
SUBSTITUTE HOUSE BILL 1545

State of Washington

57th Legislature

2001 Regular Session

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

Read first time . Referred to Committee on .

1 AN ACT Relating to nonprofit organizations; amending RCW 24.06.005,
2 24.06.025, 24.06.030, 24.06.035, 24.06.100, 24.06.110, 24.06.115,
3 24.06.150, 24.06.160, 24.06.185, 24.06.190, 24.06.195, 24.06.245,
4 24.06.250, and 24.06.255; and adding a new section to chapter 24.06
5 RCW.

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

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.

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

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

9 (5) "Articles of incorporation" includes the original articles of
10 incorporation and all amendments thereto, and includes articles of
11 merger.

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

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

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

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

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

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

27 (12) "Duplicate originals" means two copies, original or otherwise,
28 each with original signatures, or one original with original signatures
29 and one copy thereof.

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

34 (14) "Effective date" means, in connection with a document filing
35 made by the secretary of state, the date which is shown by affixing a
36 "filed" stamp on the documents. When a document is received for filing
37 by the secretary of state in a form which complies with the
38 requirements of this chapter and which would entitle the document to be
39 filed immediately upon receipt, but the secretary of state's approval

1 action occurs subsequent to the date of receipt, the secretary of
2 state's filing date shall relate back to the date on which the
3 secretary of state first received the document in acceptable form. An
4 applicant may request a specific effective date no more than thirty
5 days later than the receipt date which might otherwise be applied as
6 the effective date.

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

12 (16) "An officer of the corporation" means, in connection with the
13 execution of documents submitted for filing with the secretary of
14 state, the president, a vice president, the secretary, or the treasurer
15 of the corporation.

16 (17) "Electronic transmission" or "electronically transmitted"
17 means any process of electronic communication not directly involving
18 the physical transfer of paper that is suitable for the retention,
19 retrieval, and reproduction of the transmitted information by the
20 recipient. However, such an electronic transmission must either set
21 forth or be submitted with information, including any security or
22 validation controls used, from which it can reasonably be determined
23 that the electronic transmission was authorized by, as applicable, the
24 corporation or shareholder or member by or on behalf of which the
25 electronic transmission was sent.

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

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

31 The articles of incorporation shall set forth:

32 (1) The name of the corporation.

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

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

36 (4) The qualifications and the rights and responsibilities of the
37 members and the manner of their election, appointment or admission to
38 membership and termination of membership; and, if there is more than

1 one class of members or if the members of any one class are not equal,
2 the relative rights and responsibilities of each class or each member.

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

4 (a) The aggregate number of shares which the corporation shall have
5 authority to issue; if such shares are to consist of one class only,
6 the par value of each of such shares, or a statement that all of such
7 shares are without par value; or, if such shares are to be divided into
8 classes, the number of shares of each class, and a statement of the par
9 value of the shares of each such class or that such shares are to be
10 without par value;

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

14 (c) If the corporation is to issue the shares of any preferred or
15 special class in series, then the designation of each series and a
16 statement of the variations in the relative rights and preferences as
17 between series insofar as the same are to be fixed in the articles of
18 incorporation, and a statement of any authority to be vested in the
19 board of directors to establish series and fix and determine the
20 variations in the relative rights and preferences as between series;

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

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

26 (7) Provisions for distribution of assets on dissolution or final
27 liquidation.

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

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

33 ~~(10))~~) The address of its initial registered office, including
34 street and number, and the name of its initial registered agent at such
35 address.

36 ~~((11))~~) (10) The number of directors constituting the initial
37 board of directors, and the names and addresses of the persons who are
38 to serve as the initial directors.

39 ~~((12))~~) (11) The name and address of each incorporator.

