

2 SHB 1545 - S COMM AMD
3 By Committee on Judiciary

4
5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 24.06.005 and 2000 c 167 s 1 are each amended to read
8 as follows:

9 As used in this chapter, unless the context otherwise requires, the
10 term:

11 (1) "Corporation" or "domestic corporation" means a mutual
12 corporation or miscellaneous corporation subject to the provisions of
13 this chapter, except a foreign corporation.

14 (2) "Foreign corporation" means a mutual or miscellaneous
15 corporation or other corporation organized under laws other than the
16 laws of this state which would be subject to the provisions of this
17 chapter if organized under the laws of this state.

18 (3) "Mutual corporation" means a corporation organized to
19 accomplish one or more of its purposes on a mutual basis for members
20 and other persons.

21 (4) "Miscellaneous corporation" means any corporation which is
22 organized for a purpose or in a manner not provided for by the
23 Washington business corporation act or by the Washington nonprofit
24 corporation act, and which is not required to be organized under other
25 laws of this state.

26 (5) "Articles of incorporation" includes the original articles of
27 incorporation and all amendments thereto, and includes articles of
28 merger.

29 (6) "Bylaws" means the code or codes of rules adopted for the
30 regulation or management of the affairs of the corporation irrespective
31 of the name or names by which such rules are designated.

32 (7) "Member" means one having membership rights in a corporation in
33 accordance with provisions of its articles of incorporation or bylaws.

34 (8) "Stock" or "share" means the units into which the proprietary
35 interests of a corporation are divided in a corporation organized with
36 stock.

1 (9) "Stockholder" or "shareholder" means one who is a holder of
2 record of one or more shares in a corporation organized with stock.

3 (10) "Board of directors" means the group of persons vested with
4 the management of the affairs of the corporation irrespective of the
5 name by which such group is designated.

6 (11) "Insolvent" means inability of a corporation to pay debts as
7 they become due in the usual course of its affairs.

8 (12) "Duplicate originals" means two copies, original or otherwise,
9 each with original signatures, or one original with original signatures
10 and one copy thereof.

11 (13) "Conforms to law" as used in connection with duties of the
12 secretary of state in reviewing documents for filing under this
13 chapter, means the secretary of state has determined the document
14 complies as to form with the applicable requirements of this chapter.

15 (14) "Effective date" means, in connection with a document filing
16 made by the secretary of state, the date which is shown by affixing a
17 "filed" stamp on the documents. When a document is received for filing
18 by the secretary of state in a form which complies with the
19 requirements of this chapter and which would entitle the document to be
20 filed immediately upon receipt, but the secretary of state's approval
21 action occurs subsequent to the date of receipt, the secretary of
22 state's filing date shall relate back to the date on which the
23 secretary of state first received the document in acceptable form. An
24 applicant may request a specific effective date no more than thirty
25 days later than the receipt date which might otherwise be applied as
26 the effective date.

27 (15) "Executed by an officer of the corporation," or words of
28 similar import, means that any document signed by such person shall be
29 and is signed by that person under penalties of perjury and in an
30 official and authorized capacity on behalf of the corporation or person
31 making the document submission with the secretary of state.

32 (16) "An officer of the corporation" means, in connection with the
33 execution of documents submitted for filing with the secretary of
34 state, the president, a vice president, the secretary, or the treasurer
35 of the corporation.

36 (17) "Electronic transmission" or "electronically transmitted"
37 means any process of electronic communication not directly involving
38 the physical transfer of paper that is suitable for the retention,
39 retrieval, and reproduction of the transmitted information by the

1 recipient. However, such an electronic transmission must either set
2 forth or be submitted with information, including any security or
3 validation controls used, from which it can reasonably be determined
4 that the electronic transmission was authorized by, as applicable, the
5 corporation or shareholder or member by or on behalf of which the
6 electronic transmission was sent.

7 (18) "Consumer cooperative" means a corporation engaged in the
8 retail sale, to its members and other consumers, of goods or services
9 of a type that are generally for personal, living, or family use.

10 **Sec. 2.** RCW 24.06.025 and 1987 c 212 s 708 are each amended to
11 read as follows:

12 The articles of incorporation shall set forth:

13 (1) The name of the corporation.

14 (2) The period of duration, which may be perpetual or for a stated
15 number of years.

16 (3) The purpose or purposes for which the corporation is organized.

17 (4) The qualifications and the rights and responsibilities of the
18 members and the manner of their election, appointment or admission to
19 membership and termination of membership; and, if there is more than
20 one class of members or if the members of any one class are not equal,
21 the relative rights and responsibilities of each class or each member.

