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SENATE BILL 5123

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State of Washington                      58th Legislature                      2003 Regular Session

By Senators Johnson, Kline and Esser

Read first time 01/15/2003. Referred to Committee on Judiciary.

1            AN ACT Relating to the Washington business corporation act;  
2 amending RCW 23B.07.260, 23B.10.020, 23B.10.030, 23B.10.040,  
3 23B.11.030, 23B.12.020, 23B.13.020, and 23B.14.020; adding a new  
4 section to chapter 23B.01 RCW; and adding a new section to chapter  
5 23B.11 RCW.

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

7            NEW SECTION.    **Sec. 1.** A new section is added to chapter 23B.01 RCW  
8 to read as follows:

9            (1) A corporation has provided notice or any other record to  
10 shareholders of record who share a common address if all of the  
11 following requirements are met:

12            (a) The corporation delivers the notice or other record to the  
13 common address;

14            (b) The corporation addresses the notice or other record to the  
15 shareholders who share that address either as a group or to each of the  
16 shareholders individually; and

17            (c) Each shareholder consents in a record to delivery of a single  
18 copy of such a notice or other record to the shareholders' common

1 address, and the corporation notifies each shareholder of the duration  
2 of that shareholder's consent, and explains the manner by which the  
3 shareholder can revoke the consent.

4 (2) For purposes of this section, "address" means a street address,  
5 a post office box number, a facsimile telephone number, a common  
6 address, location, or system for electronic transmissions, or another  
7 similar destination to which records are delivered.

8 (3) If a shareholder revokes consent to delivery of a single copy  
9 of any notice or other record to a common address, or notifies the  
10 corporation that the shareholder wishes to receive an individual copy  
11 of any notice or other record, the corporation shall begin sending  
12 individual copies to that shareholder within thirty days after the  
13 corporation receives the revocation of consent or notice.

14 (4) Prior to the delivery of notice by electronic transmission to  
15 a common address, location, or system for electronic transmissions  
16 under this section, each shareholder consenting to receive notice under  
17 this section must also have consented to the receipt of notices by  
18 electronic transmission as provided in RCW 23B.01.410.

19 **Sec. 2.** RCW 23B.07.260 and 1989 c 165 s 74 are each amended to  
20 read as follows:

21 (1) If the articles of incorporation or this title provide for  
22 voting ~~((by))~~ on a matter by all shares entitled to vote thereon,  
23 voting together as a single voting group ~~((on a matter))~~ and do not  
24 provide for separate voting by any other voting group or groups with  
25 respect to that matter, action on that matter is taken when voted upon  
26 by that single voting group as provided in RCW 23B.07.250.

27 (2) If the articles of incorporation or this title provide for  
28 voting by two or more voting groups on a matter, action on that matter  
29 is taken only when voted upon by each of those voting groups ~~((counted~~  
30 ~~separately))~~ as provided in RCW 23B.07.250. ~~((Action may be taken by~~  
31 ~~one voting group on a matter even though no action is taken by another~~  
32 ~~voting group entitled to vote on the matter.))~~

33 **Sec. 3.** RCW 23B.10.020 and 1989 c 165 s 121 are each amended to  
34 read as follows:

35 Unless the articles of incorporation provide otherwise, a

1 corporation's board of directors may adopt one or more amendments to  
2 the corporation's articles of incorporation without shareholder action:

3 (1) If the corporation has only one class of shares outstanding, to  
4 provide, change, or eliminate any provision with respect to the par  
5 value of any class of shares;

6 (2) To delete the names and addresses of the initial directors;

7 (3) To delete the name and address of the initial registered agent  
8 or registered office, if a statement of change is on file with the  
9 secretary of state;

10 (4) If the corporation has only one class of shares outstanding,  
11 solely to:

12 (a) Effect a forward split of, or change the number of authorized  
13 shares of that class in proportion to ((effectuate)) a forward split  
14 of, or stock dividend in, the corporation's ((own)) outstanding  
15 shares(, or solely to do so and to change the number of authorized  
16 shares in proportion thereto)); or

17 (b) Effect a reverse split of the corporation's outstanding shares  
18 and the number of authorized shares of that class in the same  
19 proportions;

20 (5) To change the corporate name; or

21 (6) To make any other change expressly permitted by this title to  
22 be made without shareholder action.

