for specific matters to be considered at the
22 meeting, or direct that the votes represented at the meeting constitute
23 a quorum for ~~((action-on))~~ approval of those matters, and enter other
24 orders necessary to accomplish the purpose or purposes of the meeting.

25 **Sec. 14.** RCW 23B.07.040 and 2002 c 297 s 23 are each amended to
26 read as follows:

27 (1)(a) Corporate action required or permitted by this title to be
28 ~~((taken))~~ approved by a shareholder vote at a ~~((shareholders¹))~~ meeting
29 may be ~~((taken))~~ approved without a meeting or a vote if either:

30 (i) The corporate action is ~~((taken))~~ approved by all shareholders
31 entitled to vote on the corporate action; or

32 (ii) The corporate action is ~~((taken))~~ approved by shareholders
33 holding of record or otherwise entitled to vote in the aggregate not
34 less than the minimum number of votes that would be necessary to
35 ~~((authorize or take))~~ approve such corporate action at a meeting at
36 which all shares entitled to vote on the corporate action were present
37 and voted, and at the time the corporate action is ~~((taken))~~ approved

1 the corporation is not a public company and is authorized to ~~((take))~~
2 approve such corporate action under this subsection (1)(a)(ii) by a
3 general or limited authorization contained in its articles of
4 incorporation.

5 (b) ~~((The taking of))~~ Corporate action may be approved by
6 shareholders without a meeting or a vote ~~((must be evidenced by one or~~
7 ~~more consents, each in the form of a record describing the action~~
8 ~~taken, executed))~~ by means of execution of a single consent or multiple
9 counterpart consents by shareholders holding of record or otherwise
10 entitled to vote in the aggregate not less than the minimum number of
11 votes necessary ~~((in order to take such action by consent))~~ under
12 (a)(i) or (ii) of this subsection~~((, and))~~. Any such shareholder
13 consent must: (i) Be in the form of an executed record; (ii) indicate
14 the date of execution of the consent by each shareholder who executes
15 it, which date must be on or after the applicable record date
16 determined in accordance with subsection (2) of this section; (iii)
17 describe the corporate action being approved; (iv) when delivered to
18 each shareholder for execution, include or be accompanied by the same
19 material that would have been required by this title to be delivered to
20 shareholders in or accompanying a notice of meeting at which the
21 proposed corporate action would have been submitted for shareholder
22 approval; and (v) be delivered to the corporation for inclusion in the
23 minutes or filing with the corporate records~~((, which consent shall be~~
24 ~~set forth either (i) in an executed record or (ii) if the corporation~~
25 ~~has designated an address, location, or system to which the consent may~~
26 ~~be electronically transmitted and the consent is electronically~~
27 ~~transmitted to the designated address, location, or system, in an~~
28 ~~executed electronically transmitted record.~~

29 (2) ~~If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the~~
30 ~~record date for determining shareholders entitled to take action~~
31 ~~without a meeting is the date on which the first shareholder consent is~~
32 ~~executed under subsection (1) of this section. Every consent shall~~
33 ~~bear the date of execution of each shareholder who executes the~~
34 ~~consent. A consent is not effective to take the action referred to in~~
35 ~~the consent unless, within sixty days of the earliest dated consent~~
36 ~~delivered to the corporation, consents executed by a sufficient number~~
37 ~~of shareholders to take action are delivered to the corporation.~~

1 ~~(3))~~ in accordance with subsection (4) of this section. A
2 shareholder may withdraw an executed shareholder consent ((only)) by
3 delivering a notice of withdrawal in the form of ((a)) an executed
4 record to the corporation prior to the time when ((consents sufficient
5 to authorize taking the action have been delivered to the corporation.

6 ~~(4) Unless the shareholder consent specifies a later effective~~
7 ~~date, action taken under this section is effective when:~~ (a) ~~Consents~~
8 ~~sufficient to authorize taking the action have been delivered to the~~
9 ~~corporation; and (b) the period of advance notice required by the~~
10 ~~corporation's articles of incorporation to be given to any~~
11 ~~nonconsenting shareholders has been satisfied.~~

12 ~~(5) A consent executed)~~ shareholder consents sufficient to approve
13 the corporate action have been delivered to the corporation.

14 (2) The record date for determining shareholders entitled to
15 approve a corporate action without a meeting may be fixed under RCW
16 23B.07.030 or 23B.07.070, but if not so fixed shall be the date of
17 execution indicated on the earliest dated shareholder consent executed
18 under subsection (1) of this section, even though such shareholder
19 consent may not have been delivered to the corporation on that date.

20 (3)(a) Notice that shareholder consents are being sought under
21 subsection (1)(a) of this section shall be given, by the corporation or
22 by another person soliciting such consents, on or promptly after the
23 record date, to all shareholders entitled to vote on the record date
24 who have not yet executed the shareholder consent and, if this title
25 would otherwise require that notice of a meeting of shareholders to
26 consider the proposed corporate action be given to nonvoting
27 shareholders, to all nonvoting shareholders as of the record date.
28 Notice given under this subsection (3)(a) shall include or be
29 accompanied by the same information required to be included in or to
30 accompany the shareholder consent under subsection (1)(b)(iii) and (iv)
31 of this section.

32 (b) Notice that sufficient shareholder consents have been executed
33 to approve the proposed corporate action under either of subsection
34 (1)(a)(i) or (ii) of this section shall be given by the corporation,
35 promptly after delivery to the corporation of shareholder consents
36 sufficient to approve the corporate action in accordance with
37 subsection (4) of this section, to all shareholders entitled to vote on
38 the record date and, if this title would otherwise require that notice

1 of a meeting of shareholders to consider the proposed corporate action
2 be given to nonvoting shareholders, to all nonvoting shareholders as of
3 the record date.

4 (4) Unless the consent executed by shareholders specifies a later
5 effective date, shareholder approval obtained under this section is
6 effective when: (a) Executed shareholder consents sufficient to
7 approve the proposed corporate action have been delivered to the
8 corporation, either at an address designated by the corporation for
9 delivery of such shareholder consents or at the corporation's
10 registered office, or to such electronic address, location, or system
11 as the corporation may have designated for delivery of such shareholder
12 consents; and (b) any period of advance notice required by the
13 corporation's articles of incorporation to be given to any
14 nonconsenting shareholders has been satisfied. Executed shareholder
15 consents are not effective to approve a proposed corporate action
16 unless, within sixty days after the date of the earliest dated
17 shareholder consent delivered to the corporation, consents executed by
18 a sufficient number of shareholders to approve the corporate action are
19 delivered to the corporation.

20 (5) Approval of corporate action by execution of shareholder
21 consents under this section has the effect of a meeting vote and may be
22 described as such in any record, except that, if the corporate action
23 requires the filing of a certificate under any other section of this
24 title, the certificate so filed shall state, in lieu of any statement
25 required by that section concerning any vote of shareholders, that
26 ((consent)) shareholder approval has been obtained in accordance with
27 this section and that notice to any nonconsenting shareholders has been
28 given ((as provided in this section.

29 ~~(6) Notice of the taking of action by shareholders without a~~
30 ~~meeting by less than unanimous consent of all shareholders entitled to~~
31 ~~vote on the action shall be given, before the date on which the action~~
32 ~~becomes effective, to those shareholders entitled to vote on the action~~
33 ~~who have not consented and, if this title would otherwise require that~~
34 ~~notice of a meeting of shareholders to consider the action be given to~~
35 ~~nonvoting shareholders, to all nonvoting shareholders of the~~
36 ~~corporation. The general or limited authorization in the corporation's~~
37 ~~articles of incorporation authorizing shareholder action by less than~~
38 ~~unanimous consent shall specify the amount and form of notice required~~

1 ~~to be given to nonconsenting shareholders before the effective date of~~
2 ~~the action. In the case of action of a type that would constitute a~~
3 ~~significant business transaction under RCW 23B.19.020(15), the notice~~
4 ~~shall be given no fewer than twenty days before the effective date of~~
5 ~~the action. The notice shall be in the form of a record and shall~~
6 ~~contain or be accompanied by the same material that, under this title,~~
7 ~~would have been required to be delivered to nonconsenting or nonvoting~~
8 ~~shareholders in a notice of meeting at which the proposed action would~~
9 ~~have been submitted for shareholder action. If the action taken is of~~
10 ~~a type that would entitle shareholders to exercise dissenters' rights~~
11 ~~under RCW 23B.13.020(1), then the notice must comply with RCW~~
12 ~~23B.13.220(2), RCW 23B.13.210 shall not apply, and all shareholders who~~
13 ~~have not executed the consent taking the action are entitled to receive~~
14 ~~the notice, demand payment under RCW 23B.13.230, and assert other~~
15 ~~dissenters' rights as prescribed in chapter 23B.13 RCW)) to the extent~~
16 ~~required by this section.~~

17 **Sec. 15.** RCW 23B.07.060 and 2002 c 297 s 24 are each amended to
18 read as follows:

19 (1) A shareholder may waive any notice required by this title, the
20 articles of incorporation, or bylaws before or after the date and time
21 of the meeting that is the subject of such notice, or in the case of
22 notice required by RCW 23B.07.040(~~(+6)~~)(3), before or after the
23 corporate action to be (~~taken~~) approved by executed consent (~~is~~)
24 becomes effective. Except as provided by subsections (2) and (3) of
25 this section, the waiver must be delivered by the shareholder entitled
26 to notice to the corporation for inclusion in the minutes or filing
27 with the corporate records, which waiver shall be set forth either (a)
28 in an executed and dated record or (b) if the corporation has
29 designated an address, location, or system to which the waiver may be
30 electronically transmitted and the waiver is electronically transmitted
31 to the designated address, location, or system, in an executed and
32 dated electronically transmitted record.