22 (5) If the corporation is to have capital stock:

23 (a) The aggregate number of shares which the corporation shall have
24 authority to issue; if such shares are to consist of one class only,
25 the par value of each of such shares, or a statement that all of such
26 shares are without par value; or, if such shares are to be divided into
27 classes, the number of shares of each class, and a statement of the par
28 value of the shares of each such class or that such shares are to be
29 without par value;

30 (b) If the shares are to be divided into classes, the designation
31 of each class and a statement of the preferences, limitations and
32 relative rights in respect of the shares of each class;

33 (c) If the corporation is to issue the shares of any preferred or
34 special class in series, then the designation of each series and a
35 statement of the variations in the relative rights and preferences as
36 between series insofar as the same are to be fixed in the articles of
37 incorporation, and a statement of any authority to be vested in the

1 board of directors to establish series and fix and determine the
2 variations in the relative rights and preferences as between series;

3 (d) Any provision limiting or denying to shareholders the
4 preemptive right to acquire additional shares of the corporation.

5 (6) If the corporation is to distribute surplus funds to its
6 members, stockholders or other persons, provisions for determining the
7 amount and time of the distribution.

8 (7) Provisions for distribution of assets on dissolution or final
9 liquidation.

10 (8) Whether a dissenting shareholder or member shall be limited to
11 a return of less than the fair value of his shares or membership.

12 (9) (~~Any provisions, not inconsistent with law, which the~~
13 ~~incorporators elect to set forth in the articles of incorporation for~~
14 ~~the regulation of the internal affairs of the corporation.~~

15 ~~(10))~~ The address of its initial registered office, including
16 street and number, and the name of its initial registered agent at such
17 address.

18 (~~(11))~~ (10) The number of directors constituting the initial
19 board of directors, and the names and addresses of the persons who are
20 to serve as the initial directors.

21 (~~(12))~~ (11) The name and address of each incorporator.

22 (~~(13))~~ (12) Any provision, not inconsistent with law, (~~which the~~
23 ~~incorporators elect to set forth in the articles of incorporation))~~ for
24 the regulation of the internal affairs of the association, including
25 (~~provisions regarding~~):

26 (a) (~~Eliminating or limiting the personal liability of a director~~
27 ~~to the association or its members for monetary damages for conduct as~~
28 ~~a director: PROVIDED, That such provision shall not eliminate or limit~~
29 ~~the liability of a director for acts or omissions that involve~~
30 ~~intentional misconduct by a director or a knowing violation of law by~~
31 ~~a director, or for any transaction from which the director will~~
32 ~~personally receive a benefit in money, property, or services to which~~
33 ~~the director is not legally entitled. No such provision may eliminate~~
34 ~~or limit the liability of a director for any act or omission occurring~~
35 ~~before the date when such provision becomes effective)) Overriding the
36 release from liability provided in RCW 24.06.035(2); and~~

37 (b) Any provision which under this title is required or permitted
38 to be set forth in the bylaws.

1 It shall not be necessary to set forth in the articles of
2 incorporation any of the corporate powers enumerated in this chapter.

3 Unless the articles of incorporation provide that a change in the
4 number of directors shall be made only by amendment to the articles of
5 incorporation, a change in the number of directors made by amendment to
6 the bylaws shall be controlling. In all other cases, whenever a
7 provision of the articles of incorporation is inconsistent with a
8 bylaw, the provision of the articles of incorporation shall be
9 controlling.

10 **Sec. 3.** RCW 24.06.030 and 1969 ex.s. c 120 s 6 are each amended to
11 read as follows:

12 Each corporation shall have power:

13 (1) To have perpetual succession by its corporate name unless a
14 limited period of duration is stated in its articles of incorporation.

15 (2) To sue and be sued, complain and defend, in its corporate name.

16 (3) To have a corporate seal which may be altered at pleasure, and
17 to use the same by causing it, or a facsimile thereof, to be impressed
18 or affixed or in any other manner reproduced.

19 (4) To purchase, take, receive, lease, take by gift, devise or
20 bequest, or otherwise acquire, own, hold, be trustee of, improve, use
21 and otherwise deal in and with real or personal property, or any
22 interest therein, wherever situated.

23 (5) To sell, convey, mortgage, pledge, lease, exchange, transfer
24 and otherwise dispose of all or any part of its property and assets.

25 (6) To lend money to its employees.

26 (7) To purchase, take, receive, subscribe for, or otherwise
27 acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or
28 otherwise dispose of, and otherwise use and deal in and with, shares or
29 other interests in, or obligations of, other domestic or foreign
30 corporations, whether for profit or not for profit, associations,
31 partnerships or individuals, or direct or indirect obligations of the
32 United States, or of any other government, state, territory,
33 governmental district or municipality or of any instrumentality
34 thereof.