23 **Sec. 4.** RCW 23B.10.030 and 1989 c 165 s 122 are each amended to  
24 read as follows:

25 (1) A corporation's board of directors may propose one or more  
26 amendments to the articles of incorporation for submission to the  
27 shareholders.

28 (2) For the amendment to be adopted:

29 (a) The board of directors must recommend the amendment to the  
30 shareholders unless the board of directors determines that because of  
31 conflict of interest or other special circumstances it should make no  
32 recommendation and communicates the basis for its determination to the  
33 shareholders with the amendment; and

34 (b) The shareholders entitled to vote on the amendment must approve  
35 the amendment as provided in subsection (5) of this section.

36 (3) The board of directors may condition its submission of the  
37 proposed amendment on any basis, including the affirmative vote of

1 holders of a specified percentage of shares held by any group of  
2 shareholders not otherwise entitled under this title or the articles of  
3 incorporation to vote as a separate voting group on the proposed  
4 amendment.

5 (4) The corporation shall notify each shareholder, whether or not  
6 entitled to vote, of the proposed shareholders' meeting in accordance  
7 with RCW 23B.07.050. The notice of meeting must also state that the  
8 purpose, or one of the purposes, of the meeting is to consider the  
9 proposed amendment and contain or be accompanied by a copy of the  
10 amendment.

11 (~~Unless this title, the articles of incorporation, or~~) In  
12 addition to any other voting conditions imposed by the board of  
13 directors(~~, acting pursuant to~~) under subsection (3) of this section,  
14 (~~require a greater vote or a vote by voting groups,~~) the amendment to  
15 be adopted must be approved (~~by each voting group entitled to vote~~  
16 thereon)) by two-thirds, or, in the case of a public company, a  
17 majority, of the voting group comprising all the votes entitled to be  
18 cast (~~by that voting group~~) on the proposed amendment, and of each  
19 other voting group entitled under RCW 23B.10.040 or the articles of  
20 incorporation to vote separately on the proposed amendment. The  
21 articles of incorporation may require a greater vote than that provided  
22 for in this subsection. The articles of incorporation of a corporation  
23 other than a public company may (~~provide for~~) require a lesser vote  
24 than that provided for in this subsection, or (~~for~~) may require  
25 a lesser vote by separate voting groups, so long as the required vote  
26 (~~provided for each voting group entitled to vote separately on the~~  
27 amendment)) is not less than a majority of all the votes entitled to be  
28 cast on the proposed amendment (~~by that voting group~~) and of each  
29 other voting group entitled to vote separately on the proposed  
30 amendment. Separate voting by additional voting groups is required on  
31 a proposed amendment under the circumstances described in RCW  
32 23B.10.040.

33 **Sec. 5.** RCW 23B.10.040 and 1989 c 165 s 123 are each amended to  
34 read as follows:

35 (1) Except as otherwise required by subsection (3) of this section  
36 or otherwise permitted by subsection (4) of this section, the holders  
37 of the outstanding shares of a class or series are entitled to vote as

1 a separate voting group(~~(7)~~) on a proposed amendment if shareholder  
2 voting is otherwise required by this title(~~(7, on a proposed amendment)~~)  
3 and if the amendment would:

4 (a) Increase (~~or decrease~~) the aggregate number of authorized  
5 shares of the class or series;

6 (b) Effect an exchange or reclassification of all or part of the  
7 issued and outstanding shares of the class or series into shares of  
8 another class or series, thereby adversely affecting the holders of the  
9 shares so exchanged or reclassified;

10 (~~(c) (Effect an exchange or reclassification, or create the right~~  
11 ~~of exchange, of all or part of the shares of another class into shares~~  
12 ~~of the class;~~

13 ~~(d))~~ Change the (~~(designation,)~~) rights, preferences, or  
14 limitations of all or part of the issued and outstanding shares of the  
15 class or series, thereby adversely affecting the holders of shares of  
16 the class or series;

17 ~~((e))~~ (d) Change (~~(the shares of)~~) all or part of the issued and  
18 outstanding shares of the class or series into a different number of  
19 shares of the same class or series, thereby adversely affecting the  
20 holders of shares of the class or series;

21 ~~((f))~~ (e) Create a new class or series of shares having rights or  
22 preferences with respect to distributions or to dissolution that are,  
23 or upon designation by the board of directors in accordance with RCW  
24 23B.06.020 may be, prior, superior, or substantially equal to the  
25 shares of the class or series;

