

SB 5004 - H COMM AMD

By Committee on Civil Rights & Judiciary

ADOPTED 03/20/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 23B.01.400 and 2022 c 42 s 101 are each amended to
4 read as follows:

5 (~~Unless the context clearly requires otherwise, the~~) The
6 definitions in this section apply throughout this title unless the
7 context clearly requires otherwise.

8 (1) "Articles of incorporation" include amended and restated
9 articles of incorporation and articles of merger.

10 (2) "Authorized shares" means the shares of all classes a
11 domestic or foreign corporation is authorized to issue.

12 (3) "Conspicuous" means so prepared that a reasonable person
13 against whom the writing is to operate should have noticed it. For
14 example, text in italics, boldface, contrasting color, capitals, or
15 underlined is conspicuous.

16 (4) "Controlling interest" means ownership of an entity's
17 outstanding shares or interests in such number as to entitle the
18 holder at the time to elect a majority of the entity's directors or
19 other governors without regard to voting power which may thereafter
20 exist upon a default, failure, or other contingency.

21 (5) "Corporate action" means any resolution, act, policy,
22 contract, transaction, plan, adoption or amendment of articles of
23 incorporation or bylaws, or other matter approved by or submitted for
24 approval to a corporation's incorporators, board of directors or a
25 committee thereof, or shareholders.

26 (6) "Corporation" or "domestic corporation" means a corporation
27 for profit, including a social purpose corporation, which is not a
28 foreign corporation, incorporated under or subject to the provisions
29 of this title.

30 (7) "Deliver" or "delivery" means any method of delivery used in
31 conventional commercial practice, including delivery by hand, mail,

1 commercial delivery, and, if authorized in accordance with RCW
2 23B.01.410, by electronic transmission.

3 (8) "Distribution" means a direct or indirect transfer of money
4 or other property, except its own shares, or incurrence of
5 indebtedness by a corporation to or for the benefit of its
6 shareholders in respect to any of its shares. A distribution may be
7 in the form of a declaration or payment of a dividend; a distribution
8 in partial or complete liquidation, or upon voluntary or involuntary
9 dissolution; a purchase, redemption, or other acquisition of shares;
10 a distribution of indebtedness; or otherwise.

11 (9) "Document" means:

12 (a) Any tangible medium on which information is inscribed, and
13 includes handwritten, typed, printed, or similar instruments or
14 copies of such instruments; and

15 (b) An electronic record.

16 (10) "Electronic" means relating to technology having electrical,
17 digital, magnetic, wireless, optical, electromagnetic, or similar
18 capabilities.

19 (11) "Electronic mail" means an electronic transmission directed
20 to a unique electronic mail address, which electronic mail will be
21 deemed to include any files attached thereto and any information
22 hyperlinked to a website if the electronic mail includes the contact
23 information of an officer or agent of the corporation who is
24 available to assist with accessing such files and information.

25 (12) "Electronic mail address" means a destination, commonly
26 expressed as a string of characters, consisting of a unique user name
27 or mailbox, commonly referred to as the "local part" of the address,
28 and a reference to an internet domain, commonly referred to as the
29 "domain part" of the address, whether or not displayed, to which
30 electronic mail can be sent or delivered.

31 (13) "Electronic record" means information that is stored in an
32 electronic or other nontangible medium and: (a) Is retrievable in
33 paper form by the recipient through an automated process used in
34 conventional commercial practice; or (b) if not retrievable in paper
35 form by the recipient through an automated process used in
36 conventional commercial practice, is otherwise authorized in
37 accordance with RCW 23B.01.410(10).

38 (14) "Electronic transmission" or "electronically transmitted"
39 means internet transmission, telephonic transmission, electronic mail
40 transmission, transmission of a telegram, cablegram, or datagram, the

1 use of, or participation in, one or more electronic networks or
2 databases including one or more distributed electronic networks or
3 databases, or any other form or process of communication, not
4 directly involving the physical transfer of paper or another tangible
5 medium, which:

6 (a) Is suitable for the retention, retrieval, and reproduction of
7 information by the recipient; and

8 (b) Is retrievable in paper form by the recipient through an
9 automated process used in conventional commercial practice, or, if
10 not retrievable in paper form by the recipient through an automated
11 process used in conventional commercial practice, is otherwise
12 authorized in accordance with RCW 23B.01.410(10).

13 (15) "Employee" includes an officer but not a director. A
14 director may accept duties that make the director also an employee.

15 (16) "Entity" includes a corporation and foreign corporation,
16 not-for-profit corporation, business trust, estate, trust,
17 partnership, limited liability company, association, joint venture,
18 two or more persons having a joint or common economic interest, the
19 state, United States, and a foreign governmental subdivision, agency,
20 or instrumentality, or any other legal or commercial entity.

21 (17) "Execute," "executes," or "executed" means, with present
22 intent to authenticate or adopt a document:

23 (a) To sign or adopt a tangible symbol to the document, and
24 includes any manual, facsimile, or conformed signature;

25 (b) To attach or logically associate with an electronic
26 transmission an electronic sound, symbol, or process, and includes an
27 electronic signature; or

28 (c) With respect to a document to be filed with the secretary of
29 state, in compliance with the standards for filing with the office of
30 the secretary of state as prescribed by the secretary of state.

31 (18) "Foreign corporation" means a corporation for profit
32 incorporated under a law other than the law of this state.

33 (19) "Foreign limited partnership" means a partnership formed
34 under laws other than of this state and having as partners one or
35 more general partners and one or more limited partners.