33 (2) A shareholder's attendance at a meeting waives objection to
34 lack of notice or defective notice of the meeting, unless the
35 shareholder at the beginning of the meeting objects to holding the
36 meeting or transacting business at the meeting.

1 (3) A shareholder waives objection to consideration of a particular
2 matter at a meeting that is not within the purpose or purposes
3 described in the meeting notice, unless the shareholder objects to
4 considering the matter when it is presented.

5 **Sec. 16.** RCW 23B.07.070 and 1989 c 165 s 66 are each amended to
6 read as follows:

7 (1) The bylaws may fix or provide the manner of fixing the record
8 date for one or more voting groups in order to determine the
9 shareholders entitled to notice of a shareholders' meeting, to demand
10 a special meeting, to vote, or to ~~((take))~~ approve any other corporate
11 action. If the bylaws do not fix or provide for fixing a record date,
12 the board of directors of the corporation may fix a future date as the
13 record date.

14 (2) If not otherwise fixed under subsection (1) of this section or
15 RCW 23B.07.030, the record date for determining shareholders entitled
16 to notice of and to vote at an annual or special shareholders' meeting
17 is the day before the first notice is delivered to shareholders.

18 (3) If the board of directors does not fix the record date for
19 determining shareholders entitled to a share dividend, it is the date
20 the board of directors authorizes the share dividend.

21 (4) If the board of directors does not fix the record date for
22 determining shareholders entitled to a distribution, other than one
23 involving a purchase, redemption, or other acquisition of the
24 corporation's shares, it is the date the board of directors authorizes
25 the distribution.

26 (5) A record date fixed under this section may not be more than
27 seventy days before the meeting ~~((or action requiring a~~
28 ~~determination))~~ of shareholders or more than ten days prior to the date
29 on which the first shareholder consent is executed under RCW
30 23B.07.040(1)(b).

31 (6) A determination of shareholders entitled to notice of or to
32 vote at a shareholders' meeting is effective for any adjournment of the
33 meeting unless the board of directors fixes a new record date, which it
34 must do if the meeting is adjourned to a date more than one hundred
35 twenty days after the date fixed for the original meeting.

36 (7) If a court orders a meeting adjourned to a date more than one

1 hundred twenty days after the date fixed for the original meeting, it
2 may provide that the original record date continues in effect or it may
3 fix a new record date.

4 **Sec. 17.** RCW 23B.07.200 and 1989 c 165 s 68 are each amended to
5 read as follows:

6 (1) After fixing a record date for a meeting, a corporation shall
7 prepare an alphabetical list of the names of all its shareholders on
8 the record date who are entitled to notice of a shareholders' meeting.
9 The list must be arranged by voting group, and within each voting group
10 by class or series of shares, and show the address of and number of
11 shares held by each shareholder.

12 (2) The shareholders' list must be available for inspection by any
13 shareholder, beginning ten days prior to the meeting and continuing
14 through the meeting, at the corporation's principal office or at a
15 place identified in the meeting notice in the city where the meeting
16 will be held. A shareholder, the shareholder's agent, or the
17 shareholder's attorney is entitled to inspect the list, during regular
18 business hours and at the shareholder's expense, during the period it
19 is available for inspection.

20 (3) The corporation shall make the shareholders' list available at
21 the meeting, and any shareholder, the shareholder's agent, or the
22 shareholder's attorney is entitled to inspect the list at any time
23 during the meeting or any adjournment.

24 (4) If the corporation refuses to allow a shareholder, the
25 shareholder's agent, or the shareholder's attorney to inspect the
26 shareholders' list before or at the meeting, the superior court of the
27 county where a corporation's principal office, or, if none in this
28 state, its registered office, is located, on application of the
29 shareholder, may summarily order the inspection at the corporation's
30 expense and may postpone the meeting for which the list was prepared
31 until the inspection is complete.

32 (5) A shareholder's right to copy the shareholders' list, and a
33 shareholder's right to otherwise inspect and copy the record of
34 shareholders, is governed by RCW 23B.16.020(3).

35 (6) Refusal or failure to prepare or make available the
36 shareholders' list does not affect the validity of corporate action
37 (~~taken~~) approved at the meeting.

1 **Sec. 18.** RCW 23B.07.250 and 1989 c 165 s 73 are each amended to
2 read as follows:

3 (1) Shares entitled to vote as a separate voting group may ~~((take))~~
4 approve a corporate action ~~((on a matter))~~ at a meeting only if a
5 quorum of those shares exists with respect to that ~~((matter))~~ corporate
6 action. Unless the articles of incorporation or this title provide
7 otherwise, a majority of the votes entitled to be cast on the
8 ~~((matter))~~ corporate action by the voting group constitutes a quorum of
9 that voting group for ~~((action on that matter))~~ approval of that
10 corporate action.

11 (2) Once a share is represented for any purpose at a meeting other
12 than solely to object to holding the meeting or transacting business at
13 the meeting, it is deemed present for quorum purposes for the remainder
14 of the meeting and for any adjournment of that meeting unless a new
15 record date is or must be set for that adjourned meeting.

16 (3) If a quorum exists, a corporate action ~~((on a matter))~~, other
17 than the election of directors, is approved by a voting group if the
18 votes cast within the voting group favoring the corporate action exceed
19 the votes cast within the voting group opposing the corporate action,
20 unless the articles of incorporation or this title require a greater
21 number of affirmative votes.

22 (4) An amendment of articles of incorporation adding, changing, or
23 deleting either (i) a quorum for a voting group greater or lesser than
24 specified in subsection (1) of this section, or (ii) a voting
25 requirement for a voting group greater than specified in subsection (3)
26 of this section, is governed by RCW 23B.07.270.

27 (5) The election of directors is governed by RCW 23B.07.280.

28 **Sec. 19.** RCW 23B.07.260 and 2003 c 35 s 2 are each amended to read
29 as follows:

30 (1) If the articles of incorporation or this title provide for
31 voting on a ~~((matter))~~ corporate action by all shares entitled to vote
32 thereon, voting together as a single voting group and do not provide
33 for separate voting by any other voting group or groups with respect to
34 that ~~((matter))~~ corporate action, ~~((action on that matter is taken))~~
35 that corporate action is approved when voted upon by that single voting
36 group as provided in RCW 23B.07.250.

1 (2) If the articles of incorporation or this title provide for
2 voting by two or more voting groups on a (~~matter~~) corporate action,
3 (~~action on that matter is taken~~) that corporate action is approved
4 only when voted upon by each of those voting groups as provided in RCW
5 23B.07.250.

6 **Sec. 20.** RCW 23B.07.270 and 1990 c 178 s 11 are each amended to
7 read as follows:

8 (1) The articles of incorporation may provide for a greater or
9 lesser quorum, but not less than one-third of the votes entitled to be
10 cast, for shareholders, or voting groups of shareholders, than is
11 provided for by this title.

12 (2) The articles of incorporation may provide for a greater voting
13 requirement for shareholders, or voting groups of shareholders, than is
14 provided for by this title.

15 (3) Under RCW 23B.10.030, 23B.11.030, 23B.12.020, and 23B.14.020,
16 the articles of incorporation may provide for a lesser vote than is
17 otherwise prescribed in those sections or for a lesser vote by separate
18 voting groups, so long as the vote provided for each voting group
19 entitled to vote separately on the plan or transaction is not less than
20 a majority of all the votes entitled to be cast on the plan or
21 transaction by that voting group.

22 (4) Except as provided in subsection (5) of this section, an
23 amendment to the articles of incorporation that adds, changes, or
24 deletes a greater or lesser quorum or voting requirement for a
25 particular corporate action must meet the same quorum requirement and
26 be adopted by the same vote and voting groups as are required (~~to take~~
27 ~~action~~) under the quorum and voting requirements then in effect for
28 approval of the corporate action.

29 (5) An amendment to the articles of incorporation that adds,
30 changes, or deletes a greater or lesser quorum or voting requirement
31 for a merger, share exchange, sale of substantially all assets, or
32 dissolution must be adopted by the same vote and voting groups as are
33 required (~~to take action~~) under the quorum and voting requirements
34 then in effect for approval of the particular corporate action, or the
35 quorum and voting requirements then in effect for amendments to
36 articles of incorporation, whichever is greater.

1 **Sec. 21.** RCW 23B.07.280 and 1989 c 165 s 76 are each amended to
2 read as follows:

3 (1) Unless otherwise provided in the articles of incorporation,
4 shareholders entitled to vote at any election of directors are entitled
5 to cumulate votes by multiplying the number of votes they are entitled
6 to cast by the number of directors for whom they are entitled to vote
7 and to cast the product for a single candidate or distribute the
8 product among two or more candidates.

9 (2) Unless otherwise provided in the articles of incorporation or
10 in a bylaw adopted under RCW 23B.10.205, in any election of directors
11 the candidates elected are those receiving the largest numbers of votes
12 cast by the shares entitled to vote in the election, up to the number
13 of directors to be elected by such shares.

14 **Sec. 22.** RCW 23B.07.320 and 1995 c 47 s 6 are each amended to read
15 as follows:

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

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

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

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

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

33 (e) Establishes the terms and conditions of any agreement for the
34 transfer or use of property or the provision of services between the
35 corporation and any shareholder, director, officer, or employee of the
36 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 the
3 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 persons
15 who are shareholders at the time of the agreement and is made known to
16 the corporation;

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

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

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

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

20 (6) The existence or performance of an agreement authorized by this
21 section shall not be a ground for imposing personal liability on any
22 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 formalities
25 otherwise applicable to the matters governed by the agreement.

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

29 **Sec. 23.** RCW 23B.08.030 and 2007 c 467 s 1 are each amended to
30 read as follows:

31 (1) A board of directors must consist of one or more individuals,
32 with the number specified in or fixed in accordance with the articles
33 of incorporation or bylaws.