26 ~~((g))~~ (f) Increase the rights(~~(7)~~) or preferences with respect to  
27 distributions or to dissolution, or the number of authorized shares of  
28 any class or series that, after giving effect to the amendment,  
29 (~~(have))~~ has rights or preferences with respect to distributions or to  
30 dissolution that are, or upon designation by the board of directors in  
31 accordance with RCW 23B.06.020 may be, prior, superior, or  
32 substantially equal to the shares of the class or series;

33 ~~((h))~~ (g) Limit or deny an existing preemptive right of all or  
34 part of the shares of the class or series; (~~or~~

35 ~~(i))~~ (h) Cancel or otherwise adversely affect rights to  
36 distributions or dividends that have accumulated but not yet been  
37 declared on all or part of the shares of the class or series; or

1 (i) Effect a redemption or cancellation of all or part of the  
2 shares of the class or series in exchange for cash or any other form of  
3 consideration other than shares of the corporation.

4 (2) If a proposed amendment would affect only a series of a class  
5 of shares in one or more of the ways described in subsection (1) of  
6 this section, only the shares of that series are entitled to vote as a  
7 separate voting group on the proposed amendment. A voting group  
8 entitled to vote separately under this section may never comprise a  
9 group of holders smaller than the holders of a single class or series  
10 authorized and designated as a class or series in the articles of  
11 incorporation, unless otherwise provided in the articles of  
12 incorporation or unless the board of directors conditions its  
13 submission of the proposed amendment on a separate vote by one or more  
14 smaller voting groups.

15 (3) If a proposed amendment, ~~that ((entitles))~~ would otherwise  
16 entitle two or more classes or series of shares ~~((within a class))~~ to  
17 vote as separate voting groups under this section, ~~would affect those~~  
18 two or more classes or series in the same or a substantially similar  
19 way, then instead of voting as separate voting groups the shares of all  
20 ~~((the))~~ similarly affected classes or series ~~((within the class so~~  
21 ~~affected must))~~ shall vote together as a single voting group on the  
22 proposed amendment, unless otherwise provided in the articles of  
23 incorporation or unless the board of directors conditions its  
24 submission of the proposed amendment on a separate vote by one or more  
25 classes or series.

26 (4) A class or series of shares is entitled to the voting group  
27 rights granted by this section although the articles of incorporation  
28 ~~((provide that))~~ generally describe the shares ~~((are))~~ of the class or  
29 series as nonvoting shares. The articles of incorporation may,  
30 however, limit or deny the voting group rights granted by subsection  
31 (1)(a), (e), or (f) of this section as to any class or series of issued  
32 or unissued shares, by means of a provision that makes explicit  
33 reference to the limitation or denial of voting group rights that would  
34 otherwise apply under subsection (1)(a), (e), or (f) of this section.

35 **Sec. 6.** RCW 23B.11.030 and 1989 c 165 s 133 are each amended to  
36 read as follows:

37 (1) After adopting a plan of merger or share exchange, the board of

1 directors of each corporation party to the merger, and the board of  
2 directors of the corporation whose shares will be acquired in the share  
3 exchange, shall submit the plan of merger, except as provided in  
4 subsection (7) of this section, or share exchange for approval by its  
5 shareholders.

6 (2) For a plan of merger or share exchange to be approved:

7 (a) The board of directors must recommend the plan of merger or  
8 share exchange to the shareholders, unless the board of directors  
9 determines that because of conflict of interest or other special  
10 circumstances it should make no recommendation and communicates the  
11 basis for its determination to the shareholders with the plan; and

12 (b) The shareholders entitled to vote must approve the plan, except  
13 as provided in subsection (7) of this section.

14 (3) The board of directors may condition its submission of the  
15 proposed plan of merger or share exchange on any basis, including the  
16 affirmative vote of holders of a specified percentage of shares held by  
17 any group of shareholders not otherwise entitled under this title or  
18 the articles of incorporation to vote as a separate voting group on the  
19 proposed plan of merger or share exchange.

20 (4) The corporation shall notify each shareholder, whether or not  
21 entitled to vote, of the proposed shareholders' meeting in accordance  
22 with RCW 23B.07.050. The notice must also state that the purpose, or  
23 one of the purposes, of the meeting is to consider the plan of merger  
24 or share exchange and must contain or be accompanied by a copy or  
25 summary of the plan.

