

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1545

57th Legislature
2001 Regular Legislative Session

Passed by the House April 16, 2001
Yeas 94 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate April 9, 2001
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1545** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1545

AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

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, 24.06.185, 24.06.190, 24.06.195, 24.06.245, 24.06.250, and
4 24.06.255; and adding a new section to chapter 24.06 RCW.

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

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

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

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

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

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

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

6 (5) "Articles of incorporation" includes the original articles of
7 incorporation and all amendments thereto, and includes articles of
8 merger.

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

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

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

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

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

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

24 (12) "Duplicate originals" means two copies, original or otherwise,
25 each with original signatures, or one original with original signatures
26 and one copy thereof.

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

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

1 applicant may request a specific effective date no more than thirty
2 days later than the receipt date which might otherwise be applied as
3 the effective date.

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

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

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

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

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

28 The articles of incorporation shall set forth:

29 (1) The name of the corporation.

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

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

33 (4) The qualifications and the rights and responsibilities of the
34 members and the manner of their election, appointment or admission to
35 membership and termination of membership; and, if there is more than
36 one class of members or if the members of any one class are not equal,
37 the relative rights and responsibilities of each class or each member.

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

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

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

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

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

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

23 (7) Provisions for distribution of assets on dissolution or final
24 liquidation.

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

27 ~~((Any provisions, not inconsistent with law, which the
28 incorporators elect to set forth in the articles of incorporation for
29 the regulation of the internal affairs of the corporation.~~

30 ~~(+10))~~ The address of its initial registered office, including
31 street and number, and the name of its initial registered agent at such
32 address.

33 ~~((+11))~~ (10) The number of directors constituting the initial
34 board of directors, and the names and addresses of the persons who are
35 to serve as the initial directors.

36 ~~((+12))~~ (11) The name and address of each incorporator.

37 ~~((+13))~~ (12) Any provision, not inconsistent with law, ~~((which the
38 incorporators elect to set forth in the articles of incorporation))~~ for

1 the regulation of the internal affairs of the association, including
2 ((provisions regarding)):

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

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

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

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

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

27 Each corporation shall have power:

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

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

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

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

- 1 (5) To sell, convey, mortgage, pledge, lease, exchange, transfer
2 and otherwise dispose of all or any part of its property and assets.
- 3 (6) To lend money to its employees.
- 4 (7) To purchase, take, receive, subscribe for, or otherwise
5 acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or
6 otherwise dispose of, and otherwise use and deal in and with, shares or
7 other interests in, or obligations of, other domestic or foreign
8 corporations, whether for profit or not for profit, associations,
9 partnerships or individuals, or direct or indirect obligations of the
10 United States, or of any other government, state, territory,
11 governmental district or municipality or of any instrumentality
12 thereof.
- 13 (8) To make contracts and incur liabilities, borrow money at such
14 rates of interest as the corporation may determine, issue its notes,
15 bonds, and other obligations, and secure any of its obligations by
16 mortgage or pledge of all or any of its property, franchises and
17 income.
- 18 (9) To lend money for its corporate purposes, invest and reinvest
19 its funds, and take and hold real and personal property as security for
20 the payment of funds so loaned or invested.
- 21 (10) To conduct its affairs, carry on its operations, and have
22 offices and exercise the powers granted by this chapter, in any state,
23 territory, district, or possession of the United States, or in any
24 foreign country.
- 25 (11) To elect or appoint officers and agents of the corporation,
26 and define their duties and fix their compensation.
- 27 (12) To make and alter bylaws, not inconsistent with its articles
28 of incorporation or with the laws of this state, for the administration
29 and regulation of the affairs of the corporation.
- 30 (13) To establish and maintain reserve, equity, surplus or other
31 funds, and to provide for the time, form and manner of distribution of
32 such funds among members, shareholders or other persons with interests
33 therein in accordance with the articles of incorporation.
- 34 (14) Unless otherwise provided in the articles of incorporation, to
35 make donations for the public welfare or for charitable, scientific or
36 educational purposes, and in time of war to make donations in aid of
37 the United States and its war activities.
- 38 (15) To indemnify any director or officer or former director or
39 officer of the corporation, or any person who may have served at its

