

# SENATE BILL REPORT

## SHB 1545

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As Reported By Senate Committee On:  
Judiciary, March 29, 2001

**Title:** An act relating to nonprofit organizations.

**Brief Description:** Regulating nonprofit organizations.

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

**Brief History:**

**Committee Activity:** Judiciary: 3/26/01, 3/29/01 [DPA].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended.

Signed by Senators Kline, Chair; Constantine, Vice Chair; Costa, Hargrove, Johnson, Kastama, Long, McCaslin, Roach, Thibaudeau and Zarelli.

**Staff:** Lilah Amos (786-7421)

**Background:** A business which is operated on a nonprofit basis may be organized under the Nonprofit Miscellaneous and Mutual Corporations Act. Such a corporation is substantially similar to a corporation organized under the Washington Nonprofit Corporation Act, but specifically applies to those corporations which can make distributions to shareholders. It is suggested that changes in the Nonprofit Miscellaneous and Mutual Corporations Act are needed to bring the act into harmony with the laws governing other types of Washington corporations, to make it easier to attract qualified board members by limiting their liability, and to make other changes regarding conduct of meetings and inspection of records which protect shareholder's privacy and enable these corporations to function more efficiently in the modern business environment.

Indemnification of Directors and Officers for Negligence. Currently, directors of nonprofit miscellaneous and mutual corporations cannot be indemnified for liability to third parties for negligence or misconduct in the performance of duty. This differs from profit and other nonprofit corporations, which are authorized to indemnify directors for liability to third parties for negligence.

Liability of Directors and Officers. Currently, directors and officers of nonprofit miscellaneous and mutual corporations are immune from individual liability to third parties for discretionary decisions or failure to make discretionary decisions unless their action constitutes gross negligence. Articles of incorporation can provide that directors and officers are not liable to the corporation or its members for monetary damages for their conduct unless their act or omission involved intentional misconduct, a knowing violation of law, or a transaction from which a director will personally receive a benefit to which he or she is not

legally entitled. There is no statutory standard of care for directors and officers of nonprofit miscellaneous and mutual corporations, although standards of care and exemptions from liability for performing in accordance with these standards are in effect for profit and other nonprofit corporations.

**Summary of Amended Bill: Liability.** Three changes are made in existing liability law for nonprofit miscellaneous and mutual corporations:

- (1) Directors can be indemnified for negligent actions which result in liability to third parties.
- (2) The release of liability for directors and officers to the corporation and shareholders is automatic unless the articles of incorporation provide otherwise, whereas currently directors and officers are released from liability only if the articles of incorporation so provide.
- (3) A standard of practice and care for directors and officers is added which is consistent with the provisions currently in effect for profit corporations under Chapter 23B RCW. It exempts directors from liability to third parties if the director follows this standard.

Corporate Entity, Meetings, Authority of Board.

- (1) A "consumer cooperative" is defined as a corporation engaged in the retail sale, to its members or consumers, of goods or services of a type generally for personal, living, or family use.
- (2) Members can participate in meetings and will be deemed present if they can communicate in a manner in which all persons participating can hear each other during the meeting.
- (3) The minimum number of votes constituting a quorum is changed from one-quarter of the outstanding votes to 5 percent for consumer cooperatives.
- (4) A board of directors may change the name of the corporation without seeking member or shareholder approval.

Dissenting Shareholders. The situations in which shareholders or members who disagree with mergers and other changes in ownership of the corporation have the right to obtain "fair value" for their shares are limited. If shareholders or members of a consumer cooperative are entitled to "dissent" and obtain payment for their shares, the presumptive fair value is the amount initially paid for the membership. A corporation can fix the fair value payable to a dissenting shareholder or member in articles of incorporation.

**Amended Bill Compared to Substitute Bill:** The portion of the amendment allowing nonprofit miscellaneous and mutual corporations to prescribe privacy and use limitations for member's inspection of corporate books and records is deleted. The release of liability of directors and officers to the corporation and shareholders applies only to acts after the effective date of the act. The minimum quorum remains at one-fourth of all votes entitled

to be cast, except for consumer cooperatives, which have a minimum quorum of 5 percent of all votes entitled to be cast. Officers are added to those who are entitled to reasonably rely on opinions and information from employees and professional staff.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Washington law regarding nonprofit miscellaneous and mutual corporations needs to be modernized. The three types of corporations should be treated uniformly. It is difficult for companies to attract qualified directors for boards because they are not currently allowed to indemnify directors. The release from liability should be automatic unless limited by the articles of incorporation, as presently occurs for the other types of corporations. The minimum votes required for a quorum should be reduced because it is difficult to obtain the necessary participation at meetings. The intent of this bill is to allow companies to interact more efficiently with their members.

**Testimony Against:** None.

**Testified:** Representative Lantz, prime sponsor; Michael Collins, REI (pro); John Steele, Gray Cary Law Firm (pro).