26 (5) (~~Unless this title, the articles of incorporation, or~~) In  
27 addition to any other voting conditions imposed by the board of  
28 directors(~~, acting pursuant to~~) under subsection (3) of this section,  
29 (~~require a greater vote or a vote by voting groups,~~) the plan of  
30 merger to be authorized must be approved by (~~each voting group~~  
31 ~~entitled to vote separately on the plan by~~) two-thirds of the voting  
32 group comprising all the votes entitled to be cast on the plan (~~by~~  
33 ~~that voting group~~), and of each other voting group entitled under  
34 section 7 of this act or the articles of incorporation to vote  
35 separately on the plan, unless shareholder action is not required under  
36 subsection (7) of this section. The articles of incorporation may  
37 (~~provide for a~~) require a greater or lesser vote than that provided  
38 in this subsection, or (~~for~~) a greater or lesser vote by separate

1 voting groups, so long as the required vote (~~((provided for each voting~~  
2 ~~group entitled to vote separately on the plan of merger))~~ is not less  
3 than a majority of all the votes entitled to be cast on the plan of  
4 merger (~~((by that voting group))~~ and of each other voting group entitled  
5 to vote separately on the plan. Separate voting by additional voting  
6 groups is required on a plan of merger (~~((if the plan contains a~~  
7 ~~provision that, if contained in a proposed amendment to articles of~~  
8 ~~incorporation, would require action by one or more separate voting~~  
9 ~~groups on the proposed amendment under RCW 23B.10.040))~~ under the  
10 circumstances described in section 7 of this act.

11 (6) (~~Unless this title, the articles of incorporation, or~~) In  
12 addition to any other voting conditions imposed by the board of  
13 directors(~~(, acting pursuant to))~~ under subsection (3) of this section,  
14 (~~(require a greater vote or a vote by voting groups,)~~) the plan of  
15 share exchange to be authorized must be approved by (~~(each voting group~~  
16 ~~entitled to vote separately on the plan by))~~ two-thirds of the voting  
17 group comprising all the votes entitled to be cast on the plan (~~(by~~  
18 ~~that voting group)), and of each other voting group entitled under~~  
19 section 7 of this act or the articles of incorporation to vote  
20 separately on the plan. The articles of incorporation may (~~(provide~~  
21 ~~for a))~~ require a greater or lesser vote than that provided in this  
22 subsection, or (~~(for))~~ a greater or lesser vote by separate voting  
23 groups, so long as the required vote (~~((provided for each voting group~~  
24 ~~entitled to vote separately on the plan of share exchange))~~ is not less  
25 than a majority of all the votes entitled to be cast on the plan of  
26 share exchange (~~((by that voting group))~~ and of each other voting group  
27 entitled to vote separately on the plan. Separate voting by additional  
28 voting groups is required on a plan of share exchange (~~((by each class~~  
29 ~~or series of shares included in the exchange, with each class or series~~  
30 ~~constituting a separate voting group))~~ under the circumstances  
31 described in section 7 of this act.

32 (7) Action by the shareholders of the surviving corporation on a  
33 plan of merger is not required if:

34 (a) The articles of incorporation of the surviving corporation will  
35 not differ, except for amendments enumerated in RCW 23B.10.020, from  
36 its articles of incorporation before the merger;

37 (b) Each shareholder of the surviving corporation whose shares were  
38 outstanding immediately before the effective date of the merger will



1 hold the same number of shares, with identical designations,  
2 preferences, limitations, and relative rights, immediately after the  
3 merger;

4 (c) The number of voting shares outstanding immediately after the  
5 merger, plus the number of voting shares issuable as a result of the  
6 merger, either by the conversion of securities issued pursuant to the  
7 merger or the exercise of rights and warrants issued pursuant to the  
8 merger, will not exceed the total number of voting shares of the  
9 surviving corporation authorized by its articles of incorporation  
10 immediately before the merger; and

11 (d) The number of participating shares outstanding immediately  
12 after the merger, plus the number of participating shares issuable as  
13 a result of the merger, either by the conversion of securities issued  
14 pursuant to the merger or the exercise of rights and warrants issued  
15 pursuant to the merger, will not exceed the total number of  
16 participating shares authorized by its articles of incorporation  
17 immediately before the merger.

18 (8) As used in subsection (7) of this section:

19 (a) "Participating shares" means shares that entitle their holders  
20 to participate without limitation in distributions.