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

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

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

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

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

35 (2) Unless the articles of incorporation provide otherwise, a
36 member of the board of directors or an officer of the corporation is
37 not individually liable to the corporation or its shareholders or
38 members in their capacity as shareholders or members for conduct within

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

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

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

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

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

32 If the articles of incorporation or bylaws so provide, members or
33 shareholders may participate in any meeting of members or shareholders
34 by any means of communication by which all persons participating in the
35 meeting can hear each other during the meeting. A member or
36 shareholder participating in a meeting by this means is deemed to be
37 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, or in the
22 case of consumer cooperatives, five percent, of the votes which members
23 or shareholders are entitled to cast in person, by mail, by electronic
24 transmission, or by proxy, at a meeting considering the adoption of a
25 proposal which is required by the provisions of this chapter to be
26 adopted by at least two-thirds of the votes which members or
27 shareholders present at the meeting in person or by mail, by electronic
28 transmission, or represented by proxy are entitled to cast. In all
29 other matters and in the absence of any provision in the articles of
30 incorporation or bylaws, a quorum shall consist of one-fourth, or in
31 the case of consumer cooperatives, five percent, of the votes which
32 members or shareholders are entitled to cast in person, by mail, by
33 electronic transmission, or by proxy at the meeting. On any proposal
34 on which a class of shareholders or members is entitled to vote as a
35 class, a quorum of the class entitled to vote as such class must also
36 be present in person, by mail, by electronic transmission, or
37 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 or officer reasonably believes to be reliable and competent in
34 the matters presented; or

35 (b) Legal counsel, public accountants, or other persons as to
36 matters the director or officer reasonably believes are within the
37 person's 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 24.06.185 and 1969 ex.s. c 120 s 37 are each amended
13 to read as follows:

14 A corporation may amend its articles of incorporation from time to
15 time in any and as many respects as may be desired, so long as its
16 articles of incorporation as amended contain only such provisions as
17 are lawful under this chapter. A member or shareholder of a
18 corporation does not have a vested property right resulting from any
19 provision in the articles of incorporation.

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

22 Amendments to the articles of incorporation shall be made in the
23 following manner:

24 A corporation's board of directors may amend the articles of
25 incorporation to change the name of the corporation, without seeking
26 member or shareholder approval. With respect to amendments other than
27 to change the name of the corporation, the board of directors shall
28 adopt a resolution setting forth the proposed amendment and directing
29 that it be submitted to a vote at a meeting of members and
30 shareholders, which may be either an annual or a special meeting.
31 Written or printed notice or, if specifically permitted by the articles
32 of incorporation or bylaws of the corporation, notice by electronic
33 transmission, setting forth the proposed amendment or a summary of the
34 changes to be effected thereby shall be given to each member and
35 shareholder entitled to vote at such meeting within the time and in the
36 manner provided in this chapter for the giving of notice of meetings of
37 members and shareholders. The proposed amendment shall be adopted upon

1 receiving at least two-thirds of the votes which members or
2 shareholders present in person or by mail or by electronic transmission
3 at such meeting or represented by proxy are entitled to cast:
4 PROVIDED, That when any class of shares or members is entitled to vote
5 thereon by class, the proposed amendment must receive at least two-
6 thirds of the votes of the members or shareholders of each class
7 entitled to vote thereon as a class, who are present in person, by
8 mail, by electronic transmission, or represented by proxy at such
9 meeting.

10 Any number of amendments may be submitted and voted upon at any one
11 meeting.

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

14 The articles of amendment shall be executed in duplicate originals
15 by the corporation by an officer of the corporation, and shall set
16 forth:

17 (1) The name of the corporation.