35 (8) To make contracts and incur liabilities, borrow money at such
36 rates of interest as the corporation may determine, issue its notes,
37 bonds, and other obligations, and secure any of its obligations by

1 mortgage or pledge of all or any of its property, franchises and
2 income.

3 (9) To lend money for its corporate purposes, invest and reinvest
4 its funds, and take and hold real and personal property as security for
5 the payment of funds so loaned or invested.

6 (10) To conduct its affairs, carry on its operations, and have
7 offices and exercise the powers granted by this chapter, in any state,
8 territory, district, or possession of the United States, or in any
9 foreign country.

10 (11) To elect or appoint officers and agents of the corporation,
11 and define their duties and fix their compensation.

12 (12) To make and alter bylaws, not inconsistent with its articles
13 of incorporation or with the laws of this state, for the administration
14 and regulation of the affairs of the corporation.

15 (13) To establish and maintain reserve, equity, surplus or other
16 funds, and to provide for the time, form and manner of distribution of
17 such funds among members, shareholders or other persons with interests
18 therein in accordance with the articles of incorporation.

19 (14) Unless otherwise provided in the articles of incorporation, to
20 make donations for the public welfare or for charitable, scientific or
21 educational purposes, and in time of war to make donations in aid of
22 the United States and its war activities.

23 (15) To indemnify any director or officer or former director or
24 officer of the corporation, or any person who may have served at its
25 request as a director or officer of another corporation, against
26 expenses actually and necessarily incurred by him or her in connection
27 with the defense of any action, suit or proceeding in which he or she
28 is made a party by reason of being or having been such director or
29 officer, except ~~((in relation to matters as to which he shall be
30 adjudged in such action, suit or proceeding to be liable for negligence
31 or misconduct in the performance of duty))~~ for acts or omissions that
32 involve intentional misconduct or a knowing violation of law by the
33 director or officer, or that involve a transaction from which the
34 director or officer will personally receive a benefit in money,
35 property, or services to which the director or officer is not legally
36 entitled: PROVIDED, That such indemnification shall not be deemed
37 exclusive of any other rights to which such director or officer may be
38 entitled, under any bylaw, agreement, vote of board of directors or
39 members or shareholders, or otherwise.

1 (16) To cease its corporate activities and surrender its corporate
2 franchise.

3 (17) To have and exercise all powers necessary or convenient to
4 effect any or all of the purposes for which the corporation is
5 organized and not inconsistent with the articles of incorporation or
6 the provisions of this chapter.

7 **Sec. 4.** RCW 24.06.035 and 1987 c 212 s 709 are each amended to
8 read as follows:

9 (1) A corporation subject to the provisions of this chapter shall
10 not engage in any business, trade, a vocation or profession for profit:
11 PROVIDED, That nothing contained herein shall be construed to forbid
12 such a corporation from accumulating reserve, equity, surplus or other
13 funds through subscriptions, fees, dues or assessments, or from charges
14 made its members or other persons for services rendered or supplies or
15 benefits furnished, or from distributing its surplus funds to its
16 members, stockholders or other persons in accordance with the
17 provisions of the articles of incorporation. A member of the board of
18 directors or an officer of such a corporation shall have the same
19 immunity from liability as is granted in RCW 4.24.264.

20 (2) Unless the articles of incorporation provide otherwise, a
21 member of the board of directors or an officer of the corporation is
22 not individually liable to the corporation or its shareholders or
23 members in their capacity as shareholders or members for conduct within
24 his or her official capacity as a director or officer after the
25 effective date of this subsection except for acts or omissions that
26 involve intentional misconduct or a knowing violation of the law, or
27 that involve a transaction from which the director or officer will
28 personally receive a benefit in money, property, or services to which
29 the director or officer is not legally entitled. Nothing in this
30 subsection may be construed to limit or modify in any manner the power
31 of the attorney general to bring an action on behalf of the public to
32 enjoin, correct, or otherwise remedy a breach of a charitable trust by
33 a corporation or its directors or officers.

34 **Sec. 5.** RCW 24.06.100 and 1969 ex.s. c 120 s 20 are each amended
35 to read as follows:

36 Meetings of members and/or shareholders may be held at such place,
37 either within or without this state, as may be provided in the bylaws.

1 In the absence of any such provision, all meetings shall be held at the
2 registered office of the corporation in this state.

3 An annual meeting of the members and shareholders shall be held at
4 such time as may be provided in the bylaws. Failure to hold the annual
5 meeting at the designated time shall not work a forfeiture or
6 dissolution of the corporation.