1 (~~((13))~~) (12) Any provision, not inconsistent with law, (~~((which the~~
2 ~~incorporators elect to set forth in the articles of incorporation))~~) for
3 the regulation of the internal affairs of the association, including
4 (~~(provisions regarding)~~):

5 (a) (~~(Eliminating or limiting the personal liability of a director~~
6 ~~to the association or its members for monetary damages for conduct as~~
7 ~~a director: PROVIDED, That such provision shall not eliminate or limit~~
8 ~~the liability of a director for acts or omissions that involve~~
9 ~~intentional misconduct by a director or a knowing violation of law by~~
10 ~~a director, or for any transaction from which the director will~~
11 ~~personally receive a benefit in money, property, or services to which~~
12 ~~the director is not legally entitled. No such provision may eliminate~~
13 ~~or limit the liability of a director for any act or omission occurring~~
14 ~~before the date when such provision becomes effective)) Overriding the
15 release from liability provided in RCW 24.06.035(2); and~~

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

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

20 Unless the articles of incorporation provide that a change in the
21 number of directors shall be made only by amendment to the articles of
22 incorporation, a change in the number of directors made by amendment to
23 the bylaws shall be controlling. In all other cases, whenever a
24 provision of the articles of incorporation is inconsistent with a
25 bylaw, the provision of the articles of incorporation shall be
26 controlling.

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

29 Each corporation shall have power:

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

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

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

36 (4) To purchase, take, receive, lease, take by gift, devise or
37 bequest, or otherwise acquire, own, hold, be trustee of, improve, use

1 and otherwise deal in and with real or personal property, or any
2 interest therein, wherever situated.

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

5 (6) To lend money to its employees.

6 (7) To purchase, take, receive, subscribe for, or otherwise
7 acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or
8 otherwise dispose of, and otherwise use and deal in and with, shares or
9 other interests in, or obligations of, other domestic or foreign
10 corporations, whether for profit or not for profit, associations,
11 partnerships or individuals, or direct or indirect obligations of the
12 United States, or of any other government, state, territory,
13 governmental district or municipality or of any instrumentality
14 thereof.

15 (8) To make contracts and incur liabilities, borrow money at such
16 rates of interest as the corporation may determine, issue its notes,
17 bonds, and other obligations, and secure any of its obligations by
18 mortgage or pledge of all or any of its property, franchises and
19 income.

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

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

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

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

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

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

1 (15) To indemnify any director or officer or former director or
2 officer of the corporation, or any person who may have served at its
3 request as a director or officer of another corporation, against
4 expenses actually and necessarily incurred by him or her in connection
5 with the defense of any action, suit or proceeding in which he or she
6 is made a party by reason of being or having been such director or
7 officer, except (~~in relation to matters as to which he shall be~~
8 ~~adjudged in such action, suit or proceeding to be liable for negligence~~
9 ~~or misconduct in the performance of duty~~) for acts or omissions that
10 involve intentional misconduct or a knowing violation of law by the
11 director or officer, or that involve a transaction from which the
12 director or officer will personally receive a benefit in money,
13 property, or services to which the director or officer is not legally
14 entitled: PROVIDED, That such indemnification shall not be deemed
15 exclusive of any other rights to which such director or officer may be
16 entitled, under any bylaw, agreement, vote of board of directors or
17 members or shareholders, or otherwise.

18 (16) To cease its corporate activities and surrender its corporate
19 franchise.

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

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

26 (1) A corporation subject to the provisions of this chapter shall
27 not engage in any business, trade, a vocation or profession for profit:
28 PROVIDED, That nothing contained herein shall be construed to forbid
29 such a corporation from accumulating reserve, equity, surplus or other
30 funds through subscriptions, fees, dues or assessments, or from charges
31 made its members or other persons for services rendered or supplies or
32 benefits furnished, or from distributing its surplus funds to its
33 members, stockholders or other persons in accordance with the
34 provisions of the articles of incorporation. A member of the board of
35 directors or an officer of such a corporation shall have the same
36 immunity from liability as is granted in RCW 4.24.264.