34 (2) Directors are elected at the first annual shareholders' meeting
35 and at each annual meeting thereafter unless (a) their terms are
36 staggered under RCW 23B.08.060, or (b) their terms are otherwise

1 governed by RCW 23B.05.050. Directors also may be elected by execution
2 of a shareholder consent (~~((action))~~) under RCW 23B.07.040.

3 **Sec. 24.** RCW 23B.08.210 and 2002 c 297 s 29 are each amended to
4 read as follows:

5 (1) Unless the articles of incorporation or bylaws provide
6 otherwise, corporate action required or permitted by this title to be
7 (~~((taken))~~) approved at a board of directors' meeting may be (~~((taken))~~)
8 approved without a meeting if the corporate action is (~~((taken))~~)
9 approved by all members of the board. The approval of the corporate
10 action must be evidenced by one or more consents describing the
11 (~~((action-taken))~~) corporate action being approved, executed by each
12 director either before or after the (~~((action-taken))~~) corporate action
13 becomes effective, and delivered to the corporation for inclusion in
14 the minutes or filing with the corporate records, each of which
15 consents shall be set forth either (a) in an executed record or (b) if
16 the corporation has designated an address, location, or system to which
17 the consents may be electronically transmitted and the consent is
18 electronically transmitted to the designated address, location, or
19 system, in an executed electronically transmitted record.

20 (2) Corporate action (~~((taken))~~) is approved under this section (~~((is~~
21 ~~effective))~~) when the last director executes the consent(~~((, unless the~~
22 ~~consent specifies a later effective date))~~).

23 (3) A consent under this section has the effect of a meeting vote
24 and may be described as such in any record.

25 **Sec. 25.** RCW 23B.08.230 and 2002 c 297 s 30 are each amended to
26 read as follows:

27 (1) A director may waive any notice required by this title, the
28 articles of incorporation, or bylaws before or after the date and time
29 stated in the notice, and such waiver shall be equivalent to the giving
30 of such notice. Except as provided by subsection (2) of this section,
31 the waiver must be delivered by the director entitled to the notice to
32 the corporation for inclusion in the minutes or filing with the
33 corporate records, which waiver shall be set forth either (a) in an
34 executed record or (b) if the corporation has designated an address,
35 location, or system to which the waiver may be electronically

1 transmitted and the waiver has been electronically transmitted to the
2 designated address, location, or system, in an executed electronically
3 transmitted record.

4 (2) A director's attendance at or participation in a meeting waives
5 any required notice to the director of the meeting unless the director
6 at the beginning of the meeting, or promptly upon the director's
7 arrival, objects to holding the meeting or transacting business at the
8 meeting and does not thereafter vote for or assent to any corporate
9 action (~~taken~~) approved at the meeting.

10 **Sec. 26.** RCW 23B.08.240 and 2002 c 297 s 31 are each amended to
11 read as follows:

12 (1) Unless the articles of incorporation or bylaws require a
13 greater or lesser number, a quorum of a board of directors consists of
14 a majority of the number of directors specified in or fixed in
15 accordance with the articles of incorporation or bylaws.

16 (2) Notwithstanding subsection (1) of this section, a quorum of a
17 board of directors may in no event be less than one-third of the number
18 of directors specified in or fixed in accordance with the articles of
19 incorporation or bylaws.

20 (3) If a quorum is present when a vote is taken, the affirmative
21 vote of a majority of directors present is the act of the board of
22 directors unless the articles of incorporation or bylaws require the
23 vote of a greater number of directors.

24 (4) A director who is present at a meeting of the board of
25 directors when corporate action is (~~taken~~) approved is deemed to have
26 assented to the corporate action (~~taken~~) unless: (a) The director
27 objects at the beginning of the meeting, or promptly upon the
28 director's arrival, to holding it or transacting business at the
29 meeting; (b) the director's dissent or abstention (~~from~~) as to the
30 corporate action (~~taken~~) is entered in the minutes of the meeting; or
31 (c) the director delivers notice of the director's dissent or
32 abstention as to the corporate action to the presiding officer of the
33 meeting before (~~its~~) adjournment or to the corporation within a
34 reasonable time after adjournment of the meeting. The right of dissent
35 or abstention is not available to a director who votes in favor of the
36 corporate action (~~taken~~).

1 **Sec. 27.** RCW 23B.08.250 and 1989 c 165 s 96 are each amended to
2 read as follows:

3 (1) Unless the articles of incorporation or bylaws provide
4 otherwise, a board of directors may create one or more committees of
5 directors. Each committee must have two or more members, who serve at
6 the pleasure of the board of directors.

7 (2) The creation of a committee and appointment of members to it
8 must be approved by the greater of (a) a majority of all the directors
9 in office when the ~~((action))~~ creation of the committee is ~~((taken))~~
10 approved or (b) the number of directors required by the articles of
11 incorporation or bylaws to ~~((take-action))~~ approve the creation of the
12 committee under RCW 23B.08.240.

13 (3) RCW 23B.08.200 through 23B.08.240, which govern meetings,
14 approval of corporate action without meetings, notice and waiver of
15 notice, and quorum and voting requirements of the board of directors,
16 apply to committees and their members as well.

17 (4) To the extent specified by the board of directors or in the
18 articles of incorporation or bylaws, each committee may exercise the
19 authority of the board of directors under RCW 23B.08.010.

20 (5) A committee may not, however:

21 (a) ~~((Authorize-or))~~ Approve a distribution except according to a
22 general formula or method prescribed by the board of directors;

23 (b) Approve or propose to shareholders corporate action that this
24 title requires be approved by shareholders;

25 (c) Fill vacancies on the board of directors or on any of its
26 committees;

27 (d) Amend articles of incorporation pursuant to RCW 23B.10.020;

28 (e) Adopt, amend, or repeal bylaws;

29 (f) Approve a plan of merger not requiring shareholder approval; or

30 (g) ~~((Authorize-or))~~ Approve the issuance or sale or contract for
31 sale of shares, or determine the designation and relative rights,
32 preferences, and limitations of a class or series of shares, except
33 that the board of directors may authorize a committee, or a senior
34 executive officer of the corporation to do so within limits
35 specifically prescribed by the board of directors.

36 (6) The creation of, delegation of authority to, or approval of
37 corporate action by a committee does not alone constitute compliance by
38 a director with the standards of conduct described in RCW 23B.08.300.

1 **Sec. 28.** RCW 23B.08.500 and 1989 c 165 s 105 are each amended to
2 read as follows:

3 For purposes of RCW 23B.08.510 through 23B.08.600:

4 (1) "Corporation" includes any domestic or foreign predecessor
5 entity of a corporation in a merger or other transaction in which the
6 predecessor's existence ceased upon (~~(consummation)~~) the effective date
7 of the transaction.

8 (2) "Director" means an individual who is or was a director of a
9 corporation or an individual who, while a director of a corporation, is
10 or was serving at the corporation's request as a director, officer,
11 partner, trustee, employee, or agent of another foreign or domestic
12 corporation, partnership, joint venture, trust, employee benefit plan,
13 or other enterprise. A director is considered to be serving an
14 employee benefit plan at the corporation's request if the director's
15 duties to the corporation also impose duties on, or otherwise involve
16 services by, the director to the plan or to participants in or
17 beneficiaries of the plan. "Director" includes, unless the context
18 requires otherwise, the estate or personal representative of a
19 director.

20 (3) "Expenses" include counsel fees.

21 (4) "Liability" means the obligation to pay a judgment, settlement,
22 penalty, fine, including an excise tax assessed with respect to an
23 employee benefit plan, or reasonable expenses incurred with respect to
24 a proceeding.

25 (5) "Official capacity" means: (a) When used with respect to a
26 director, the office of director in a corporation; and (b) when used
27 with respect to an individual other than a director, as contemplated in
28 RCW 23B.08.570, the office in a corporation held by the officer or the
29 employment or agency relationship undertaken by the employee or agent
30 on behalf of the corporation. "Official capacity" does not include
31 service for any other foreign or domestic corporation or any
32 partnership, joint venture, trust, employee benefit plan, or other
33 enterprise.

34 (6) "Party" includes an individual who was, is, or is threatened to
35 be made a named defendant or respondent in a proceeding.

36 (7) "Proceeding" means any threatened, pending, or completed
37 action, suit, or proceeding, whether civil, criminal, administrative,
38 or investigative and whether formal or informal.

1 **Sec. 29.** RCW 23B.08.550 and 1989 c 165 s 110 are each amended to
2 read as follows:

3 (1) A corporation may not indemnify a director under RCW 23B.08.510
4 unless (~~authorized~~) approved in the specific case after a
5 determination has been made that indemnification of the director is
6 permissible in the circumstances because the director has met the
7 standard of conduct set forth in RCW 23B.08.510.

8 (2) The determination shall be made:

9 (a) By the board of directors by majority vote of a quorum
10 consisting of directors not at the time parties to the proceeding;

11 (b) If a quorum cannot be obtained under (a) of this subsection, by
12 majority vote of a committee duly designated by the board of directors,
13 in which designation directors who are parties may participate,
14 consisting solely of two or more directors not at the time parties to
15 the proceeding;

16 (c) By special legal counsel:

17 (i) Selected by the board of directors or its committee in the
18 manner prescribed in (a) or (b) of this subsection; or

19 (ii) If a quorum of the board of directors cannot be obtained under
20 (a) of this subsection and a committee cannot be designated under (b)
21 of this subsection, selected by majority vote of the full board of
22 directors, in which selection directors who are parties may
23 participate; or

24 (d) By the shareholders, but shares owned by or voted under the
25 control of directors who are at the time parties to the proceeding may
26 not be voted on the determination.