18 (2) Any amendment so adopted.

19 (3) If an amendment was adopted by the board of directors without
20 being submitted for member or shareholder action, a statement to that
21 effect and that member or shareholder action was not required; or a
22 statement setting forth the date of the meeting of members and
23 shareholders at which the amendment was adopted, that a quorum was
24 present at such meeting, and that such amendment received at least two-
25 thirds of the votes which members or shareholders of the corporation,
26 and of each class entitled to vote thereon as a class, present at such
27 meeting in person, by mail, by electronic transmission, or represented
28 by proxy were entitled to cast, or a statement that such amendment was
29 adopted by a consent in writing signed by all members and shareholders
30 entitled to vote with respect thereto.

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

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

35 (1) Any plan of merger or consolidation to which the corporation is
36 a party other than a merger or consolidation in which all members or
37 shareholders of the corporation have the right to continue their

1 membership or shareholder status in the surviving corporation on
2 substantially similar terms; or

3 (2) Any sale or exchange of all or substantially all of the
4 property and assets of the corporation not made in the usual and
5 regular course of its business, including a sale in dissolution, but
6 not including a sale pursuant to an order of a court having
7 jurisdiction in the premises or a sale for cash on terms requiring that
8 all or substantially all of the net proceeds of sale be distributed to
9 the shareholders in accordance with their respective interests within
10 one year after the date of sale; or

11 (3) Any amendment to the articles of incorporation (~~which changes~~
12 ~~voting or property rights of members or shareholders other than by~~
13 ~~changing the number of memberships or shares or classes of either~~
14 ~~thereof~~) that materially reduces the number of shares owned by a
15 shareholder to a fraction of a share if the fractional share is to be
16 acquired by the corporation for cash; or

17 (4) (~~Any amendment to the articles of incorporation which~~
18 ~~reorganizes a corporation under the provisions of this chapter~~) Any
19 corporate action taken pursuant to a member or shareholder vote to the
20 extent that the articles of incorporation, bylaws, or a resolution of
21 the board of directors provides that voting or nonvoting members or
22 shareholders are entitled to dissent and obtain payment for their
23 membership or shares.

24 A member or shareholder entitled to dissent and obtain payment for
25 the member's or shareholder's membership interest or shares under this
26 chapter may not challenge the corporate action creating the member's or
27 shareholder's entitlement unless the action fails to comply with the
28 procedural requirements imposed by this title, the articles of
29 incorporation, or the bylaws, or is fraudulent with respect to the
30 member or shareholder or the corporation.

31 The provisions of this section shall not apply to the members or
32 shareholders of the surviving corporation in a merger if such
33 corporation is on the date of the filing of the articles of merger the
34 owner of all the outstanding shares of the other corporations, domestic
35 or foreign, which are parties to the merger(~~, or if a vote of the~~
36 ~~members and shareholders of such corporation is not necessary to~~
37 ~~authorize such merger~~)).

38 The meeting notice for any meeting at which a proposed corporate
39 action creating dissenters' rights is submitted to a vote must state

1 that members or shareholders are or may be entitled to assert
2 dissenters' rights and be accompanied by a copy of RCW 24.06.250.