7 Special meetings of the members or shareholders may be called by
8 the president or by the board of directors. Special meetings of the
9 members or shareholders may also be called by such other officers or
10 persons or number or proportion of members or shareholders as may be
11 provided in the articles of incorporation or the bylaws. In the
12 absence of a provision fixing the number or proportion of members or
13 shareholders entitled to call a meeting, a special meeting of members
14 or shareholders may be called by persons having one-twentieth of the
15 votes entitled to be cast at such meeting. Only business within the
16 purpose or purposes described in the meeting notice required by RCW
17 24.06.105 may be conducted at a special meeting.

18 If the articles of incorporation or bylaws so provide, members or
19 shareholders may participate in any meeting of members or shareholders
20 by any means of communication by which all persons participating in the
21 meeting can hear each other during the meeting. A member or
22 shareholder participating in a meeting by this means is deemed to be
23 present in person at the meeting.

24 **Sec. 6.** RCW 24.06.110 and 2000 c 167 s 4 are each amended to read
25 as follows:

26 The right of a class or classes of members or shareholders to vote
27 may be limited, enlarged or denied to the extent specified in the
28 articles of incorporation. Unless so limited, enlarged or denied, each
29 member and each outstanding share of each class shall be entitled to
30 one vote on each matter submitted to a vote of members or shareholders.
31 No member of a class may acquire any interest which will entitle him or
32 her to a greater vote than any other member of the same class.

33 A member or shareholder may vote in person or, unless the articles
34 of incorporation or the bylaws otherwise provide, may vote by mail, by
35 electronic transmission, or by proxy executed in writing by the member
36 or shareholder or by his or her duly authorized attorney-in-fact:
37 PROVIDED, That no proxy shall be valid for more than eleven months from
38 the date of its execution unless otherwise specified in the proxy.

1 If a member or shareholder may vote by proxy, the proxy may be
2 given by:

3 (1) Executing a writing authorizing another person or persons to
4 act for the member or shareholder as proxy. Execution may be
5 accomplished by the member or shareholder or the member's or
6 shareholder's authorized officer, director, employee, or agent signing
7 the writing or causing his or her signature to be affixed to the
8 writing by any reasonable means including, but not limited to,
9 facsimile signature; or

10 (2) Authorizing another person or persons to act for the member or
11 shareholder as proxy by transmitting or authorizing the transmission of
12 an electronic transmission to the person who will be the holder of the
13 proxy, or to a proxy solicitation firm, proxy support service
14 organization, or like agent duly authorized by the person who will be
15 the holder of the proxy to receive the transmission. If it is
16 determined that the electronic transmissions are valid, the inspector
17 of election or, if there are no inspectors, any other officer or agent
18 of the corporation making that determination on behalf of the
19 corporation shall specify the information upon which they relied. The
20 corporation shall require the holders of proxies received by electronic
21 transmission to provide to the corporation copies of the electronic
22 transmission and the corporation shall retain copies of the electronic
23 transmission for a reasonable period of time.

24 If specifically permitted by the articles of incorporation ((~~may~~
25 provide that)) or bylaws, whenever proposals or directors or officers
26 are to be voted upon, such vote may be taken by mail or by electronic
27 transmission if the name of each candidate and the text of each
28 proposal to be so voted upon are set forth in a writing accompanying or
29 contained in the notice of meeting. Persons voting by mail or by
30 electronic transmission shall be deemed present for all purposes of
31 quorum, count of votes and percentages of total voting power voting.

32 The articles of incorporation or the bylaws may provide that in all
33 elections for directors every person entitled to vote shall have the
34 right to cumulate his or her vote and to give one candidate a number of
35 votes equal to his or her vote multiplied by the number of directors to
36 be elected, or by distributing such votes on the same principle among
37 any number of such candidates.

1 **Sec. 7.** RCW 24.06.115 and 2000 c 167 s 5 are each amended to read
2 as follows:

3 The articles of incorporation or the bylaws may provide the number
4 or percentage of votes which members or shareholders are entitled to
5 cast in person, by mail, by electronic transmission, or by proxy, which
6 shall constitute a quorum at meetings of shareholders or members.
7 However, in no event shall a quorum be less than one-fourth, or in the
8 case of consumer cooperatives, five percent, of the votes which members
9 or shareholders are entitled to cast in person, by mail, by electronic
10 transmission, or by proxy, at a meeting considering the adoption of a
11 proposal which is required by the provisions of this chapter to be
12 adopted by at least two-thirds of the votes which members or
13 shareholders present at the meeting in person or by mail, by electronic
14 transmission, or represented by proxy are entitled to cast. In all
15 other matters and in the absence of any provision in the articles of
16 incorporation or bylaws, a quorum shall consist of one-fourth, or in
17 the case of consumer cooperatives, five percent, of the votes which
18 members or shareholders are entitled to cast in person, by mail, by
19 electronic transmission, or by proxy at the meeting. On any proposal
20 on which a class of shareholders or members is entitled to vote as a
21 class, a quorum of the class entitled to vote as such class must also
22 be present in person, by mail, by electronic transmission, or
23 represented by proxy.