27 (3) (~~Authorization~~) Approval of indemnification and evaluation as
28 to reasonableness of expenses shall be made in the same manner as the
29 determination that indemnification is permissible, except that if the
30 determination is made by special legal counsel, (~~authorization~~)
31 approval of indemnification and evaluation as to reasonableness of
32 expenses shall be made by those entitled under subsection (2)(c) of
33 this section to select counsel.

34 **Sec. 30.** RCW 23B.08.700 and 1989 c 165 s 116 are each amended to
35 read as follows:

36 For purposes of RCW 23B.08.710 through 23B.08.730:

1 (1) "Conflicting interest" with respect to a corporation means the
2 interest a director of the corporation has respecting a transaction
3 effected or proposed to be effected by the corporation, or by a
4 subsidiary of the corporation or any other entity in which the
5 corporation has a controlling interest, if:

6 (a) Whether or not the transaction is brought before the board of
7 directors of the corporation for action, the director knows at the time
8 of commitment that the director or a related person is a party to the
9 transaction or has a beneficial financial interest in or so closely
10 linked to the transaction and of such financial significance to the
11 director or a related person that the interest would reasonably be
12 expected to exert an influence on the director's judgment if the
13 director were called upon to vote on the transaction; or

14 (b) The transaction is brought, or is of such character and
15 significance to the corporation that it would in the normal course be
16 brought, before the board of directors of the corporation for action,
17 and the director knows at the time of commitment that any of the
18 following persons is either a party to the transaction or has a
19 beneficial financial interest in or so closely linked to the
20 transaction and of such financial significance to the person that the
21 interest would reasonably be expected to exert an influence on the
22 director's judgment if the director were called upon to vote on the
23 transaction: (i) An entity, other than the corporation, of which the
24 director is a director, general partner, agent, or employee; (ii) a
25 person that controls one or more of the entities specified in (b)(i) of
26 this subsection or an entity that is controlled by, or is under common
27 control with, one or more of the entities specified in (b)(i) of this
28 subsection; or (iii) an individual who is a general partner, principal,
29 or employer of the director.

30 (2) "Director's conflicting interest transaction" with respect to
31 a corporation means a transaction effected or proposed to be effected
32 by the corporation, or by a subsidiary of the corporation or any other
33 entity in which the corporation has a controlling interest, respecting
34 which a director of the corporation has a conflicting interest.

35 (3) "Related person" of a director means (a) the spouse, or a
36 parent or sibling thereof, of the director, or a child, grandchild,
37 sibling, parent, or spouse of any thereof, of the director, or an
38 individual having the same home as the director, or a trust or estate

1 of which an individual specified herein is a substantial beneficiary;
2 or (b) a trust, estate, incompetent, conservatee, or minor of which the
3 director is a fiduciary.

4 (4) "Required disclosure" means disclosure by the director who has
5 a conflicting interest of (a) the existence and nature of the
6 director's conflicting interest, and (b) all facts known to the
7 director respecting the subject matter of the transaction that an
8 ordinarily prudent person would reasonably believe to be material to a
9 judgment about whether or not to proceed with the transaction.

10 (5) "Time of commitment" respecting a transaction means the time
11 when the transaction (~~(is consummated)~~) becomes effective or, if made
12 pursuant to contract, the time when the corporation, or its subsidiary
13 or the entity in which it has a controlling interest, becomes
14 contractually obligated so that its unilateral withdrawal from the
15 transaction would entail significant loss, liability, or other damage.

16 **Sec. 31.** RCW 23B.10.020 and 2003 c 35 s 3 are each amended to read
17 as follows:

18 Unless the articles of incorporation provide otherwise, a
19 corporation's board of directors may adopt one or more amendments to
20 the corporation's articles of incorporation without shareholder
21 (~~(action)~~) approval:

22 (1) If the corporation has only one class of shares outstanding, to
23 provide, change, or eliminate any provision with respect to the par
24 value of any class of shares;

25 (2) To delete the names and addresses of the initial directors;

26 (3) To delete the name and address of the initial registered agent
27 or registered office, if a statement of change is on file with the
28 secretary of state;

29 (4) If the corporation has only one class of shares outstanding,
30 solely to:

31 (a) Effect a forward split of, or change the number of authorized
32 shares of that class in proportion to a forward split of, or stock
33 dividend in, the corporation's outstanding shares; or

34 (b) Effect a reverse split of the corporation's outstanding shares
35 and the number of authorized shares of that class in the same
36 proportions;

37 (5) To change the corporate name; or

1 (6) To make any other change expressly permitted by this title to
2 be made without shareholder (~~(action)~~) approval.

3 **Sec. 32.** RCW 23B.10.060 and 1989 c 165 s 125 are each amended to
4 read as follows:

5 A corporation amending its articles of incorporation shall deliver
6 to the secretary of state for filing articles of amendment setting
7 forth:

8 (1) The name of the corporation;

9 (2) The text of each amendment adopted;

10 (3) If an amendment provides for an exchange, reclassification, or
11 cancellation of issued shares, provisions for implementing the
12 amendment if not contained in the amendment itself;

13 (4) The date of each amendment's adoption;

14 (5) If an amendment was adopted by the incorporators or board of
15 directors without shareholder (~~(action)~~) approval, a statement to that
16 effect and that shareholder (~~(action)~~) approval was not required; and

17 (6) If shareholder (~~(action)~~) approval was required, a statement
18 that the amendment was duly approved by the shareholders in accordance
19 with the provisions of RCW 23B.10.030 and 23B.10.040.

20 **Sec. 33.** RCW 23B.10.070 and 1991 c 72 s 36 are each amended to
21 read as follows:

22 (1) Any officer of the corporation may restate its articles of
23 incorporation at any time.

24 (2) A restatement may include one or more amendments to the
25 articles of incorporation. If the restatement includes an amendment
26 not requiring shareholder approval, it must be adopted by the board of
27 directors. If the restatement includes an amendment requiring
28 shareholder approval, it must be adopted in accordance with RCW
29 23B.10.030.

30 (3) If the board of directors submits a restatement for shareholder
31 (~~(action)~~) approval, the corporation shall notify each shareholder,
32 whether or not entitled to vote, of the proposed shareholders' meeting
33 in accordance with RCW 23B.07.050. The notice must also state that the
34 purpose, or one of the purposes, of the meeting is to consider the
35 proposed restatement and contain or be accompanied by a copy of the

1 restatement that identifies any amendment or other change it would make
2 in the articles of incorporation.

3 (4) A corporation restating its articles of incorporation shall
4 deliver to the secretary of state for filing articles of restatement
5 setting forth the name of the corporation and the text of the restated
6 articles of incorporation together with a certificate setting forth:

7 (a) If the restatement does not include an amendment to the
8 articles of incorporation, a statement to that effect;

9 (b) If the restatement contains an amendment to the articles of
10 incorporation not requiring shareholder approval, a statement that the
11 board of directors adopted the restatement and the date of such
12 adoption;

13 (c) If the restatement contains an amendment to the articles of
14 incorporation requiring shareholder approval, the information required
15 by RCW 23B.10.060; and

16 (d) Both the articles of restatement and the certificate must be
17 executed.

18 (5) Duly adopted restated articles of incorporation supersede the
19 original articles of incorporation and all amendments to them.

20 (6) The secretary of state may certify restated articles of
21 incorporation, as the articles of incorporation currently in effect,
22 without including the certificate information required by subsection
23 (4) of this section.

24 **Sec. 34.** RCW 23B.10.080 and 1989 c 165 s 127 are each amended to
25 read as follows:

26 (1) A corporation's articles of incorporation may be amended
27 without (~~action~~) approval by the board of directors or shareholders
28 to carry out a plan of reorganization ordered or decreed by a court of
29 competent jurisdiction under federal statute if the articles of
30 incorporation after amendment contain only provisions required or
31 permitted by RCW 23B.02.020.

32 (2) The individual or individuals designated by the court shall
33 deliver to the secretary of state for filing articles of amendment
34 setting forth:

35 (a) The name of the corporation;

36 (b) The text of each amendment approved by the court;

1 (c) The date of the court's order or decree approving the articles
2 of amendment;

3 (d) The title of the reorganization proceeding in which the order
4 or decree was entered; and

5 (e) A statement that the court had jurisdiction of the proceeding
6 under federal statute.

7 (3) Shareholders of a corporation undergoing reorganization do not
8 have dissenters' rights except as and to the extent provided in the
9 reorganization plan.

10 (4) This section does not apply after entry of a final decree in
11 the reorganization proceeding even though the court retains
12 jurisdiction of the proceeding for limited purposes unrelated to
13 consummation of the reorganization plan.

14 **Sec. 35.** RCW 23B.10.200 and 2007 c 467 s 7 are each amended to
15 read as follows:

16 (1) A corporation's board of directors may amend or repeal the
17 corporation's bylaws, or adopt new bylaws, unless:

18 (a) The articles of incorporation, RCW 23B.10.205, or, if
19 applicable, RCW (~~23B.07.035~~) 23B.10.210, or any other provision of
20 this title reserve this power exclusively to the shareholders in whole
21 or part; or

22 (b) The shareholders, in amending or repealing a particular bylaw,
23 provide expressly that the board of directors may not amend or repeal
24 that bylaw.

25 (2) A corporation's shareholders may amend or repeal the
26 corporation's bylaws, or adopt new bylaws, even though the bylaws may
27 also be amended or repealed, or new bylaws may also be adopted, by its
28 board of directors.