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

5 Any member or shareholder electing to exercise such right of
6 dissent shall file with the corporation, prior to or at the meeting of
7 members and shareholders at which such proposed corporate action is
8 submitted to a vote, a written objection to such proposed corporate
9 action. If such proposed corporate action be approved by the required
10 vote and such member or shareholder shall not have voted in favor
11 thereof, such member or shareholder may, within ten days after the date
12 on which the vote was taken, (~~or if a corporation is to be merged~~
13 ~~without a vote of its members and shareholders into another~~
14 ~~corporation, any other members or shareholders may, within fifteen days~~
15 ~~after the plan of such merger shall have been mailed or sent by~~
16 ~~electronic transmission to such members and shareholders,~~) make
17 written demand on the corporation, or, in the case of a merger or
18 consolidation, on the surviving or new corporation, domestic or
19 foreign, for payment of the fair value of such member's membership or
20 of such shareholder's shares, and, if such proposed corporate action is
21 effected, such corporation shall pay to such member, upon surrender of
22 his or her membership certificate, if any, or to such shareholder, upon
23 surrender of the certificate or certificates representing such shares,
24 the fair value thereof as of the day prior to the date on which the
25 vote was taken approving the proposed corporate action, excluding any
26 appreciation or depreciation in anticipation of such corporate action.
27 Any member or shareholder failing to make demand within the ten day
28 period shall be bound by the terms of the proposed corporate action.
29 Any member or shareholder making such demand shall thereafter be
30 entitled only to payment as in this section provided and shall not be
31 entitled to vote or to exercise any other rights of a member or
32 shareholder.

33 No such demand shall be withdrawn unless the corporation shall
34 consent thereto. The right of such member or shareholder to be paid
35 the fair value of his or her membership or shares shall cease and his
36 or her status as a member or shareholder shall be restored, without
37 prejudice to any corporate proceedings which may have been taken during
38 the interim, if:

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

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

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

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

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

15 Within ten days after such corporate action is effected, the
16 corporation, or, in the case of a merger or consolidation, the
17 surviving or new corporation, domestic or foreign, shall give written
18 notice thereof to each dissenting member or shareholder who has made
19 demand as herein provided, and shall make a written offer to each such
20 member or shareholder to pay for such shares or membership at a
21 specified price deemed by such corporation to be the fair value
22 thereof. Except in cases where the fair value payable to dissenters is
23 fixed in the articles of incorporation or pursuant to RCW 24.06.255,
24 such notice and offer shall be accompanied by a balance sheet of the
25 corporation in which the member ((has)) holds his or her membership or
26 ((the shares of which)) the dissenting shareholder holds shares, as of
27 the latest available date and not more than twelve months prior to the
28 making of such offer, and a profit and loss statement of such
29 corporation for the twelve months' period ended on the date of such
30 balance sheet.

31 If the fair value payable to dissenting members or shareholders is
32 fixed in the articles of incorporation or pursuant to RCW 24.06.255, or
33 if within thirty days after the date on which such corporate action was
34 effected the fair value of such shares or membership is agreed upon
35 between any such dissenting member or shareholder and the corporation,
36 payment therefor shall be made within ninety days after the date on
37 which such corporate action was effected, upon surrender of the
38 membership certificate, if any, or upon surrender of the certificate or
39 certificates representing such shares. Upon payment of the agreed

1 value the dissenting member or shareholder shall cease to have any
2 interest in such membership or shares.

3 If the fair value payable to dissenting members or shareholders is
4 not fixed in the articles of incorporation or pursuant to RCW
5 24.06.025, and within such period of thirty days a dissenting member or
6 shareholder and the corporation do not so agree, then the dissenting
7 member or shareholder shall be entitled to make written demand to the
8 corporation, ((within thirty days after receipt of written demand from
9 any dissenting member or shareholder given)) within sixty days after
10 the date on which such corporate action was effected, requesting that
11 the corporation petition for a determination of the fair value by a
12 court. If such a demand is not timely made on the corporation, the
13 right of such member or shareholder to demand to be paid the fair value
14 of his or her membership or shares shall be forfeited. Within thirty
15 days after receipt of such a written demand from any dissenting member
16 or shareholder, the corporation shall, or at its election at any time
17 within ((such period of sixty)) ninety days after the date on which
18 such corporate action was effected may, file a petition in any court of
19 competent jurisdiction in the county in this state where the registered
20 office of the corporation is located praying that the fair value of
21 such membership or shares be found and determined. If, in the case of
22 a merger or consolidation, the surviving or new corporation is a
23 foreign corporation without a registered office in this state, such
24 petition shall be filed in the county where the registered office of
25 the domestic corporation was last located. If the corporation shall
26 fail to institute the proceeding as herein provided, any dissenting
27 member or shareholder may do so in the name of the corporation. All
28 dissenting members and shareholders, wherever residing, shall be made
29 parties to the proceeding as an action against their memberships or
30 shares quasi in rem. A copy of the petition shall be served on each
31 dissenting member and shareholder who is a resident of this state and
32 shall be served by registered or certified mail on each dissenting
33 member or shareholder who is a nonresident. Service on nonresidents
34 shall also be made by publication as provided by law. The jurisdiction
35 of the court shall be plenary and exclusive. All members and
36 shareholders who are parties to the proceeding shall be entitled to
37 judgment against the corporation for the amount of the fair value of
38 their shares. The court may, if it so elects, appoint one or more
39 persons as appraisers to receive evidence and recommend a decision on