21 (b) "Voting shares" means shares that entitle their holders to vote  
22 unconditionally in elections of directors.

23 (9) After a merger or share exchange is authorized, and at any time  
24 before articles of merger or share exchange are filed, the planned  
25 merger or share exchange may be abandoned, subject to any contractual  
26 rights, without further shareholder action, in accordance with the  
27 procedure set forth in the plan of merger or share exchange or, if none  
28 is set forth, in the manner determined by the board of directors.

29 NEW SECTION. **Sec. 7.** A new section is added to chapter 23B.11 RCW  
30 to read as follows:

31 (1) Except as otherwise required by subsection (3) of this section  
32 or otherwise permitted by subsection (4) of this section, the holders  
33 of the outstanding shares of a class or series are entitled to vote as  
34 a separate voting group on a proposed plan of merger or plan of share  
35 exchange if shareholder voting is otherwise required by this title and  
36 if, as a result of the proposed plan, holders of part or all of the  
37 class or series would hold or receive:

1 (a) Shares of any class or series of the surviving or acquiring  
2 corporation, or of any parent corporation of the surviving corporation,  
3 and either (i) that class or series has a greater number of authorized  
4 shares than the class or series held by the holders prior to the merger  
5 or share exchange, or (ii) the proposed plan effects a change in the  
6 number of shares held by the holders, or in the rights, preferences, or  
7 limitations of the shares they hold, or in the class or series of  
8 shares they hold, and such change adversely affects the holders;

9 (b) Shares of any class or series of the surviving or acquiring  
10 corporation, or of any parent corporation of the surviving corporation,  
11 and the holders who hold or receive shares of that class or series are  
12 adversely affected under the proposed plan, as compared to their  
13 circumstances prior to the proposed merger or share exchange, by the  
14 creation, existence, number of authorized shares, or rights or  
15 preferences with respect to distributions or to dissolution, of another  
16 class or series of shares of the surviving, acquiring, or parent  
17 corporation having rights or preferences with respect to distributions  
18 or to dissolution that are, or upon designation by the surviving,  
19 acquiring, or parent corporation's board of directors may be, prior,  
20 superior, or substantially equal to the shares of the class or series  
21 held or to be received by the holders in the proposed merger or share  
22 exchange; or

23 (c) Cash or any other form of consideration other than shares of  
24 the surviving or acquiring corporation or of any parent corporation of  
25 the surviving corporation, received upon redemption or cancellation of  
26 all or part of their shares pursuant to the proposed plan of merger or  
27 share exchange.

28 (2) If a proposed plan of merger or share exchange would affect  
29 only a series of a class of shares in one or more of the ways described  
30 in subsection (1) of this section, only the shares of that series are  
31 entitled to vote as a separate voting group on the proposed plan. A  
32 voting group entitled to vote separately under this section may never  
33 comprise a group of holders smaller than the holders of a single class  
34 or series authorized and designated as a class or series in the  
35 articles of incorporation, unless otherwise provided in the articles of  
36 incorporation or unless the board of directors conditions its  
37 submission of the proposed plan on a separate vote by one or more  
38 smaller voting groups.

1 (3) If a proposed plan of merger or share exchange, that would  
2 otherwise entitle two or more classes or series of shares to vote as  
3 separate voting groups under this section, would affect those two or  
4 more classes or series in the same or a substantially similar way, then  
5 instead of voting as separate voting groups, the shares of all  
6 similarly affected classes or series shall vote together as a single  
7 voting group on the proposed plan of merger or share exchange, unless  
8 otherwise provided in the articles of incorporation or unless the board  
9 of directors conditions its submission of the proposed plan on a  
10 separate vote by one or more classes or series. Holders of shares of  
11 two or more classes or series of shares who will, under a proposed  
12 plan, receive the same type of consideration in the form of shares of  
13 the surviving or acquiring corporation or of any parent corporation of  
14 the surviving corporation, cash or other form of consideration, or the  
15 same combination thereof, but in differing amounts resulting solely  
16 from application of provisions in the corporation's articles of  
17 incorporation governing distribution of consideration received in a  
18 merger or share exchange, are affected in the same or a substantially  
19 similar way and are not, by reason of receiving the same types or  
20 differing amounts of consideration, entitled to vote as separate voting  
21 groups on the proposed plan, unless the articles of incorporation  
22 expressly require otherwise or the board of directors conditions its  
23 submission of the proposed plan on a separate vote by one or more  
24 classes or series.

