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HOUSE BILL 1148

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State of Washington

63rd Legislature

2013 Regular Session

By Representatives Pedersen, Rodne, Goodman, and Ryu; by request of Washington State Bar Association

Read first time 01/17/13. Referred to Committee on Judiciary.

1 AN ACT Relating to dissenters' rights under the Washington business  
2 corporation act; amending RCW 23B.13.220 and 23B.13.230; and reenacting  
3 and amending RCW 23B.13.020.

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

5 **Sec. 1.** RCW 23B.13.020 and 2009 c 189 s 41 and 2009 c 188 s 1404  
6 are each reenacted and amended to read as follows:

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

10 (a) A plan of merger, which has become effective, to which the  
11 corporation is a party (i) if shareholder approval was required for the  
12 merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation,  
13 and the shareholder was entitled to vote on the merger, or (ii) if the  
14 corporation was a subsidiary (~~(that has been merged)~~) and the plan of  
15 merger provided for the merger of the subsidiary with its parent under  
16 RCW 23B.11.040;

17 (b) A plan of share exchange, which has become effective, to which  
18 the corporation is a party as the corporation whose shares have been  
19 acquired, if the shareholder was entitled to vote on the plan;

1 (c) A sale or exchange, which has become effective, of all, or  
2 substantially all, of the property of the corporation other than in the  
3 usual and regular course of business, if the shareholder was entitled  
4 to vote on the sale or exchange, including a sale in dissolution, but  
5 not including a sale pursuant to court order or a sale for cash  
6 pursuant to a plan by which all or substantially all of the net  
7 proceeds of the sale will be distributed to the shareholders within one  
8 year after the date of sale;

9 (d) An amendment of the articles of incorporation, whether or not  
10 the shareholder was entitled to vote on the amendment, if the amendment  
11 effects a redemption or cancellation of all of the shareholder's shares  
12 in exchange for cash or other consideration other than shares of the  
13 corporation; ((or))

14 (e) Any action described in RCW 23B.25.120; or

15 (f) Any corporate action approved pursuant to a shareholder vote to  
16 the extent the articles of incorporation, bylaws, or a resolution of  
17 the board of directors provides that voting or nonvoting shareholders  
18 are entitled to dissent and obtain payment for their shares.

19 (2) A shareholder entitled to dissent and obtain payment for the  
20 shareholder's shares under this chapter may not challenge the corporate  
21 action creating the shareholder's entitlement unless the action fails  
22 to comply with the procedural requirements imposed by this title, RCW  
23 25.10.831 through 25.10.886, the articles of incorporation, or the  
24 bylaws, or is fraudulent with respect to the shareholder or the  
25 corporation.

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

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

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

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

34 **Sec. 2.** RCW 23B.13.220 and 2009 c 189 s 44 are each amended to  
35 read as follows:

36 (1) If proposed corporate action creating dissenters' rights under  
37 RCW 23B.13.020 is approved at a shareholders' meeting, the corporation

1 shall within ten days after the effective date of the corporate action  
2 deliver to all shareholders who satisfied the requirements of RCW  
3 23B.13.210(1) a notice in compliance with subsection ~~((3))~~ (5) of  
4 this section.

5 (2) If proposed corporate action creating dissenters' rights under  
6 RCW 23B.13.020 is approved without a vote of shareholders in accordance  
7 with RCW 23B.07.040, the notice delivered pursuant to RCW  
8 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW  
9 23B.13.210(2) shall comply with subsection ~~((3))~~ (5) of this section.

10 (3) In the case of proposed corporate action creating dissenters'  
11 rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten  
12 days after the effective date of the corporate action deliver to all  
13 shareholders of the subsidiary other than the parent a notice in  
14 compliance with subsection (5) of this section.

15 (4) In the case of proposed corporate action creating dissenters'  
16 rights under RCW 23B.13.020(1)(d) that, pursuant to RCW  
17 23B.10.020(4)(b), is not required to be approved by the shareholders of  
18 the corporation, the corporation shall within ten days after the  
19 effective date of the corporate action deliver to all shareholders  
20 entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance  
21 with subsection (5) of this section.

22 (5) Any notice under subsection (1) ~~((~~3~~))~~, (2), (3), or (4) of  
23 this section must:

24 (a) State where the payment demand must be sent and where and when  
25 certificates for certificated shares must be deposited;

26 (b) Inform holders of uncertificated shares to what extent transfer  
27 of the shares will be restricted after the payment demand is received;

28 (c) Supply a form for demanding payment that includes the date of  
29 the first announcement to news media or to shareholders of the terms of  
30 the proposed corporate action and requires that the person asserting  
31 dissenters' rights certify whether or not the person acquired  
32 beneficial ownership of the shares before that date;

33 (d) Set a date by which the corporation must receive the payment  
34 demand, which date may not be fewer than thirty nor more than sixty  
35 days after the date the notice in subsection (1) ~~((~~3~~))~~, (2), (3), or  
36 (4) of this section is delivered; and

37 (e) Be accompanied by a copy of this chapter.

1       **Sec. 3.** RCW 23B.13.230 and 2002 c 297 s 39 are each amended to  
2 read as follows:

3       (1) A shareholder sent a notice described in RCW 23B.13.220 must  
4 demand payment, certify whether the shareholder acquired beneficial  
5 ownership of the shares before the date required to be set forth in the  
6 notice pursuant to RCW 23B.13.220(~~(+2)~~) (5)(c), and deposit the  
7 shareholder's certificates, all in accordance with the terms of the  
8 notice.

9       (2) The shareholder who demands payment and deposits the  
10 shareholder's share certificates under subsection (1) of this section  
11 retains all other rights of a shareholder until the proposed corporate  
12 action is effected.

13       (3) A shareholder who does not demand payment or deposit the  
14 shareholder's share certificates where required, each by the date set  
15 in the notice, is not entitled to payment for the shareholder's shares  
16 under this chapter.

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