1 the question of fair value. The appraisers shall have such power and
2 authority as shall be specified in the order of their appointment or an
3 amendment thereof. The judgment shall be payable only upon and
4 concurrently with the surrender to the corporation of the membership
5 certificate, if any, or of the certificate or certificates representing
6 such shares. Upon payment of the judgment, the dissenting shareholder
7 or member shall cease to have any interest in such shares or
8 membership.

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

13 The costs and expenses of any such proceeding shall be determined
14 by the court and shall be assessed against the corporation, but all or
15 any part of such costs and expenses may be apportioned and assessed as
16 the court may deem equitable against any or all of the dissenting
17 members and shareholders who are parties to the proceeding to whom the
18 corporation shall have made an offer to pay for membership or shares if
19 the court shall find that the action of such members or shareholders in
20 failing to accept such offer was arbitrary or vexatious or not in good
21 faith. Such expenses shall include reasonable compensation for and
22 reasonable expenses of the appraisers, but shall exclude the fees and
23 expenses of counsel for and experts employed by any party; but if the
24 fair value of the memberships or shares as determined materially
25 exceeds the amount which the corporation offered to pay therefor, or if
26 no offer was made, the court in its discretion may award to any member
27 or shareholder who is a party to the proceeding such sum as the court
28 may determine to be reasonable compensation to any expert or experts
29 employed by the member or shareholder in the proceeding.

30 Within twenty days after demanding payment for his or her shares or
31 membership, each member and shareholder demanding payment shall submit
32 the certificate or certificates representing his or her membership or
33 shares to the corporation for notation thereon that such demand has
34 been made. His or her failure to do so shall, at the option of the
35 corporation, terminate his or her rights under this section unless a
36 court of competent jurisdiction, for good and sufficient cause shown,
37 shall otherwise direct. If membership or shares represented by a
38 certificate on which notation has been so made shall be transferred,
39 each new certificate issued therefor shall bear a similar notation,

1 together with the name of the original dissenting holder of such
2 membership or shares, and a transferee of such membership or shares
3 shall acquire by such transfer no rights in the corporation other than
4 those which the original dissenting member or shareholder had after
5 making demand for payment of the fair value thereof.

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

8 Notwithstanding any provision in this chapter for the payment of
9 fair value to a dissenting member or shareholder, (1) the articles of
10 incorporation may provide that a dissenting member or shareholder shall
11 be limited to a return of a lesser amount, but in no event shall a
12 dissenting member or shareholder be limited to a return of less than
13 the consideration paid to the corporation for the membership or shares
14 which he or she holds unless the fair value of the membership or shares
15 is less than the consideration paid to the corporation, and (2) the
16 fair value payable to a dissenting member of a consumer cooperative
17 shall be a fixed amount equal to the consideration paid to the
18 corporation for the member's current membership unless the articles of
19 incorporation expressly provide for a greater or lesser amount.

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