37 (2) Unless the articles of incorporation provide otherwise, a
38 member of the board of directors or an officer of the corporation is

1 not individually liable to the corporation or its shareholders or
2 members in their capacity as shareholders or members for conduct within
3 his or her official capacity as a director or officer except for acts
4 or omissions that involve intentional misconduct or a knowing violation
5 of the law, or that involve a transaction from which the director or
6 officer will personally receive a benefit in money, property, or
7 services to which the director or officer is not legally entitled.
8 Nothing in this subsection may be construed to limit or modify in any
9 manner the power of the attorney general to bring an action on behalf
10 of the public to enjoin, correct, or otherwise remedy a breach of a
11 charitable trust by a corporation or its directors or officers.

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

14 Meetings of members and/or shareholders may be held at such place,
15 either within or without this state, as may be provided in the bylaws.
16 In the absence of any such provision, all meetings shall be held at the
17 registered office of the corporation in this state.

18 An annual meeting of the members and shareholders shall be held at
19 such time as may be provided in the bylaws. Failure to hold the annual
20 meeting at the designated time shall not work a forfeiture or
21 dissolution of the corporation.

22 Special meetings of the members or shareholders may be called by
23 the president or by the board of directors. Special meetings of the
24 members or shareholders may also be called by such other officers or
25 persons or number or proportion of members or shareholders as may be
26 provided in the articles of incorporation or the bylaws. In the
27 absence of a provision fixing the number or proportion of members or
28 shareholders entitled to call a meeting, a special meeting of members
29 or shareholders may be called by persons having one-twentieth of the
30 votes entitled to be cast at such meeting. Only business within the
31 purpose or purposes described in the meeting notice required by RCW
32 24.06.105 may be conducted at a special meeting.

33 If the articles of incorporation or bylaws so provide, members or
34 shareholders may participate in any meeting of members or shareholders
35 by any means of communication by which all persons participating in the
36 meeting can hear each other during the meeting. A member or
37 shareholder participating in a meeting by this means is deemed to be
38 present in person at the meeting.

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

3 The right of a class or classes of members or shareholders to vote
4 may be limited, enlarged or denied to the extent specified in the
5 articles of incorporation. Unless so limited, enlarged or denied, each
6 member and each outstanding share of each class shall be entitled to
7 one vote on each matter submitted to a vote of members or shareholders.
8 No member of a class may acquire any interest which will entitle him or
9 her to a greater vote than any other member of the same class.

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

16 If a member or shareholder may vote by proxy, the proxy may be
17 given by:

18 (1) Executing a writing authorizing another person or persons to
19 act for the member or shareholder as proxy. Execution may be
20 accomplished by the member or shareholder or the member's or
21 shareholder's authorized officer, director, employee, or agent signing
22 the writing or causing his or her signature to be affixed to the
23 writing by any reasonable means including, but not limited to,
24 facsimile signature; or

25 (2) Authorizing another person or persons to act for the member or
26 shareholder as proxy by transmitting or authorizing the transmission of
27 an electronic transmission to the person who will be the holder of the
28 proxy, or to a proxy solicitation firm, proxy support service
29 organization, or like agent duly authorized by the person who will be
30 the holder of the proxy to receive the transmission. If it is
31 determined that the electronic transmissions are valid, the inspector
32 of election or, if there are no inspectors, any other officer or agent
33 of the corporation making that determination on behalf of the
34 corporation shall specify the information upon which they relied. The
35 corporation shall require the holders of proxies received by electronic
36 transmission to provide to the corporation copies of the electronic
37 transmission and the corporation shall retain copies of the electronic
38 transmission for a reasonable period of time.

1 If specifically permitted by the articles of incorporation ((may
2 provide that)) or bylaws, whenever proposals or directors or officers
3 are to be voted upon, such vote may be taken by mail or by electronic
4 transmission if the name of each candidate and the text of each
5 proposal to be so voted upon are set forth in a writing accompanying or
6 contained in the notice of meeting. Persons voting by mail or by
7 electronic transmission shall be deemed present for all purposes of
8 quorum, count of votes and percentages of total voting power voting.