29 **Sec. 36.** RCW 23B.10.205 and 2007 c 467 s 5 are each amended to
30 read as follows:

31 (1) Unless the articles of incorporation (~~(a)~~) specifically
32 prohibit the adoption of a bylaw pursuant to this section, (~~(b)~~)
33 alter the vote specified in RCW 23B.07.280(2), or (~~(c)~~) allow for or
34 do not exclude cumulative voting, a public company may elect in its
35 bylaws to be governed in the election of directors as follows:

1 ~~((i))~~ (a) Each vote entitled to be cast may be voted for, voted
2 against, or withheld for one or more candidates up to that number of
3 candidates that is equal to the number of directors to be elected but
4 without cumulating the votes, or a shareholder may indicate an
5 abstention for one or more candidates;

6 ~~((ii))~~ (b) To be elected, a candidate must have received the
7 number, percentage, or level of votes specified in the bylaws; provided
8 that holders of shares entitled to vote in the election and
9 constituting a quorum are present at the meeting. Except in a
10 contested election as provided in ~~((e)(v))~~ (e) of this subsection, a
11 candidate who does not receive the number, percentage, or level of
12 votes specified in the bylaws but who was a director at the time of the
13 election shall continue to serve as a director for a term that shall
14 terminate on the date that is the earlier of ~~((A))~~ (i) the date
15 specified in the bylaw, but not longer than ninety days from the date
16 on which the voting results are determined pursuant to RCW
17 23B.07.035(2), or ~~((B))~~ (ii) the date on which an individual is
18 selected by the board of directors to fill the office held by such
19 director, which selection shall be deemed to constitute the filling of
20 a vacancy by the board to which RCW 23B.08.100 applies;

21 ~~((iii))~~ (c) A bylaw adopted pursuant to this section may provide
22 that votes cast against and/or withheld as to a candidate are to be
23 taken into account in determining whether the number, percentage, or
24 level of votes required for election has been received. Unless the
25 bylaw specifies otherwise, only votes cast are to be taken into account
26 and a ballot marked "withheld" in respect to a share is deemed to be a
27 vote cast. Unless the bylaws specify otherwise, shares otherwise
28 present at the meeting but for which there is an abstention or as to
29 which no authority or direction to vote in the election is given or
30 specified, are not deemed to be votes cast in the election;

31 ~~((iv))~~ (d) The board of directors may select any qualified
32 individual to fill the office held by a director who did not receive
33 the specified vote for election referenced in ~~((e)(ii))~~ (b) of this
34 subsection; and

35 ~~((v))~~ (e) Unless the bylaw specifies otherwise, a bylaw adopted
36 pursuant to this subsection (1) shall not apply to an election of
37 directors by a voting group if ~~((A))~~ (i) at the expiration of the
38 time fixed under a provision requiring advance notification of director

1 candidates, or ~~((B))~~ (ii) absent such a provision, at a time fixed by
2 the board of directors which is not more than fourteen days before
3 notice is given of the meeting at which the election is to occur, there
4 are more candidates for election by the voting group than the number of
5 directors to be elected, one or more of whom are properly proposed by
6 shareholders. An individual shall not be considered a candidate for
7 purposes of this subsection ~~(1)((e)(v))~~ (e) if the board of directors
8 determines before the notice of meeting is given that such individual's
9 candidacy does not create a bona fide election contest.

10 (2) A bylaw containing an election to be governed by this section
11 may be repealed or amended:

12 (a) If originally adopted by the shareholders, only by the
13 shareholders, unless the bylaw otherwise provides; or

14 (b) If adopted by the board of directors, by the board of directors
15 or the shareholders.

16 **Sec. 37.** RCW 23B.10.210 and 1989 c 165 s 130 are each amended to
17 read as follows:

18 (1) A bylaw that fixes a greater quorum or voting requirement for
19 the board of directors may be amended or repealed:

20 (a) If originally adopted by the shareholders, only by the
21 shareholders; or

22 (b) If originally adopted by the board of directors, either by the
23 shareholders or by the board of directors.

24 (2) A bylaw adopted or amended by the shareholders that fixes a
25 greater quorum or voting requirement for the board of directors may
26 provide that it may be amended or repealed only by a specified vote of
27 either the shareholders or the board of directors.

28 (3) If the corporation is a public company, ~~((action))~~ approval by
29 the board of directors under subsection (1)(b) of this section to adopt
30 or amend a bylaw that changes the quorum or voting requirement for the
31 board of directors must meet the quorum requirement and be ~~((adopted))~~
32 approved by the vote required ~~((to take action))~~ for approval under the
33 quorum and voting requirement then in effect.

34 (4) If the corporation is not a public company, ~~((action))~~ approval
35 by the board of directors under subsection (1)(b) of this section to
36 adopt or amend a bylaw that changes the quorum or voting requirement
37 for the board of directors must meet the same quorum requirement and be

1 (~~adopted~~) approved by the same vote required (~~to take action~~) for
2 approval under the quorum and voting requirement then in effect or
3 proposed to be adopted, whichever is greater.

4 **Sec. 38.** RCW 23B.11.030 and 2003 c 35 s 6 are each amended to read
5 as follows:

6 (1) After adopting a plan of merger or share exchange, the board of
7 directors of each corporation party to the merger, and the board of
8 directors of the corporation whose shares will be acquired in the share
9 exchange, shall submit the plan of merger, except as provided in
10 subsection (7) of this section, or share exchange for approval by its
11 shareholders.

12 (2) For a plan of merger or share exchange to be approved:

13 (a) The board of directors must recommend the plan of merger or
14 share exchange to the shareholders, unless the board of directors
15 determines that because of conflict of interest or other special
16 circumstances it should make no recommendation and communicates the
17 basis for its determination to the shareholders with the plan; and

18 (b) The shareholders entitled to vote must approve the plan, except
19 as provided in subsection (7) of this section.

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

26 (4) The corporation shall notify each shareholder, whether or not
27 entitled to vote, of the proposed shareholders' meeting in accordance
28 with RCW 23B.07.050. The notice must also state that the purpose, or
29 one of the purposes, of the meeting is to consider the plan of merger
30 or share exchange and must contain or be accompanied by a copy or
31 summary of the plan.

32 (5) In addition to any other voting conditions imposed by the board
33 of directors under subsection (3) of this section, the plan of merger
34 (~~to be authorized~~) must be approved by two-thirds of the voting group
35 comprising all the votes entitled to be cast on the plan, and of each
36 other voting group entitled under RCW 23B.11.035 or the articles of
37 incorporation to vote separately on the plan, unless shareholder

1 ((action)) approval is not required under subsection (7) of this
2 section. The articles of incorporation may require a greater or lesser
3 vote than that provided in this subsection, or a greater or lesser vote
4 by separate voting groups, so long as the required vote is not less
5 than a majority of all the votes entitled to be cast on the plan of
6 merger and of each other voting group entitled to vote separately on
7 the plan. Separate voting by additional voting groups is required on
8 a plan of merger under the circumstances described in RCW 23B.11.035.

9 (6) In addition to any other voting conditions imposed by the board
10 of directors under subsection (3) of this section, the plan of share
11 exchange (~~((to be authorized))~~) must be approved by two-thirds of the
12 voting group comprising all the votes entitled to be cast on the plan,
13 and of each other voting group entitled under RCW 23B.11.035 or the
14 articles of incorporation to vote separately on the plan. The articles
15 of incorporation may require a greater or lesser vote than that
16 provided in this subsection, or a greater or lesser vote by separate
17 voting groups, so long as the required vote is not less than a majority
18 of all the votes entitled to be cast on the plan of share exchange and
19 of each other voting group entitled to vote separately on the plan.
20 Separate voting by additional voting groups is required on a plan of
21 share exchange under the circumstances described in RCW 23B.11.035.

22 (7) (~~((Action))~~) Approval by the shareholders of the surviving
23 corporation on a plan of merger is not required if:

24 (a) The articles of incorporation of the surviving corporation will
25 not differ, except for amendments enumerated in RCW 23B.10.020, from
26 its articles of incorporation before the merger;

27 (b) Each shareholder of the surviving corporation whose shares were
28 outstanding immediately before the effective date of the merger will
29 hold the same number of shares, with identical designations,
30 preferences, limitations, and relative rights, immediately after the
31 merger;

32 (c) The number of voting shares outstanding immediately after the
33 merger, plus the number of voting shares issuable as a result of the
34 merger, either by the conversion of securities issued pursuant to the
35 merger or the exercise of rights and warrants issued pursuant to the
36 merger, will not exceed the total number of voting shares of the
37 surviving corporation authorized by its articles of incorporation
38 immediately before the merger; and

1 (d) The number of participating shares outstanding immediately
2 after the merger, plus the number of participating shares issuable as
3 a result of the merger, either by the conversion of securities issued
4 pursuant to the merger or the exercise of rights and warrants issued
5 pursuant to the merger, will not exceed the total number of
6 participating shares authorized by its articles of incorporation
7 immediately before the merger.

8 (8) As used in subsection (7) of this section:

9 (a) "Participating shares" means shares that entitle their holders
10 to participate without limitation in distributions.

11 (b) "Voting shares" means shares that entitle their holders to vote
12 unconditionally in elections of directors.

13 (9) After a merger or share exchange is (~~authorized~~) approved,
14 and at any time before articles of merger or share exchange are filed,
15 the planned merger or share exchange may be abandoned, subject to any
16 contractual rights, without further shareholder (~~action~~) approval, in
17 accordance with the procedure set forth in the plan of merger or share
18 exchange or, if none is set forth, in the manner determined by the
19 board of directors.

20 **Sec. 39.** RCW 23B.11.040 and 2002 c 297 s 34 are each amended to
21 read as follows:

22 (1) A parent corporation owning at least ninety percent of the
23 outstanding shares of each class of a subsidiary corporation may merge
24 the subsidiary into itself without approval of the shareholders of the
25 parent or subsidiary.

