

SENATE BILL REPORT

HB 1074

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, MARCH 30, 1993

Brief Description: Regulating corporations.

SPONSORS: Representatives Ludwig, Padden, Appelwick and Johanson

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Hargrove, Niemi, and Spanel.

Staff: Jon Carlson (786-7459)

Hearing Dates: March 25, 1993; March 30, 1993

BACKGROUND:

The current Washington Business Corporations Act was enacted by the Legislature in 1989 and governs the operation of corporations within the state.

Many of the provisions in the act are designed to protect the interests of minority shareholders or shareholders without voting power. In what are sometimes referred to as "closely-held" corporations, the stock of the company is owned by a relatively small number of shareholders. Different types of agreements between shareholders have been developed over the years in closely-held corporations. These agreements have sometimes been invalidated because they do not meet the requirements of the Business Corporations Act as to form or substance. The Washington Bar Association is recommending the adoption of statutory provisions explicitly validating some forms of shareholder agreements in closely-held corporations.

The Business Corporation Act also establishes specific criteria for the dissolution of a corporation by the Attorney General, creditors, or shareholders. A shareholder may seek dissolution when: 1) the directors are engaged in illegal activity; 2) the shareholders cannot reach agreement on the election of directors; 3) irreparable injury will result to the corporation because of a management deadlock; or 4) corporate assets are being wasted.

The Washington Bar Association has proposed technical changes relating to the designation of a professional corporation, and to the coverage of corporate officers by the unemployment compensation law.

SUMMARY:

Generally, a shareholder agreement among the shareholders of a corporation is valid even if the agreement violates other provisions of the Business Corporations Act.

This authorization regarding shareholder agreements is restricted in several ways. These restrictions include that the authorization applies only to corporations whose shares are not listed on a national exchange and are not regularly traded in a market maintained by a national securities association. In addition, the authorization applies only to agreements that are signed by all shareholders in the corporation. Unless the agreement provides otherwise, amendments to the agreement must also be unanimous. Specific examples are provided of the kinds of shareholder agreements that are authorized.

Rules are established regarding the rights and obligations of subsequent purchasers of shares in a corporation which is subject to a shareholder agreement. Purchasers without knowledge of the agreement may rescind the purchase.

Even if an agreement treats a corporation as though it were a partnership, the agreement is not a ground for imposing personal liability on a shareholder.

Three amendments unrelated to shareholder agreements are also made. First, the corporate name of a professional service corporation must contain either the words "professional service" or "professional corporation" or the abbreviations "P.S." or "P.C." The corporate name may also contain the words "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd." Second, a provision of the Unemployment Compensation Act which identifies corporate officers is amended to conform to the Washington Business Corporation Act's designation of those officers. Third, an additional ground upon which a shareholder may seek the dissolution of a corporation is provided. That ground is that the corporation has ceased all business activity and has failed to dissolve itself within a reasonable time.

SUMMARY OF PROPOSED SENATE AMENDMENT:

In the event that a shareholder agreement has limited or dispensed with the board of directors, the names of those persons who are responsible for running the corporation must be listed in the corporation's initial and annual reports.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

The bill ratifies hundreds of shareholder agreements that have been in place for years, and follows the trend of courts and legislatures across the country.

TESTIMONY AGAINST: None

TESTIFIED: PRO: John Steel, WA State Bar Assn.; Mike Stevenson, Securities Division, Dept. of Licensing