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

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

17 The articles of incorporation or the bylaws may provide the number
18 or percentage of votes which members or shareholders are entitled to
19 cast in person, by mail, by electronic transmission, or by proxy, which
20 shall constitute a quorum at meetings of shareholders or members.
21 However, in no event shall a quorum be less than ((one-fourth)) ten
22 percent, or in the case of consumer cooperatives, five percent, of the
23 votes which members or shareholders are entitled to cast in person, by
24 mail, by electronic transmission, or by proxy, at a meeting considering
25 the adoption of a proposal which is required by the provisions of this
26 chapter to be adopted by at least two-thirds of the votes which members
27 or shareholders present at the meeting in person or by mail, by
28 electronic transmission, or represented by proxy are entitled to cast.
29 In all other matters and in the absence of any provision in the
30 articles of incorporation or bylaws, a quorum shall consist of ((one-
31 fourth)) ten percent, or in the case of consumer cooperatives, five
32 percent, of the votes which members or shareholders are entitled to
33 cast in person, by mail, by electronic transmission, or by proxy at the
34 meeting. On any proposal on which a class of shareholders or members
35 is entitled to vote as a class, a quorum of the class entitled to vote
36 as such class must also be present in person, by mail, by electronic
37 transmission, or represented by proxy.

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

3 Meetings of the board of directors, regular or special, may be held
4 either within or without this state, and upon such notice as the bylaws
5 may prescribe. Attendance of a director at any meeting shall
6 constitute a waiver of notice of such meeting except where a director
7 attends a meeting for the express purpose of objecting to the
8 transaction of any business because the meeting is not lawfully called
9 or convened. Neither the business to be transacted at, nor the purpose
10 of, any regular or special meeting of the board of directors need be
11 specified in the notice or waiver of notice of such meeting.

12 Unless the articles of incorporation or bylaws provide otherwise,
13 any or all directors may participate in a regular or special meeting
14 by, or conduct the meeting through the use of, any means of
15 communication by which all directors participating can hear each other
16 during the meeting. A director participating in a meeting by this
17 means is deemed to be present in person at the meeting.

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

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

23 (a) In good faith;

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

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

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

32 (a) One or more officers or employees of the corporation whom the
33 director reasonably believes to be reliable and competent in the
34 matters presented; or

35 (b) Legal counsel, public accountants, or other persons as to
36 matters the director reasonably believes are within the person's
37 professional or expert competence.

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

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

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

12 **Sec. 10.** RCW 24.06.160 and 1969 ex.s. c 120 s 32 are each amended
13 to read as follows:

14 Each corporation shall keep correct and complete books and records
15 of account and shall keep minutes of the proceedings of its members,
16 shareholders, board of directors, and committees having any of the
17 authority of the board of directors; and shall keep at its registered
18 office or principal office in this state a record of the names and
19 addresses of its members and shareholders entitled to vote. All books
20 and records of a corporation may be inspected by any member or
21 shareholder, or his or her agent or attorney, for any proper purpose at
22 any reasonable time and subject to such reasonable privacy and other
23 use limitations as the corporation may prescribe. A corporation may
24 not enforce privacy or other use limitations that would prevent a
25 member or shareholder from having access to records pertaining to
26 dealings between the corporation and that member or shareholder.

27 **Sec. 11.** RCW 24.06.185 and 1969 ex.s. c 120 s 37 are each amended
28 to read as follows:

29 A corporation may amend its articles of incorporation from time to
30 time in any and as many respects as may be desired, so long as its
31 articles of incorporation as amended contain only such provisions as
32 are lawful under this chapter. A member or shareholder of a
33 corporation does not have a vested property right resulting from any
34 provision in the articles of incorporation.