26 (2) The board of directors of the parent shall (~~adopt~~) approve a
27 plan of merger that sets forth:

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

29 (b) The manner and basis of converting the shares of the subsidiary
30 into shares, obligations, or other securities of the parent or any
31 other corporation or into cash or other property in whole or part.

32 (3) Within ten days after the corporate action (~~is taken~~) becomes
33 effective, the parent shall deliver a notice to each shareholder of the
34 subsidiary, which notice shall include a copy of the plan of merger.

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

1 **Sec. 40.** RCW 23B.12.020 and 2003 c 35 s 8 are each amended to read
2 as follows:

3 (1) A corporation may sell, lease, exchange, or otherwise dispose
4 of all, or substantially all, of its property, otherwise than in the
5 usual and regular course of business, on the terms and conditions and
6 for the consideration determined by the corporation's board of
7 directors, if the board of directors proposes and its shareholders
8 approve the proposed transaction.

9 (2) For a transaction to be (~~authorized~~) approved:

10 (a) The board of directors must recommend the proposed transaction
11 to the shareholders unless the board of directors determines that
12 because of conflict of interest or other special circumstances it
13 should make no recommendation and communicates the basis for its
14 determination to the shareholders with the submission of the proposed
15 transaction; and

16 (b) The shareholders entitled to vote must approve the 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 of
21 incorporation to vote as a separate voting group on the proposed
22 transaction.

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

30 (5) In addition to any other voting conditions imposed by the board
31 of directors under subsection (3) of this section, the transaction (~~to~~
32 ~~be authorized~~) must be approved by two-thirds of the voting group
33 comprising all the votes entitled to be cast on the transaction, and of
34 each other voting group entitled under the articles of incorporation to
35 vote separately on the transaction. The articles of incorporation may
36 require a greater or lesser vote than provided in this subsection, or
37 a greater or lesser vote by any separate voting groups provided for in
38 the articles of incorporation, so long as the required vote is not less

1 than a majority of all the votes entitled to be cast on the transaction
2 and of each other voting group entitled to vote separately on the
3 transaction.

4 (6) After a sale, lease, exchange, or other disposition of property
5 is (~~authorized~~) approved, the transaction may be abandoned, subject
6 to any contractual rights, without further shareholder (~~action~~)
7 approval, in a manner determined by the board of directors.

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

10 **Sec. 41.** RCW 23B.13.020 and 2003 c 35 s 9 are each amended to read
11 as follows:

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

15 (a) (~~Consummation of~~) A plan of merger, which has become
16 effective, to which the corporation is a party (i) if shareholder
17 approval (~~is~~) was required for the merger by RCW 23B.11.030,
18 23B.11.080, or the articles of incorporation, and the shareholder
19 (~~is~~) was entitled to vote on the merger, or (ii) if the corporation
20 (~~is~~) was a subsidiary that (~~is~~) has been merged with its parent
21 under RCW 23B.11.040;

22 (b) (~~Consummation of~~) A plan of share exchange, which has become
23 effective, to which the corporation is a party as the corporation whose
24 shares (~~will be~~) have been acquired, if the shareholder (~~is~~) was
25 entitled to vote on the plan;

26 (c) (~~Consummation of~~) A sale or exchange, which has become
27 effective, of all, or substantially all, of the property of the
28 corporation other than in the usual and regular course of business, if
29 the shareholder (~~is~~) was entitled to vote on the sale or exchange,
30 including a sale in dissolution, but not including a sale pursuant to
31 court order or a sale for cash pursuant to a plan by which all or
32 substantially all of the net proceeds of the sale will be distributed
33 to the shareholders within one year after the date of sale;

34 (d) An amendment of the articles of incorporation, whether or not
35 the shareholder was entitled to vote on the amendment, if the amendment
36 effects a redemption or cancellation of all of the shareholder's shares

1 in exchange for cash or other consideration other than shares of the
2 corporation; or

3 (e) Any corporate action (~~taken~~) approved pursuant to a
4 shareholder vote to the extent the articles of incorporation, bylaws,
5 or a resolution of the board of directors provides that voting or
6 nonvoting shareholders are entitled to dissent and obtain payment for
7 their shares.

8 (2) A shareholder entitled to dissent and obtain payment for the
9 shareholder's shares under this chapter may not challenge the corporate
10 action creating the shareholder's entitlement unless the action fails
11 to comply with the procedural requirements imposed by this title, RCW
12 25.10.900 through 25.10.955, the articles of incorporation, or the
13 bylaws, or is fraudulent with respect to the shareholder or the
14 corporation.

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

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

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

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

23 **Sec. 42.** RCW 23B.13.200 and 2002 c 297 s 36 are each amended to
24 read as follows:

25 (1) If proposed corporate action creating dissenters' rights under
26 RCW 23B.13.020 is submitted (~~to~~) for approval by a vote at a
27 shareholders' meeting, the meeting notice must state that shareholders
28 are or may be entitled to assert dissenters' rights under this chapter
29 and be accompanied by a copy of this chapter.

30 (2) If corporate action creating dissenters' rights under RCW
31 23B.13.020 is (~~taken~~) submitted for approval without a vote of
32 shareholders(~~, the corporation, within ten days after the effective~~
33 ~~date of such corporate action, shall deliver a notice to all~~
34 ~~shareholders entitled to assert dissenters' rights that the action was~~
35 ~~taken and send them the notice described in RCW 23B.13.220)) in
36 accordance with RCW 23B.07.040, the shareholder consent described in
37 RCW 23B.07.040(1)(b) and the notice described in RCW 23B.07.040(3)(a)~~

1 must include a statement that shareholders are or may be entitled to
2 assert dissenters' rights under this chapter and be accompanied by a
3 copy of this chapter.

4 **Sec. 43.** RCW 23B.13.210 and 2002 c 297 s 37 are each amended to
5 read as follows:

6 (1) If proposed corporate action creating dissenters' rights under
7 RCW 23B.13.020 is submitted to a vote at a shareholders' meeting, a
8 shareholder who wishes to assert dissenters' rights must (a) deliver to
9 the corporation before the vote is taken notice of the shareholder's
10 intent to demand payment for the shareholder's shares if the proposed
11 corporate action is effected, and (b) not vote such shares in favor of
12 the proposed corporate action.

13 (2) If proposed corporate action creating dissenters' rights under
14 RCW 23B.13.020 is submitted for approval without a vote of shareholders
15 in accordance with RCW 23B.07.040, a shareholder who wishes to assert
16 dissenters' rights must not execute the consent or otherwise vote such
17 shares in favor of the proposed corporate action.

18 (3) A shareholder who does not satisfy the requirements of
19 subsection (1) or (2) of this section is not entitled to payment for
20 the shareholder's shares under this chapter.

21 **Sec. 44.** RCW 23B.13.220 and 2002 c 297 s 38 are each amended to
22 read as follows:

23 (1) If proposed corporate action creating dissenters' rights under
24 RCW 23B.13.020 is ~~((authorized))~~ approved at a shareholders' meeting,
25 the corporation shall within ten days after the effective date of the
26 corporate action deliver ~~((a notice))~~ to all shareholders who satisfied
27 the requirements of RCW 23B.13.210(1) a notice in compliance with
28 subsection (3) of this section.

29 (2) ~~((The))~~ If proposed corporate action creating dissenters'
30 rights under RCW 23B.13.020 is approved without a vote of shareholders
31 in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW
32 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW
33 23B.13.210(2) shall comply with subsection (3) of this section.

34 (3) Any notice under subsection (1) or (2) of this section must
35 ~~((be sent within ten days after the effective date of the corporate~~
36 ~~action, and must))~~:

1 (a) State where the payment demand must be sent and where and when
2 certificates for certificated shares must be deposited;

3 (b) Inform holders of uncertificated shares to what extent transfer
4 of the shares will be restricted after the payment demand is received;

5 (c) Supply a form for demanding payment that includes the date of
6 the first announcement to news media or to shareholders of the terms of
7 the proposed corporate action and requires that the person asserting
8 dissenters' rights certify whether or not the person acquired
9 beneficial ownership of the shares before that date;

10 (d) Set a date by which the corporation must receive the payment
11 demand, which date may not be fewer than thirty nor more than sixty
12 days after the date the notice in subsection (1) or (2) of this section
13 is delivered; and

14 (e) Be accompanied by a copy of this chapter.

15 **Sec. 45.** RCW 23B.13.240 and 1989 c 165 s 147 are each amended to
16 read as follows:

17 (1) The corporation may restrict the transfer of uncertificated
18 shares from the date the demand for (~~their~~) payment under RCW
19 23B.13.230 is received until the proposed corporate action is effected
20 or the restriction is released under RCW 23B.13.260.

21 (2) The person for whom dissenters' rights are asserted as to
22 uncertificated shares retains all other rights of a shareholder until
23 the effective date of the proposed corporate action.

24 **Sec. 46.** RCW 23B.13.260 and 1989 c 165 s 149 are each amended to
25 read as follows:

26 (1) If the corporation does not effect the proposed corporate
27 action within sixty days after the date set for demanding payment and
28 depositing share certificates, the corporation shall return the
29 deposited certificates and release any transfer restrictions imposed on
30 uncertificated shares.

31 (2) If after returning deposited certificates and releasing
32 transfer restrictions, the corporation wishes to (~~undertake~~) effect
33 the proposed corporate action, it must send a new dissenters' notice
34 under RCW 23B.13.220 and repeat the payment demand procedure.

1 **Sec. 47.** RCW 23B.13.270 and 1989 c 165 s 150 are each amended to
2 read as follows:

3 (1) A corporation may elect to withhold payment required by RCW
4 23B.13.250 from a dissenter unless the dissenter was the beneficial
5 owner of the shares before the date set forth in the dissenters' notice
6 as the date of the first announcement to news media or to shareholders
7 of the terms of the proposed corporate action.