24 **Sec. 8.** RCW 24.06.150 and 1969 ex.s. c 120 s 30 are each amended
25 to read as follows:

26 Meetings of the board of directors, regular or special, may be held
27 either within or without this state, and upon such notice as the bylaws
28 may prescribe. Attendance of a director at any meeting shall
29 constitute a waiver of notice of such meeting except where a director
30 attends a meeting for the express purpose of objecting to the
31 transaction of any business because the meeting is not lawfully called
32 or convened. Neither the business to be transacted at, nor the purpose
33 of, any regular or special meeting of the board of directors need be
34 specified in the notice or waiver of notice of such meeting.

35 Unless the articles of incorporation or bylaws provide otherwise,
36 any or all directors may participate in a regular or special meeting
37 by, or conduct the meeting through the use of, any means of
38 communication by which all directors participating can hear each other

1 during the meeting. A director participating in a meeting by this
2 means is deemed to be present in person at the meeting.

3 **NEW SECTION. Sec. 9.** A new section is added to chapter 24.06 RCW
4 to read as follows:

5 (1) A director shall discharge the duties of a director, including
6 duties as a member of a committee, and an officer with discretionary
7 authority shall discharge the officer's duties under that authority:

8 (a) In good faith;

9 (b) With the care an ordinarily prudent person in a like position
10 would exercise under similar circumstances; and

11 (c) In a manner the director or officer reasonably believes to be
12 in the best interests of the corporation.

13 (2) In discharging the duties of a director or an officer, a
14 director or officer is entitled to rely on information, opinions,
15 reports, or statements, including financial statements and other
16 financial data, if prepared or presented by:

17 (a) One or more officers or employees of the corporation whom the
18 director or officer reasonably believes to be reliable and competent in
19 the matters presented; or

20 (b) Legal counsel, public accountants, or other persons as to
21 matters the director or officer reasonably believes are within the
22 person's professional or expert competence.

23 In addition, a director is entitled to rely on a committee of the
24 board of directors of which the director is not a member if the
25 director reasonably believes the committee merits confidence.

26 (3) A director or an officer is not acting in good faith if the
27 director or officer has knowledge concerning the matter in question
28 that makes reliance otherwise permitted by subsection (2) of this
29 section unwarranted.

30 (4) A director or officer is not liable for any action taken as a
31 director or as an officer, or any failure to take any action, if the
32 director or officer performed the duties of the director's or officer's
33 office in compliance with this section.

34 **Sec. 10.** RCW 24.06.185 and 1969 ex.s. c 120 s 37 are each amended
35 to read as follows:

36 A corporation may amend its articles of incorporation from time to
37 time in any and as many respects as may be desired, so long as its

1 articles of incorporation as amended contain only such provisions as
2 are lawful under this chapter. A member or shareholder of a
3 corporation does not have a vested property right resulting from any
4 provision in the articles of incorporation.

5 **Sec. 11.** RCW 24.06.190 and 2000 c 167 s 6 are each amended to read
6 as follows:

7 Amendments to the articles of incorporation shall be made in the
8 following manner:

9 A corporation's board of directors may amend the articles of
10 incorporation to change the name of the corporation, without seeking
11 member or shareholder approval. With respect to amendments other than
12 to change the name of the corporation, the board of directors shall
13 adopt a resolution setting forth the proposed amendment and directing
14 that it be submitted to a vote at a meeting of members and
15 shareholders, which may be either an annual or a special meeting.
16 Written or printed notice or, if specifically permitted by the articles
17 of incorporation or bylaws of the corporation, notice by electronic
18 transmission, setting forth the proposed amendment or a summary of the
19 changes to be effected thereby shall be given to each member and
20 shareholder entitled to vote at such meeting within the time and in the
21 manner provided in this chapter for the giving of notice of meetings of
22 members and shareholders. The proposed amendment shall be adopted upon
23 receiving at least two-thirds of the votes which members or
24 shareholders present in person or by mail or by electronic transmission
25 at such meeting or represented by proxy are entitled to cast:
26 PROVIDED, That when any class of shares or members is entitled to vote
27 thereon by class, the proposed amendment must receive at least two-
28 thirds of the votes of the members or shareholders of each class
29 entitled to vote thereon as a class, who are present in person, by
30 mail, by electronic transmission, or represented by proxy at such
31 meeting.