35 **Sec. 12.** RCW 24.06.190 and 2000 c 167 s 6 are each amended to read
36 as follows:

1 Amendments to the articles of incorporation shall be made in the
2 following manner:

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

26 Any number of amendments may be submitted and voted upon at any one
27 meeting.

28 **Sec. 13.** RCW 24.06.195 and 2000 c 167 s 7 are each amended to read
29 as follows:

30 The articles of amendment shall be executed in duplicate originals
31 by the corporation by an officer of the corporation, and shall set
32 forth:

33 (1) The name of the corporation.

34 (2) Any amendment so adopted.

35 (3) If an amendment was adopted by the board of directors without
36 being submitted for member or shareholder action, a statement to that
37 effect and that member or shareholder action was not required; or a
38 statement setting forth the date of the meeting of members and

1 shareholders at which the amendment was adopted, that a quorum was
2 present at such meeting, and that such amendment received at least two-
3 thirds of the votes which members or shareholders of the corporation,
4 and of each class entitled to vote thereon as a class, present at such
5 meeting in person, by mail, by electronic transmission, or represented
6 by proxy were entitled to cast, or a statement that such amendment was
7 adopted by a consent in writing signed by all members and shareholders
8 entitled to vote with respect thereto.

9 **Sec. 14.** RCW 24.06.245 and 1969 ex.s. c 120 s 49 are each amended
10 to read as follows:

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

13 (1) Any plan of merger or consolidation to which the corporation is
14 a party other than a merger or consolidation in which all members or
15 shareholders of the corporation have the right to continue their
16 membership or shareholder status in the surviving corporation on
17 substantially similar terms; or

18 (2) Any sale or exchange of all or substantially all of the
19 property and assets of the corporation not made in the usual and
20 regular course of its business, including a sale in dissolution, but
21 not including a sale pursuant to an order of a court having
22 jurisdiction in the premises or a sale for cash on terms requiring that
23 all or substantially all of the net proceeds of sale be distributed to
24 the shareholders in accordance with their respective interests within
25 one year after the date of sale; or

26 (3) Any amendment to the articles of incorporation (~~which changes~~
27 ~~voting or property rights of members or shareholders other than by~~
28 ~~changing the number of memberships or shares or classes of either~~
29 ~~thereof)) that materially reduces the number of shares owned by a
30 shareholder to a fraction of a share if the fractional share is to be
31 acquired by the corporation for cash; or~~

32 (4) (~~Any amendment to the articles of incorporation which~~
33 ~~reorganizes a corporation under the provisions of this chapter)) Any
34 corporate action taken pursuant to a member or shareholder vote to the
35 extent that the articles of incorporation, bylaws, or a resolution of
36 the board of directors provides that voting or nonvoting members or
37 shareholders are entitled to dissent and obtain payment for their
38 membership or shares.~~

1 A member or shareholder entitled to dissent and obtain payment for
2 the member's or shareholder's membership interest or shares under this
3 chapter may not challenge the corporate action creating the member's or
4 shareholder's entitlement unless the action fails to comply with the
5 procedural requirements imposed by this title, the articles of
6 incorporation, or the bylaws, or is fraudulent with respect to the
7 member or shareholder or the corporation.

8 The provisions of this section shall not apply to the members or
9 shareholders of the surviving corporation in a merger if such
10 corporation is on the date of the filing of the articles of merger the
11 owner of all the outstanding shares of the other corporations, domestic
12 or foreign, which are parties to the merger(~~(, or if a vote of the~~
13 ~~members and shareholders of such corporation is not necessary to~~
14 ~~authorize such merger)).~~

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

19 **Sec. 15.** RCW 24.06.250 and 2000 c 167 s 11 are each amended to
20 read as follows:

21 Any member or shareholder electing to exercise such right of
22 dissent shall file with the corporation, prior to or at the meeting of
23 members and shareholders at which such proposed corporate action is
24 submitted to a vote, a written objection to such proposed corporate
25 action. If such proposed corporate action be approved by the required
26 vote and such member or shareholder shall not have voted in favor
27 thereof, such member or shareholder may, within ten days after the date
28 on which the vote was taken, (~~(or if a corporation is to be merged~~
29 ~~without a vote of its members and shareholders into another~~
30 ~~corporation, any other members or shareholders may, within fifteen days~~
31 ~~after the plan of such merger shall have been mailed or sent by~~
32 ~~electronic transmission to such members and shareholders,)) make
33 written demand on the corporation, or, in the case of a merger or
34 consolidation, on the surviving or new corporation, domestic or
35 foreign, for payment of the fair value of such member's membership or
36 of such shareholder's shares, and, if such proposed corporate action is
37 effected, such corporation shall pay to such member, upon surrender of
38 his or her membership certificate, if any, or to such shareholder, upon~~

1 surrender of the certificate or certificates representing such shares,
2 the fair value thereof as of the day prior to the date on which the
3 vote was taken approving the proposed corporate action, excluding any
4 appreciation or depreciation in anticipation of such corporate action.
5 Any member or shareholder failing to make demand within the ten day
6 period shall be bound by the terms of the proposed corporate action.
7 Any member or shareholder making such demand shall thereafter be
8 entitled only to payment as in this section provided and shall not be
9 entitled to vote or to exercise any other rights of a member or
10 shareholder.

11 No such demand shall be withdrawn unless the corporation shall
12 consent thereto. The right of such member or shareholder to be paid
13 the fair value of his or her membership or shares shall cease and his
14 or her status as a member or shareholder shall be restored, without
15 prejudice to any corporate proceedings which may have been taken during
16 the interim, if:

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

18 (2) The proposed corporate action shall be abandoned or rescinded
19 or the members or shareholders shall revoke the authority to effect
20 such action; or

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

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

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

31 Within ten days after such corporate action is effected, the
32 corporation, or, in the case of a merger or consolidation, the
33 surviving or new corporation, domestic or foreign, shall give written
34 notice thereof to each dissenting member or shareholder who has made
35 demand as herein provided, and shall make a written offer to each such
36 member or shareholder to pay for such shares or membership at a
37 specified price deemed by such corporation to be the fair value
38 thereof. Except in cases where the fair value payable to dissenters is
39 fixed in the articles of incorporation or pursuant to RCW 24.06.255,

1 such notice and offer shall be accompanied by a balance sheet of the
2 corporation in which the member (~~(has)~~) holds his or her membership or
3 (~~(the shares of which)~~) the dissenting shareholder holds shares, as of
4 the latest available date and not more than twelve months prior to the
5 making of such offer, and a profit and loss statement of such
6 corporation for the twelve months' period ended on the date of such
7 balance sheet.

8 If the fair value payable to dissenting members or shareholders is
9 fixed in the articles of incorporation or pursuant to RCW 24.06.255, or
10 if within thirty days after the date on which such corporate action was
11 effected the fair value of such shares or membership is agreed upon
12 between any such dissenting member or shareholder and the corporation,
13 payment therefor shall be made within ninety days after the date on
14 which such corporate action was effected, upon surrender of the
15 membership certificate, if any, or upon surrender of the certificate or
16 certificates representing such shares. Upon payment of the agreed
17 value the dissenting member or shareholder shall cease to have any
18 interest in such membership or shares.