8 (2) To the extent the corporation elects to withhold payment under
9 subsection (1) of this section, after (~~taking~~) the effective date of
10 the proposed corporate action, it shall estimate the fair value of the
11 shares, plus accrued interest, and shall pay this amount to each
12 dissenter who agrees to accept it in full satisfaction of the
13 dissenter's demand. The corporation shall send with its offer an
14 explanation of how it estimated the fair value of the shares, an
15 explanation of how the interest was calculated, and a statement of the
16 dissenter's right to demand payment under RCW 23B.13.280.

17 **Sec. 48.** RCW 23B.13.280 and 2002 c 297 s 40 are each amended to
18 read as follows:

19 (1) A dissenter may deliver a notice to the corporation informing
20 the corporation of the dissenter's own estimate of the fair value of
21 the dissenter's shares and amount of interest due, and demand payment
22 of the dissenter's estimate, less any payment under RCW 23B.13.250, or
23 reject the corporation's offer under RCW 23B.13.270 and demand payment
24 of the dissenter's estimate of the fair value of the dissenter's shares
25 and interest due, if:

26 (a) The dissenter believes that the amount paid under RCW
27 23B.13.250 or offered under RCW 23B.13.270 is less than the fair value
28 of the dissenter's shares or that the interest due is incorrectly
29 calculated;

30 (b) The corporation fails to make payment under RCW 23B.13.250
31 within sixty days after the date set for demanding payment; or

32 (c) The corporation does not effect the proposed corporate action
33 and does not return the deposited certificates or release the transfer
34 restrictions imposed on uncertificated shares within sixty days after
35 the date set for demanding payment.

36 (2) A dissenter waives the right to demand payment under this
37 section unless the dissenter notifies the corporation of the

1 dissenter's demand under subsection (1) of this section within thirty
2 days after the corporation made or offered payment for the dissenter's
3 shares.

4 **Sec. 49.** RCW 23B.14.010 and 2006 c 52 s 5 are each amended to read
5 as follows:

6 (1) A majority of the initial directors, or, if initial directors
7 were not named in the articles of incorporation and have not been
8 elected, a majority of the incorporators, of a corporation that has not
9 issued shares may (~~authorize~~) approve dissolution of the corporation.

10 (2) Unless prohibited by the articles of incorporation, a majority
11 of the board of directors may (~~authorize~~) approve dissolution of the
12 corporation without approval by the shareholders, upon a finding by the
13 board of directors that:

14 (a) The corporation is not able to pay its liabilities as they
15 become due in the usual course of business, or the corporation's assets
16 are less than the sum of its total liabilities; and

17 (b) Ten or more days have elapsed since the corporation gave notice
18 to all shareholders, whether or not they would otherwise be entitled to
19 vote under RCW 23B.14.020, of the intent of the board of directors to
20 (~~authorize~~) approve dissolution under this subsection.

21 **Sec. 50.** RCW 23B.14.020 and 2006 c 52 s 6 are each amended to read
22 as follows:

23 (1) A corporation's board of directors may propose dissolution for
24 submission to the shareholders.

25 (2) For a proposal to dissolve to be (~~adopted~~) approved:

26 (a) The board of directors must recommend dissolution to the
27 shareholders unless the board of directors determines that because of
28 conflict of interest or other special circumstances it should make no
29 recommendation and communicates the basis for its determination to the
30 shareholders; and

31 (b) The shareholders entitled to vote must approve the proposal to
32 dissolve as provided in subsection (5) of this section.

33 (3) The board of directors may condition its submission of the
34 proposal for dissolution on any basis, including the affirmative vote
35 of holders of a specified percentage of shares held by any group of

1 shareholders not otherwise entitled under this title or the articles of
2 incorporation to vote as a separate voting group on the proposed
3 dissolution.

4 (4) The corporation shall notify each shareholder, whether or not
5 entitled to vote, of the proposed dissolution either (a) by giving
6 notice of a shareholders' meeting in accordance with RCW 23B.07.050 and
7 stating that the purpose or one of the purposes of the meeting is to
8 consider dissolving the corporation, or (b) in accordance with the
9 requirements of RCW 23B.07.040 for (~~taking action on the proposal~~)
10 approving the proposed dissolution without a meeting.

11 (5) In addition to any other voting conditions imposed by the board
12 of directors under subsection (3) of this section, the (~~proposal to~~
13 ~~dissolve~~) proposed dissolution must be approved by two-thirds of the
14 voting group comprising all the votes entitled to be cast on the
15 (~~proposal~~) proposed dissolution, and of each other voting group
16 entitled under the articles of incorporation to vote separately on the
17 (~~proposal~~) proposed dissolution. The articles of incorporation may
18 require a greater or lesser vote than provided in this subsection, or
19 a greater or lesser vote by any separate voting groups provided for in
20 the articles of incorporation, so long as the required vote is not less
21 than a majority of all the votes entitled to be cast on the
22 (~~proposal~~) proposed dissolution and of each other voting group
23 entitled to vote separately on the (~~proposal~~) proposed dissolution.

24 **Sec. 51.** RCW 23B.14.030 and 2006 c 52 s 7 are each amended to read
25 as follows:

26 (1) At any time after dissolution is authorized under RCW
27 23B.14.010 or 23B.14.020, the corporation may dissolve by delivering to
28 the secretary of state for filing:

29 (a) A copy of a revenue clearance certificate issued pursuant to
30 RCW 82.32.260; and

31 (b) Articles of dissolution setting forth:

32 (i) The name of the corporation;

33 (ii) The date dissolution was (~~authorized~~) approved; and

34 (iii) A statement that dissolution was duly (~~authorized~~) approved
35 by the initial directors, the incorporators, or the board of directors
36 in accordance with RCW 23B.14.010, or was duly proposed by the board of

1 directors and approved by the shareholders in accordance with RCW
2 23B.14.020.

3 (2) A corporation is dissolved upon the effective date of its
4 articles of dissolution.

5 (3) A dissolved corporation shall, within thirty days after the
6 effective date of its articles of dissolution, publish notice of its
7 dissolution and request that persons with claims against the dissolved
8 corporation present them in accordance with the notice. The notice
9 must be published once a week for three consecutive weeks in a
10 newspaper of general circulation in the county where the dissolved
11 corporation's principal office (or, if none in this state, its
12 registered office) is or was last located. The notice must also
13 describe the information that must be included in a claim, provide a
14 mailing address where a claim may be sent, and state that claims
15 against the dissolved corporation may be barred in accordance with the
16 provisions of this chapter if not timely asserted. A dissolved
17 corporation's failure to publish notice in accordance with this
18 subsection does not affect the validity or the effective date of its
19 dissolution.

20 (4) For purposes of this chapter, "dissolved corporation" means a
21 corporation whose dissolution has been (~~authorized~~) approved in
22 accordance with RCW 23B.14.010 or 23B.14.020 and whose articles of
23 dissolution have become effective, and includes any trust or other
24 successor entity to which the remaining assets of such a corporation
25 are transferred subject to its liabilities for purposes of liquidation
26 in accordance with RCW 23B.14.050.

27 **Sec. 52.** RCW 23B.14.040 and 1989 c 165 s 157 are each amended to
28 read as follows:

29 (1) A corporation may revoke its dissolution within one hundred
30 twenty days of its effective date.

31 (2) Revocation of dissolution must be (~~authorized~~) approved in
32 the same manner as the dissolution was (~~authorized~~) approved unless
33 that (~~authorization~~) approval permitted revocation upon approval by
34 (~~action-of~~) the board of directors alone, in which event the board of
35 directors may revoke the dissolution without shareholder (~~action~~)
36 approval.

1 (3) After the revocation of dissolution is (~~authorized~~) approved,
2 the corporation may revoke the dissolution by delivering to the
3 secretary of state for filing articles of revocation of dissolution,
4 together with a copy of its articles of dissolution, that set forth:

5 (a) The name of the corporation and a statement that such name
6 satisfies the requirements of RCW 23B.04.010; if the name is not
7 available, the corporation must file articles of amendment changing its
8 name with the articles of revocation of dissolution;

9 (b) The effective date of the dissolution that was revoked;

10 (c) The date that the revocation of dissolution was (~~authorized~~)
11 approved;

12 (d) If the corporation's board of directors, or incorporators,
13 revoked the dissolution, a statement to that effect;

14 (e) If the corporation's board of directors revoked a dissolution
15 authorized by the shareholders, a statement that revocation was
16 permitted by action by the board of directors alone pursuant to that
17 authorization; and

18 (f) If shareholder (~~action~~) approval was required to revoke the
19 dissolution, a statement that revocation of the dissolution was duly
20 approved by the shareholders in accordance with RCW 23B.14.040(2) and
21 23B.14.020.

22 (4) Revocation of dissolution is effective upon the effective date
23 of the articles of revocation of dissolution.

24 (5) When the revocation of dissolution is effective, it relates
25 back to and takes effect as of the effective date of the dissolution
26 and the corporation resumes carrying on its business as if dissolution
27 had never occurred.

28 **Sec. 53.** RCW 23B.14.050 and 2006 c 52 s 8 are each amended to read
29 as follows:

30 (1) A dissolved corporation continues its corporate existence but
31 may not carry on any business except that appropriate to wind up and
32 liquidate its business and affairs, including:

33 (a) Collecting its assets;

34 (b) Disposing of its properties that will be applied toward
35 satisfaction or making reasonable provision for satisfaction of its
36 liabilities or will otherwise not be distributed in kind to its

1 shareholders, but in any case subject to applicable liens and security
2 interests as well as any applicable contractual restrictions on the
3 disposition of its properties;

4 (c) Satisfying or making reasonable provision for satisfying its
5 liabilities, in accordance with their priorities as established by law,
6 and on a pro rata basis within each class of liabilities;

7 (d) Subject to the limitations imposed by RCW 23B.06.400,
8 distributing its remaining property among its shareholders according to
9 their interests; and

10 (e) Doing every other act necessary to wind up and liquidate its
11 business and affairs.