32 Any number of amendments may be submitted and voted upon at any one
33 meeting.

34 **Sec. 12.** RCW 24.06.195 and 2000 c 167 s 7 are each amended to read
35 as follows:

1 The articles of amendment shall be executed in duplicate originals
2 by the corporation by an officer of the corporation, and shall set
3 forth:

4 (1) The name of the corporation.

5 (2) Any amendment so adopted.

6 (3) If an amendment was adopted by the board of directors without
7 being submitted for member or shareholder action, a statement to that
8 effect and that member or shareholder action was not required; or a
9 statement setting forth the date of the meeting of members and
10 shareholders at which the amendment was adopted, that a quorum was
11 present at such meeting, and that such amendment received at least two-
12 thirds of the votes which members or shareholders of the corporation,
13 and of each class entitled to vote thereon as a class, present at such
14 meeting in person, by mail, by electronic transmission, or represented
15 by proxy were entitled to cast, or a statement that such amendment was
16 adopted by a consent in writing signed by all members and shareholders
17 entitled to vote with respect thereto.

18 **Sec. 13.** RCW 24.06.245 and 1969 ex.s. c 120 s 49 are each amended
19 to read as follows:

20 Any member or shareholder of a corporation shall have the right to
21 dissent from any of the following corporate actions:

22 (1) Any plan of merger or consolidation to which the corporation is
23 a party other than a merger or consolidation in which all members or
24 shareholders of the corporation have the right to continue their
25 membership or shareholder status in the surviving corporation on
26 substantially similar terms; or

27 (2) Any sale or exchange of all or substantially all of the
28 property and assets of the corporation not made in the usual and
29 regular course of its business, including a sale in dissolution, but
30 not including a sale pursuant to an order of a court having
31 jurisdiction in the premises or a sale for cash on terms requiring that
32 all or substantially all of the net proceeds of sale be distributed to
33 the shareholders in accordance with their respective interests within
34 one year after the date of sale; or

35 (3) Any amendment to the articles of incorporation (~~which changes~~
36 ~~voting or property rights of members or shareholders other than by~~
37 ~~changing the number of memberships or shares or classes of either~~
38 ~~thereof)) that materially reduces the number of shares owned by a~~

1 shareholder to a fraction of a share if the fractional share is to be
2 acquired by the corporation for cash; or

3 (4) (~~Any amendment to the articles of incorporation which~~
4 ~~reorganizes a corporation under the provisions of this chapter~~) Any
5 corporate action taken pursuant to a member or shareholder vote to the
6 extent that the articles of incorporation, bylaws, or a resolution of
7 the board of directors provides that voting or nonvoting members or
8 shareholders are entitled to dissent and obtain payment for their
9 membership or shares.

10 A member or shareholder entitled to dissent and obtain payment for
11 the member's or shareholder's membership interest or shares under this
12 chapter may not challenge the corporate action creating the member's or
13 shareholder's entitlement unless the action fails to comply with the
14 procedural requirements imposed by this title, the articles of
15 incorporation, or the bylaws, or is fraudulent with respect to the
16 member or shareholder or the corporation.

17 The provisions of this section shall not apply to the members or
18 shareholders of the surviving corporation in a merger if such
19 corporation is on the date of the filing of the articles of merger the
20 owner of all the outstanding shares of the other corporations, domestic
21 or foreign, which are parties to the merger(~~(, or if a vote of the~~
22 ~~members and shareholders of such corporation is not necessary to~~
23 ~~authorize such merger)~~).

24 The meeting notice for any meeting at which a proposed corporate
25 action creating dissenters' rights is submitted to a vote must state
26 that members or shareholders are or may be entitled to assert
27 dissenters' rights and be accompanied by a copy of RCW 24.06.250.

28 **Sec. 14.** RCW 24.06.250 and 2000 c 167 s 11 are each amended to
29 read as follows:

30 Any member or shareholder electing to exercise such right of
31 dissent shall file with the corporation, prior to or at the meeting of
32 members and shareholders at which such proposed corporate action is
33 submitted to a vote, a written objection to such proposed corporate
34 action. If such proposed corporate action be approved by the required
35 vote and such member or shareholder shall not have voted in favor
36 thereof, such member or shareholder may, within ten days after the date
37 on which the vote was taken, (~~or if a corporation is to be merged~~
38 ~~without a vote of its members and shareholders into another~~

1 corporation, any other members or shareholders may, within fifteen days
2 after the plan of such merger shall have been mailed or sent by
3 electronic transmission to such members and shareholders,)) make
4 written demand on the corporation, or, in the case of a merger or
5 consolidation, on the surviving or new corporation, domestic or
6 foreign, for payment of the fair value of such member's membership or
7 of such shareholder's shares, and, if such proposed corporate action is
8 effected, such corporation shall pay to such member, upon surrender of
9 his or her membership certificate, if any, or to such shareholder, upon
10 surrender of the certificate or certificates representing such shares,
11 the fair value thereof as of the day prior to the date on which the
12 vote was taken approving the proposed corporate action, excluding any
13 appreciation or depreciation in anticipation of such corporate action.
14 Any member or shareholder failing to make demand within the ten day
15 period shall be bound by the terms of the proposed corporate action.
16 Any member or shareholder making such demand shall thereafter be
17 entitled only to payment as in this section provided and shall not be
18 entitled to vote or to exercise any other rights of a member or
19 shareholder.