19 If the fair value payable to dissenting members or shareholders is
20 not fixed in the articles of incorporation or pursuant to RCW
21 24.06.025, and within such period of thirty days a dissenting member or
22 shareholder and the corporation do not so agree, then the dissenting
23 member or shareholder shall be entitled to make written demand to the
24 corporation, (~~(within thirty days after receipt of written demand from~~
25 ~~any dissenting member or shareholder given)~~) within sixty days after
26 the date on which such corporate action was effected, requesting that
27 the corporation petition for a determination of the fair value by a
28 court. If such a demand is not timely made on the corporation, the
29 right of such member or shareholder to demand to be paid the fair value
30 of his or her membership or shares shall be forfeited. Within thirty
31 days after receipt of such a written demand from any dissenting member
32 or shareholder, the corporation shall, or at its election at any time
33 within (~~(such period of sixty)~~) ninety days after the date on which
34 such corporate action was effected may, file a petition in any court of
35 competent jurisdiction in the county in this state where the registered
36 office of the corporation is located praying that the fair value of
37 such membership or shares be found and determined. If, in the case of
38 a merger or consolidation, the surviving or new corporation is a
39 foreign corporation without a registered office in this state, such

1 petition shall be filed in the county where the registered office of
2 the domestic corporation was last located. If the corporation shall
3 fail to institute the proceeding as herein provided, any dissenting
4 member or shareholder may do so in the name of the corporation. All
5 dissenting members and shareholders, wherever residing, shall be made
6 parties to the proceeding as an action against their memberships or
7 shares quasi in rem. A copy of the petition shall be served on each
8 dissenting member and shareholder who is a resident of this state and
9 shall be served by registered or certified mail on each dissenting
10 member or shareholder who is a nonresident. Service on nonresidents
11 shall also be made by publication as provided by law. The jurisdiction
12 of the court shall be plenary and exclusive. All members and
13 shareholders who are parties to the proceeding shall be entitled to
14 judgment against the corporation for the amount of the fair value of
15 their shares. The court may, if it so elects, appoint one or more
16 persons as appraisers to receive evidence and recommend a decision on
17 the question of fair value. The appraisers shall have such power and
18 authority as shall be specified in the order of their appointment or an
19 amendment thereof. The judgment shall be payable only upon and
20 concurrently with the surrender to the corporation of the membership
21 certificate, if any, or of the certificate or certificates representing
22 such shares. Upon payment of the judgment, the dissenting shareholder
23 or member shall cease to have any interest in such shares or
24 membership.

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

29 The costs and expenses of any such proceeding shall be determined
30 by the court and shall be assessed against the corporation, but all or
31 any part of such costs and expenses may be apportioned and assessed as
32 the court may deem equitable against any or all of the dissenting
33 members and shareholders who are parties to the proceeding to whom the
34 corporation shall have made an offer to pay for membership or shares if
35 the court shall find that the action of such members or shareholders in
36 failing to accept such offer was arbitrary or vexatious or not in good
37 faith. Such expenses shall include reasonable compensation for and
38 reasonable expenses of the appraisers, but shall exclude the fees and
39 expenses of counsel for and experts employed by any party; but if the

1 fair value of the memberships or shares as determined materially
2 exceeds the amount which the corporation offered to pay therefor, or if
3 no offer was made, the court in its discretion may award to any member
4 or shareholder who is a party to the proceeding such sum as the court
5 may determine to be reasonable compensation to any expert or experts
6 employed by the member or shareholder in the proceeding.

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

22 **Sec. 16.** RCW 24.06.255 and 1969 ex.s. c 120 s 51 are each amended
23 to read as follows:

24 Notwithstanding any provision in this chapter for the payment of
25 fair value to a dissenting member or shareholder, (1) the articles of
26 incorporation may provide that a dissenting member or shareholder shall
27 be limited to a return of a lesser amount, but in no event shall a
28 dissenting member or shareholder be limited to a return of less than
29 the consideration paid to the corporation for the membership or shares
30 which he or she holds unless the fair value of the membership or shares
31 is less than the consideration paid to the corporation, and (2) the
32 fair value payable to a dissenting member of a consumer cooperative
33 shall be a fixed amount equal to the consideration paid to the
34 corporation for the member's current membership unless the articles of
35 incorporation expressly provide for a greater or lesser amount.

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