12 (2) Except as otherwise provided in this chapter, dissolution of a
13 corporation does not:

14 (a) Transfer title to the corporation's property;

15 (b) Prevent transfer of its shares or securities, although the
16 authorization to dissolve may provide for closing the corporation's
17 share transfer records;

18 (c) Subject its directors or officers to standards of conduct
19 different from those prescribed in chapter 23B.08 RCW;

20 (d) Change quorum or voting requirements for its board of directors
21 or shareholders; change provisions for selection, resignation, or
22 removal of its directors or officers or both; or change provisions for
23 amending its bylaws;

24 (e) Prevent commencement of a proceeding by or against the
25 corporation in its corporate name;

26 (f) Abate or suspend a proceeding pending by or against the
27 corporation on the effective date of dissolution; or

28 (g) Terminate the authority of the registered agent of the
29 corporation.

30 (3) A dissolved corporation's board of directors may make a
31 determination that reasonable provision for the satisfaction of any
32 liability, whether arising in tort or by contract, statute, or
33 otherwise, and whether matured or unmatured, contingent, or
34 conditional, has been made by means of a purchase of insurance
35 coverage, provision of security therefor, contractual assumption
36 thereof by a solvent person, or any other means, that the board of
37 directors determines is reasonably calculated to provide for
38 satisfaction of the reasonably estimated amount of such liability.

1 Upon making such a determination, the board of directors shall, for
2 purposes of determining whether a subsequent distribution to
3 shareholders is prohibited under RCW 23B.06.400(2), be entitled to
4 treat such liability as fully satisfied by the assets used or committed
5 in order to make such provision. In making determinations under RCW
6 23B.06.400(2), the board of directors of a dissolved corporation may
7 also disregard, and make no provision for the satisfaction of, any
8 liabilities that are barred in accordance with RCW 23B.14.060(2), or
9 that may exceed any provision for their satisfaction ordered by a
10 superior court pursuant to RCW 23B.14.065, or that the board of
11 directors does not consider, based on the facts known to it, reasonably
12 likely to arise prior to expiration of the survival period specified in
13 RCW 23B.14.340.

14 (4) The board of directors of a dissolved corporation may at any
15 time petition to have the dissolution continued under court supervision
16 in accordance with RCW 23B.14.300, or, upon a finding that the
17 corporation is not able to pay its liabilities as they become due in
18 the usual course of business or that its assets are less than the sum
19 of its total liabilities, may dedicate the corporation's assets to the
20 repayment of its creditors by making an assignment for the benefit of
21 creditors in accordance with chapter 7.08 RCW or obtaining the
22 appointment of a general receiver in accordance with chapter 7.60 RCW.
23 The assumption of control over the corporation's assets by a court, an
24 assignee for the benefit of creditors, or a general receiver relieves
25 the directors of any further duties with respect to the liquidation of
26 the corporation's assets or the application of any assets or proceeds
27 toward satisfaction of its liabilities.

28 (5) Corporate actions (~~((and decisions))~~) to be (~~((taken))~~) approved by
29 a corporation that has been dissolved under RCW 23B.14.030 or
30 23B.14.210, which are within the scope of activities permitted in this
31 chapter, may be (~~((taken))~~) approved by the corporation's board of
32 directors and, if required, by its shareholders, membership in both
33 groups determined as of the effective date of the dissolution. If
34 vacancies in the board of directors occur after the effective date of
35 dissolution, the shareholders, or the remaining directors, even if less
36 than a quorum of the board, may fill the vacancies. A special meeting
37 of the shareholders for purposes of (~~((authorizing))~~) approving any
38 corporate action required or permitted to be (~~((authorized))~~) approved by

1 shareholders, or for purposes of electing directors, may be called by
2 any person who was an officer, director, or shareholder of the
3 corporation at the effective date of the dissolution.

4 **Sec. 54.** RCW 23B.16.010 and 2002 c 297 s 45 are each amended to
5 read as follows:

6 (1) A corporation shall keep as permanent records minutes of all
7 meetings of its shareholders and board of directors, a record of all
8 corporate actions (~~((taken))~~) approved by the shareholders or board of
9 directors by executed consent without a meeting, and a record of all
10 corporate actions (~~((taken))~~) approved by a committee of the board of
11 directors exercising the authority of the board of directors on behalf
12 of the corporation.

13 (2) A corporation shall maintain appropriate accounting records.

14 (3) A corporation or its agent shall maintain a record of its
15 shareholders, in a form that permits preparation of a list of the names
16 and addresses of all shareholders, in alphabetical order by class of
17 shares showing the number and class of shares held by each.

18 (4) A corporation shall maintain its records in written form or in
19 another form capable of conversion into written form within a
20 reasonable time.

21 (5) A corporation shall keep a copy of the following records at its
22 principal office:

23 (a) Its articles or restated articles of incorporation and all
24 amendments to them currently in effect;

25 (b) Its bylaws or restated bylaws and all amendments to them
26 currently in effect;

27 (c) The minutes of all shareholders' meetings, and records of all
28 (~~((action-taken))~~) corporate actions approved by shareholders without a
29 meeting, for the past three years;

30 (d) The financial statements described in RCW 23B.16.200(1), for
31 the past three years;

32 (e) All communications in the form of a record to shareholders
33 generally within the past three years;

34 (f) A list of the names and business addresses of its current
35 directors and officers; and

36 (g) Its initial report or most recent annual report delivered to
37 the secretary of state under RCW 23B.16.220.

1 **Sec. 55.** RCW 23B.16.020 and 2002 c 297 s 46 are each amended to
2 read as follows:

3 (1) A shareholder of a corporation is entitled to inspect and copy,
4 during regular business hours at the corporation's principal office,
5 any of the records of the corporation described in RCW 23B.16.010(5) if
6 the shareholder gives the corporation notice of the shareholder's
7 demand at least five business days before the date on which the
8 shareholder wishes to inspect and copy.

9 (2) A shareholder of a corporation is entitled to inspect and copy,
10 during regular business hours at a reasonable location specified by the
11 corporation, any of the following records of the corporation if the
12 shareholder meets the requirements of subsection (3) of this section
13 and gives the corporation notice of the shareholder's demand at least
14 five business days before the date on which the shareholder wishes to
15 inspect and copy:

16 (a) Excerpts from minutes of any meeting of the board of directors,
17 (~~records of any action~~) or of any meeting of a committee of the board
18 of directors while exercising the authority of the board of directors,
19 minutes of any meeting of the shareholders, and records of (~~action~~
20 ~~taken~~) corporate actions approved by the shareholders or board of
21 directors or a committee thereof without a meeting, to the extent not
22 subject to inspection under subsection (1) of this section;

23 (b) Accounting records of the corporation; and

24 (c) The record of shareholders.

25 (3) A shareholder may inspect and copy the records described in
26 subsection (2) of this section only if:

27 (a) The shareholder's demand is made in good faith and for a proper
28 purpose;

29 (b) The shareholder describes with reasonable particularity the
30 shareholder's purpose and the records the shareholder desires to
31 inspect; and

32 (c) The records are directly connected with the shareholder's
33 purpose.

34 (4) The right of inspection granted by this section may not be
35 abolished or limited by a corporation's articles of incorporation or
36 bylaws.

37 (5) This section does not affect:

1 (a) The right of a shareholder to inspect records under RCW
2 23B.07.200 or, if the shareholder is in litigation with the
3 corporation, to the same extent as any other litigant; or

4 (b) The power of a court, independently of this title, to compel
5 the production of corporate records for examination.

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

9 **Sec. 56.** RCW 23B.19.040 and 2007 c 45 s 1 are each amended to read
10 as follows:

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

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

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

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

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

1 within thirty days or a shorter period, if any, as may be required by
2 the exchange act shall be deemed to have disapproved such share
3 purchase.

4 (2) Except for a significant business transaction approved under
5 subsection (1) of this section or exempted by RCW 23B.19.030, in
6 addition to any other requirement, a target corporation shall not
7 engage at any time in any significant business transaction described in
8 RCW 23B.19.020(15) (a) or (e) with any acquiring person of such a
9 corporation other than a significant business transaction that either
10 meets all of the conditions of (a), (b), and (c) of this subsection or
11 meets the conditions of (d) of this subsection:

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

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

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

1 any cash dividends paid, and the market value of any dividends paid
2 other than in cash, per share of common shares since the date, up to
3 the amount of the interest.

4 (b) The aggregate amount of the cash and the market value as of the
5 consummation date of consideration other than cash to be received per
6 share by holders of outstanding shares of any class or series of
7 shares, other than common shares, of the target corporation is at least
8 equal to the highest of the following, whether or not the acquiring
9 person has previously acquired any shares of such a class or series of
10 shares:

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

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

34 (iii) The market value per share of the same class or series of
35 shares on the announcement date with respect to a significant business
36 transaction or on the date of the acquiring person's share acquisition
37 time, whichever is higher; plus interest compounded annually from such
38 a date through the consummation date at the rate for one-year United

1 States treasury obligations from time to time in effect; less the
2 aggregate amount of any cash dividends paid and the market value of any
3 dividends paid other than in cash, per share of the same class or
4 series of shares since the date, up to the amount of the interest.

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

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

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

32 (4) A significant business transaction that is made in violation of
33 subsection (1) or (2) of this section and that is not exempt under RCW
34 23B.19.030 is void.

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