20 No such demand shall be withdrawn unless the corporation shall
21 consent thereto. The right of such member or shareholder to be paid
22 the fair value of his or her membership or shares shall cease and his
23 or her status as a member or shareholder shall be restored, without
24 prejudice to any corporate proceedings which may have been taken during
25 the interim, if:

26 (1) Such demand shall be withdrawn upon consent; or

27 (2) The proposed corporate action shall be abandoned or rescinded
28 or the members or shareholders shall revoke the authority to effect
29 such action; or

30 (3) In the case of a merger, on the date of the filing of the
31 articles of merger the surviving corporation is the owner of all the
32 outstanding shares of the other corporations, domestic and foreign,
33 that are parties to the merger; or

34 (4) (~~No demand or petition for the determination of fair value by~~
35 ~~a court shall have been made or filed within the time provided by this~~
36 ~~section; or~~

37 ~~(5))~~) A court of competent jurisdiction shall determine that such
38 member or shareholder is not entitled to the relief provided by this
39 section.

1 Within ten days after such corporate action is effected, the
2 corporation, or, in the case of a merger or consolidation, the
3 surviving or new corporation, domestic or foreign, shall give written
4 notice thereof to each dissenting member or shareholder who has made
5 demand as herein provided, and shall make a written offer to each such
6 member or shareholder to pay for such shares or membership at a
7 specified price deemed by such corporation to be the fair value
8 thereof. Except in cases where the fair value payable to dissenters is
9 fixed in the articles of incorporation or pursuant to RCW 24.06.255,
10 such notice and offer shall be accompanied by a balance sheet of the
11 corporation in which the member ((has)) holds his or her membership or
12 ((the shares of which)) the dissenting shareholder holds shares, as of
13 the latest available date and not more than twelve months prior to the
14 making of such offer, and a profit and loss statement of such
15 corporation for the twelve months' period ended on the date of such
16 balance sheet.

17 If the fair value payable to dissenting members or shareholders is
18 fixed in the articles of incorporation or pursuant to RCW 24.06.255, or
19 if within thirty days after the date on which such corporate action was
20 effected the fair value of such shares or membership is agreed upon
21 between any such dissenting member or shareholder and the corporation,
22 payment therefor shall be made within ninety days after the date on
23 which such corporate action was effected, upon surrender of the
24 membership certificate, if any, or upon surrender of the certificate or
25 certificates representing such shares. Upon payment of the agreed
26 value the dissenting member or shareholder shall cease to have any
27 interest in such membership or shares.

28 If the fair value payable to dissenting members or shareholders is
29 not fixed in the articles of incorporation or pursuant to RCW
30 24.06.025, and within such period of thirty days a dissenting member or
31 shareholder and the corporation do not so agree, then the dissenting
32 member or shareholder shall be entitled to make written demand to the
33 corporation, ((within thirty days after receipt of written demand from
34 any dissenting member or shareholder given)) within sixty days after
35 the date on which such corporate action was effected, requesting that
36 the corporation petition for a determination of the fair value by a
37 court. If such a demand is not timely made on the corporation, the
38 right of such member or shareholder to demand to be paid the fair value
39 of his or her membership or shares shall be forfeited. Within thirty

1 days after receipt of such a written demand from any dissenting member
2 or shareholder, the corporation shall, or at its election at any time
3 within ((such period of sixty)) ninety days after the date on which
4 such corporate action was effected may, file a petition in any court of
5 competent jurisdiction in the county in this state where the registered
6 office of the corporation is located praying that the fair value of
7 such membership or shares be found and determined. If, in the case of
8 a merger or consolidation, the surviving or new corporation is a
9 foreign corporation without a registered office in this state, such
10 petition shall be filed in the county where the registered office of
11 the domestic corporation was last located. If the corporation shall
12 fail to institute the proceeding as herein provided, any dissenting
13 member or shareholder may do so in the name of the corporation. All
14 dissenting members and shareholders, wherever residing, shall be made
15 parties to the proceeding as an action against their memberships or
16 shares quasi in rem. A copy of the petition shall be served on each
17 dissenting member and shareholder who is a resident of this state and
18 shall be served by registered or certified mail on each dissenting
19 member or shareholder who is a nonresident. Service on nonresidents
20 shall also be made by publication as provided by law. The jurisdiction
21 of the court shall be plenary and exclusive. All members and
22 shareholders who are parties to the proceeding shall be entitled to
23 judgment against the corporation for the amount of the fair value of
24 their shares. The court may, if it so elects, appoint one or more
25 persons as appraisers to receive evidence and recommend a decision on
26 the question of fair value. The appraisers shall have such power and
27 authority as shall be specified in the order of their appointment or an
28 amendment thereof. The judgment shall be payable only upon and
29 concurrently with the surrender to the corporation of the membership
30 certificate, if any, or of the certificate or certificates representing
31 such shares. Upon payment of the judgment, the dissenting shareholder
32 or member shall cease to have any interest in such shares or
33 membership.