25 (4) A class or series of shares is entitled to the voting group  
26 rights granted by this section although the articles of incorporation  
27 generally describe the shares of the class or series as nonvoting  
28 shares. The articles of incorporation may, however, limit or deny the  
29 voting group rights granted by this section as to any class or series  
30 of issued or unissued shares, by means of a provision that makes  
31 explicit reference to the limitation or denial of voting group rights  
32 that would otherwise apply under this section.

33 **Sec. 8.** RCW 23B.12.020 and 1989 c 165 s 139 are each amended to  
34 read as follows:

35 (1) A corporation may sell, lease, exchange, or otherwise dispose  
36 of all, or substantially all, of its property, otherwise than in the  
37 usual and regular course of business, on the terms and conditions and

1 for the consideration determined by the corporation's board of  
2 directors, if the board of directors proposes and its shareholders  
3 approve the proposed transaction.

4 (2) For a transaction to be authorized:

5 (a) The board of directors must recommend the proposed transaction  
6 to the shareholders unless the board of directors determines that  
7 because of conflict of interest or other special circumstances it  
8 should make no recommendation and communicates the basis for its  
9 determination to the shareholders with the submission of the proposed  
10 transaction; and

11 (b) The shareholders entitled to vote must approve the transaction.

12 (3) The board of directors may condition its submission of the  
13 proposed transaction on any basis, including the affirmative vote of  
14 holders of a specified percentage of shares held by any group of  
15 shareholders not otherwise entitled under this title or the articles of  
16 incorporation to vote as a separate voting group on the proposed  
17 transaction.

18 (4) The corporation shall notify each shareholder, whether or not  
19 entitled to vote, of the proposed shareholders' meeting in accordance  
20 with RCW 23B.07.050. The notice must also state that the purpose, or  
21 one of the purposes, of the meeting is to consider the sale, lease,  
22 exchange, or other disposition of all, or substantially all, the  
23 property of the corporation and contain or be accompanied by a  
24 description of the transaction.

25 (5) ~~((Unless the articles of incorporation or))~~ In addition to any  
26 other voting conditions imposed by the board of directors ~~((, acting~~  
27 ~~pursuant to))~~ under subsection (3) of this section, ~~((require a greater~~  
28 ~~vote or a vote by voting groups,))~~ the transaction to be authorized  
29 must be approved by two-thirds of the voting group comprising all the  
30 votes entitled to be cast on the transaction, and of each other voting  
31 group entitled under the articles of incorporation to vote separately  
32 on the transaction. The articles of incorporation may ~~((provide for~~  
33 ~~a))~~ require a greater or lesser vote than ~~((that))~~ provided ~~((for))~~  
34 this subsection, or ~~((for))~~ a greater or lesser vote by any separate  
35 voting groups provided for in the articles of incorporation, so long as  
36 the required vote ~~((provided for each voting group entitled to vote~~  
37 ~~separately on the transaction))~~ is not less than a majority of all the

1 votes entitled to be cast on the transaction (~~(by that voting group)~~)  
2 and of each other voting group entitled to vote separately on the  
3 transaction.

4 (6) After a sale, lease, exchange, or other disposition of property  
5 is authorized, the transaction may be abandoned, subject to any  
6 contractual rights, without further shareholder action, in a manner  
7 determined by the board of directors.

8 (7) A transaction that constitutes a distribution is governed by  
9 RCW 23B.06.400 and not by this section.

10 **Sec. 9.** RCW 23B.13.020 and 1991 c 269 s 37 are each amended to  
11 read as follows:

12 (1) A shareholder is entitled to dissent from, and obtain payment  
13 of the fair value of the shareholder's shares in the event of, any of  
14 the following corporate actions:

15 (a) Consummation of a plan of merger to which the corporation is a  
16 party (i) if shareholder approval is required for the merger by RCW  
17 23B.11.030, 23B.11.080, or the articles of incorporation, and the  
18 shareholder is entitled to vote on the merger, or (ii) if the  
19 corporation is a subsidiary that is merged with its parent under RCW  
20 23B.11.040;

21 (b) Consummation of a plan of share exchange to which the  
22 corporation is a party as the corporation whose shares will be  
23 acquired, if the shareholder is entitled to vote on the plan;

