

FINAL BILL REPORT

SHB 1545

C 271 L 01

Synopsis as Enacted

Brief Description: Regulating nonprofit organizations.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Esser, Carrell and Cody).

House Committee on Judiciary
Senate Committee on Judiciary

Background:

A business that is operated on a nonprofit basis may organize under the Nonprofit Miscellaneous and Mutual Corporations Act. This act sets forth the powers, duties, rights, and obligations of both the corporation and members or shareholders of the corporation.

A corporation organized as a nonprofit miscellaneous or mutual corporation is formed by filing articles of incorporation with the Secretary of State. The corporation is governed by the provisions of the articles of incorporation and the bylaws adopted by the board of directors. The corporation is managed by a board of directors and officers and may have members or shareholders.

Articles of Incorporation:

The articles of incorporation must contain certain provisions, including the corporate name, duration and purpose for which organized, qualifications and rights of members, and whether the corporation will have capital stock. The provisions of the articles of incorporation may be amended by adoption of a resolution by the board of directors and approval by a two-thirds vote of the members and shareholders.

Meetings of Members/Shareholders and Directors:

A corporation must have an annual meeting and may call special meetings. Notice of regular and special meetings must be provided to each member or shareholder entitled to vote at the meeting. A member or shareholder may vote in person, or unless the articles of incorporation provide otherwise, by mail, electronic transmission, or proxy.

Action may be taken at a meeting if there is a quorum. For meetings of members and shareholders involving matters that require a two-thirds vote, a quorum is established

when 25 percent of the members or shareholders entitled to vote are present. For all other matters, the articles of incorporation may specify a different quorum requirement, but if none is specified a quorum of 25 percent is required. Actions that require a two-thirds vote of those present include mergers, dissolutions, and the sale of all or most of the corporation's property and assets.

Directors and Officers:

There is no general release of liability for a director's or officer's acts or omissions with respect to the corporation or its members or shareholders. However, the articles of incorporation may eliminate or limit the personal liability of a director for damages that result from the director's conduct except for acts or omissions that involve intentional misconduct or a knowing violation of the law, or any transaction from which the director will personally benefit and to which the director is not legally entitled.

A corporation may indemnify a director or an officer for expenses incurred in an action in which the director or officer is a party because he or she is a director or an officer. However, the corporation may not indemnify the director or officer for liability that results from negligence or misconduct in the performance of his or her duty.

Mergers and Dissenters' Rights:

A corporation may merge or consolidate with one or more corporations. The board of directors must adopt a resolution approving the plan of merger and the plan must also be approved by a two-thirds vote of the members and shareholders.

A member or shareholder may dissent from the following corporate actions: a merger or consolidation; a sale of all or most of the corporation's property or assets; or an amendment to the articles of incorporation that changes voting or property rights or that reorganizes a corporation. The ability to dissent from a merger does not apply if the surviving corporation owns all shares of all other corporations that are part of the merger or if the merger does not require a vote of the members or shareholders.

A dissenter must make a written demand within 10 days of the corporate action for payment of the fair value of the dissenter's membership or shares. The corporation must make an offer of fair value that it deems reasonable. If the member or shareholder does not agree with this determination, the corporation must file a petition with the court for a determination of fair value.

A corporation's articles of incorporation may limit the amount payable to a dissenter to less than fair value, but not to less than the consideration paid for membership or shares unless the fair value is less than the consideration paid.

Summary:

A number of changes are made to provisions of the Nonprofit Miscellaneous and Mutual Corporations Act relating to provisions of the articles of incorporation, corporate name changes, meetings and quorum requirements, liability of directors or officers, and dissenters' rights.

Articles of Incorporation:

The board of directors may amend the articles of incorporation to change the name of the corporation without approval of the members or shareholders.

A statement is added that members or shareholders do not receive vested property rights from any provision of the articles of incorporation.

Meetings of Members/Shareholders and Directors:

The quorum requirements for meetings of members and shareholders of consumer cooperatives is lowered to 5 percent of members or shareholders entitled to vote. The articles of incorporation may provide different quorum requirements except for actions requiring a two-thirds vote. A consumer cooperative is defined as a corporation that sells goods or services for personal, family, or living uses to its members and other consumers.

If the articles of incorporation allow, a member or shareholder may participate in a meeting by any means of communication that allows all parties to hear each other. A member or shareholder participating in this manner is deemed to be present in person at the meeting. Similarly, unless the articles of incorporation or bylaws provide otherwise, a director may participate in a meeting of the board by any means of communication and is deemed to be present in person.

The only business that may be conducted at special meetings is business within the purposes specified in the special meeting notice.

Voting by mail or electronic transmission may be authorized in the corporation's bylaws.

Directors and Officers:

Duties of directors and officers of a corporation are established. A director or an officer must act in good faith, in a manner the director or officer believes to be in the best interests of the corporation, and with the care an ordinarily prudent person would use in a like situation. In performing his or her duties, a director or an officer may rely on opinions, reports, or statements prepared or presented by: officers or employees believed to be reliable; legal counsel, accountants, or others as to matters believed to be within their expertise; or board committees as to matters within the committees' authority.

Unless the articles of incorporation provide otherwise, a director or an officer is not individually liable to the corporation or its members or shareholders, except for acts or omissions that involve intentional misconduct, a knowing violation of the law, or transactions from which the director or officer will personally benefit.

The ability of a corporation to indemnify its directors and officers is expanded. The corporation may indemnify a director or an officer for expenses incurred in a court action, except for acts or omissions that involve intentional misconduct, a knowing violation of the law, or transactions from which the director or officer will personally benefit.

Mergers and Dissenters' Rights:

The types of actions from which a member or shareholder may dissent are changed. A member or shareholder may not dissent from a merger where the member's or shareholder's status continues on substantially similar terms. A member's or shareholder's right to dissent from an action that changes voting or property rights is limited to situations where the action materially reduces the number of shares owned to a fraction of a share if this fractional share is to be acquired by the corporation for cash. The ability of a member or shareholder to dissent from an action that reorganizes a corporation is removed.

The process for dissenting from a corporate action and making a demand on the corporation for fair value is amended. If the member or shareholder does not agree to an offer of fair value made by the corporation, the member or shareholder must make a demand on the corporation within 60 days of the corporate action requesting the corporation to file a petition with the court for a determination of fair value. A member or shareholder who fails to make this request within 60 days forfeits the right to demand payment of fair value. The corporation must file a petition with the court within 30 days after receiving a demand from a member or shareholder to file the petition.

The fair value payable to a dissenting member of a consumer cooperative is fixed at the amount of consideration paid for the membership unless the articles of incorporation provide otherwise.

Votes on Final Passage:

House 98 0
Senate 48 0 (Senate amended)
House 94 0 (House concurred)

Effective: July 22, 2001