34 The judgment shall include an allowance for interest at such rate
35 as the court may find to be fair and equitable in all the
36 circumstances, from the date on which the vote was taken on the
37 proposed corporate action to the date of payment.

38 The costs and expenses of any such proceeding shall be determined
39 by the court and shall be assessed against the corporation, but all or

1 any part of such costs and expenses may be apportioned and assessed as
2 the court may deem equitable against any or all of the dissenting
3 members and shareholders who are parties to the proceeding to whom the
4 corporation shall have made an offer to pay for membership or shares if
5 the court shall find that the action of such members or shareholders in
6 failing to accept such offer was arbitrary or vexatious or not in good
7 faith. Such expenses shall include reasonable compensation for and
8 reasonable expenses of the appraisers, but shall exclude the fees and
9 expenses of counsel for and experts employed by any party; but if the
10 fair value of the memberships or shares as determined materially
11 exceeds the amount which the corporation offered to pay therefor, or if
12 no offer was made, the court in its discretion may award to any member
13 or shareholder who is a party to the proceeding such sum as the court
14 may determine to be reasonable compensation to any expert or experts
15 employed by the member or shareholder in the proceeding.

16 Within twenty days after demanding payment for his or her shares or
17 membership, each member and shareholder demanding payment shall submit
18 the certificate or certificates representing his or her membership or
19 shares to the corporation for notation thereon that such demand has
20 been made. His or her failure to do so shall, at the option of the
21 corporation, terminate his or her rights under this section unless a
22 court of competent jurisdiction, for good and sufficient cause shown,
23 shall otherwise direct. If membership or shares represented by a
24 certificate on which notation has been so made shall be transferred,
25 each new certificate issued therefor shall bear a similar notation,
26 together with the name of the original dissenting holder of such
27 membership or shares, and a transferee of such membership or shares
28 shall acquire by such transfer no rights in the corporation other than
29 those which the original dissenting member or shareholder had after
30 making demand for payment of the fair value thereof.

31 **Sec. 15.** RCW 24.06.255 and 1969 ex.s. c 120 s 51 are each amended
32 to read as follows:

33 Notwithstanding any provision in this chapter for the payment of
34 fair value to a dissenting member or shareholder, (1) the articles of
35 incorporation may provide that a dissenting member or shareholder shall
36 be limited to a return of a lesser amount, but in no event shall a
37 dissenting member or shareholder be limited to a return of less than
38 the consideration paid to the corporation for the membership or shares

1 which he or she holds unless the fair value of the membership or shares
2 is less than the consideration paid to the corporation, and (2) the
3 fair value payable to a dissenting member of a consumer cooperative
4 shall be a fixed amount equal to the consideration paid to the
5 corporation for the member's current membership unless the articles of
6 incorporation expressly provide for a greater or lesser amount."

7 **SHB 1545** - S COMM AMD
8 By Committee on Judiciary

9

10 On page 1, line 1 of the title, after "organizations;" strike the
11 remainder of the title and insert "amending RCW 24.06.005, 24.06.025,
12 24.06.030, 24.06.035, 24.06.100, 24.06.110, 24.06.115, 24.06.150,
13 24.06.185, 24.06.190, 24.06.195, 24.06.245, 24.06.250, and 24.06.255;
14 and adding a new section to chapter 24.06 RCW."

EFFECT: Clarifies that the release of liability only applies to
conduct occurring after the effective date of the proposed amendment.
Retains minimum quorum of 25% of total votes entitled to be cast
for all nonprofit miscellaneous and mutual corporations except consumer
cooperatives. For consumer cooperatives, the minimum quorum will be 5%
of total votes entitled to be cast.

Clarifies that officers as well as directors are entitled to rely
on officers and employees of the corporation, or legal counsel, public
accountants, and other persons, in discharging their duties.

Removes the ability of corporations to impose additional privacy
restrictions on members and shareholders access to records.

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