24 (c) Consummation of a sale or exchange of all, or substantially  
25 all, of the property of the corporation other than in the usual and  
26 regular course of business, if the shareholder is entitled to vote on  
27 the sale or exchange, including a sale in dissolution, but not  
28 including a sale pursuant to court order or a sale for cash pursuant to  
29 a plan by which all or substantially all of the net proceeds of the  
30 sale will be distributed to the shareholders within one year after the  
31 date of sale;

32 (d) An amendment of the articles of incorporation (~~(that materially~~  
33 ~~reduces the number of shares owned by the shareholder to a fraction of~~  
34 ~~a share if the fractional share so created is to be acquired for cash~~  
35 ~~under RCW 23B.06.040)), whether or not the shareholder was entitled to  
36 vote on the amendment, if the amendment effects a redemption or~~

1 cancellation of all of the shareholder's shares in exchange for cash or  
2 other consideration other than shares of the corporation; or

3 (e) Any corporate action taken pursuant to a shareholder vote to  
4 the extent the articles of incorporation, bylaws, or a resolution of  
5 the board of directors provides that voting or nonvoting shareholders  
6 are entitled to dissent and obtain payment for their shares.

7 (2) A shareholder entitled to dissent and obtain payment for the  
8 shareholder's shares under this chapter may not challenge the corporate  
9 action creating the shareholder's entitlement unless the action fails  
10 to comply with the procedural requirements imposed by this title, RCW  
11 25.10.900 through 25.10.955, the articles of incorporation, or the  
12 bylaws, or is fraudulent with respect to the shareholder or the  
13 corporation.

14 (3) The right of a dissenting shareholder to obtain payment of the  
15 fair value of the shareholder's shares shall terminate upon the  
16 occurrence of any one of the following events:

17 (a) The proposed corporate action is abandoned or rescinded;

18 (b) A court having jurisdiction permanently enjoins or sets aside  
19 the corporate action; or

20 (c) The shareholder's demand for payment is withdrawn with the  
21 written consent of the corporation.

22 **Sec. 10.** RCW 23B.14.020 and 1989 c 165 s 155 are each amended to  
23 read as follows:

24 (1) A corporation's board of directors may propose dissolution for  
25 submission to the shareholders.

26 (2) For a proposal to dissolve to be adopted:

27 (a) The board of directors must recommend dissolution to the  
28 shareholders unless the board of directors determines that because of  
29 conflict of interest or other special circumstances it should make no  
30 recommendation and communicates the basis for its determination to the  
31 shareholders; and

32 (b) The shareholders entitled to vote must approve the proposal to  
33 dissolve as provided in subsection (5) of this section.

34 (3) The board of directors may condition its submission of the  
35 proposal for dissolution on any basis, including the affirmative vote  
36 of holders of a specified percentage of shares held by any group of

1 shareholders not otherwise entitled under this title or the articles of  
2 incorporation to vote as a separate voting group on the proposed  
3 dissolution.

4 (4) The corporation shall notify each shareholder, whether or not  
5 entitled to vote, of the proposed shareholders' meeting in accordance  
6 with RCW 23B.07.050. The notice must also state that the purpose, or  
7 one of the purposes, of the meeting is to consider dissolving the  
8 corporation.

9 (5) ~~((Unless the articles of incorporation or))~~ In addition to any  
10 other voting conditions imposed by the board of directors~~((, acting~~  
11 ~~pursuant to))~~ under subsection (3) of this section, ~~((require a greater~~  
12 ~~vote or a vote by voting groups,))~~ the proposal to dissolve must be  
13 approved by two-thirds of the voting group comprising all the votes  
14 entitled to be cast on ~~((that))~~ the proposal ~~((in order to be~~  
15 ~~adopted)), and of each other voting group entitled under the articles~~  
16 of incorporation to vote separately on the proposal. The articles of  
17 incorporation may ~~((provide for a))~~ require a greater or lesser vote  
18 than ~~((that))~~ provided ~~((for))~~ in this subsection, or ~~((for))~~ a greater  
19 or lesser vote by any separate voting groups provided for in the  
20 articles of incorporation, so long as the required vote ~~((provided for~~  
21 ~~each voting group entitled to vote separately on the proposal to~~  
22 ~~dissolve))~~ is not less than a majority of all the votes entitled to be  
23 cast on the proposal ~~((by that voting group))~~ and of each other voting  
24 group entitled to vote separately on the proposal.

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