36 (20) "General social purpose" means the general social purpose
37 for which a social purpose corporation is organized as set forth in
38 the articles of incorporation of the corporation in accordance with
39 RCW 23B.25.040(1)(c).

1 (21) "Governmental subdivision" includes authority, county,
2 district, and municipality.

3 (22) "Governor" has the meaning given that term in RCW 23.95.105.

4 (23) "Includes" denotes a partial definition.

5 (24) "Individual" includes the estate of an incompetent or
6 deceased individual.

7 (25) "Limited partnership" or "domestic limited partnership"
8 means a partnership formed by two or more persons under the laws of
9 this state and having one or more general partners and one or more
10 limited partners.

11 (26) "Means" denotes an exhaustive definition.

12 (27) "Notice" has the meaning provided in RCW 23B.01.410.

13 (28) "Person" means an individual, corporation, business trust,
14 estate, trust, partnership, limited liability company, association,
15 joint venture, government, governmental subdivision, agency, or
16 instrumentality, or any other legal or commercial entity.

17 (29) "Principal office" means the office, in or out of this
18 state, so designated in the annual report where the principal
19 executive offices of a domestic or foreign corporation are located.

20 (30) "Proceeding" includes civil suit and criminal,
21 administrative, and investigatory action.

22 (31) "Public company" means a corporation that has a class of
23 shares registered with the federal securities and exchange commission
24 pursuant to section 12 or 15 of the securities exchange act of 1934,
25 or section 8 of the investment company act of 1940, or any successor
26 statute.

27 (32) "Qualified director" means (a) with respect to a director's
28 conflicting interest transaction as defined in RCW 23B.08.700, any
29 director who does not have either (i) a conflicting interest
30 respecting the transaction, or (ii) a familial, financial,
31 professional, or employment relationship with a second director who
32 does have a conflicting interest respecting the transaction, which
33 relationship would, in the circumstances, reasonably be expected to
34 exert an influence on the first director's judgment when voting on
35 the transaction; (b) with respect to RCW 23B.08.735, a qualified
36 director under (a) of this subsection if the business opportunity
37 were a director's conflicting interest transaction; and (c) with
38 respect to RCW 23B.02.020(2)(g), a director who is not a director (i)
39 to whom the limitation or elimination of the duty of an officer to
40 offer potential business opportunities to the corporation would

1 apply, or (ii) who has a familial, financial, professional, or
2 employment relationship with another officer to whom the limitation
3 or elimination would apply, which relationship would, in the
4 circumstances, reasonably be expected to exert an influence on the
5 director's judgment when voting on the limitation or elimination.

6 (33) "Record date" means the date fixed for determining the
7 identity of a corporation's shareholders and their shareholdings for
8 purposes of this title. The determinations shall be made as of the
9 close of business on the record date unless another time for doing so
10 is specified when the record date is fixed.

11 (34) "Registered office" means the address of the corporation's
12 registered agent.

13 (35) "Secretary" means the corporate officer to whom the board of
14 directors has delegated responsibility under RCW 23B.08.400(3) for
15 custody of the minutes of the meetings of the board of directors and
16 of the shareholders and for authenticating records of the
17 corporation.

18 (36) "Shareholder" means the person in whose name shares are
19 registered in the records of a corporation or the beneficial owner of
20 shares to the extent of the rights granted by a nominee certificate
21 on file with a corporation.

22 (37) "Shares" means the units into which the proprietary
23 interests in a corporation are divided.

24 (38) "Social purpose" includes any general social purpose and any
25 specific social purpose.

26 (39) "Social purpose corporation" means a corporation that has
27 elected to be governed as a social purpose corporation under chapter
28 23B.25 RCW.

29 (40) "Specific social purpose" means the specific social purpose
30 or purposes for which a social purpose corporation is organized as
31 set forth in the articles of incorporation of the corporation in
32 accordance with RCW 23B.25.040(2)(a).

33 (41) "State," when referring to a part of the United States,
34 includes a state and commonwealth, and their agencies and
35 governmental subdivisions, and a territory and insular possession,
36 and their agencies and governmental subdivisions, of the United
37 States.

38 (42) "Subscriber" means a person who subscribes for shares in a
39 corporation, whether before or after incorporation.

1 (43) "Subsidiary" means an entity in which the corporation has,
2 directly or indirectly, a controlling interest.

3 (44) "United States" includes a district, authority, bureau,
4 commission, department, and any other agency of the United States.

5 (45) "Voting group" means all shares of one or more classes or
6 series that under the articles of incorporation or this title are
7 entitled to vote and be counted together collectively on a matter at
8 a meeting of shareholders. All shares entitled by the articles of
9 incorporation or this title to vote generally on the matter are for
10 that purpose a single voting group.

11 (46) "Writing" or "written" means any information in the form of
12 a document.

13 (47) "Forward stock split" means the pro rata division of all the
14 outstanding shares of a class of stock into a greater number of
15 shares of the same class, whether or not the authorized shares of
16 such a class are increased in the same proportion, but does not
17 include a share dividend under RCW 23B.06.230.

18 (48) "Reverse stock split" means the pro rata combination of all
19 the outstanding shares of a class of stock into a smaller number of
20 shares of the same class, whether or not the authorized shares of
21 such a class are reduced in the same proportion.

22 (49) "Stock split" means a forward stock split or a reverse stock
23 split.

24 **Sec. 2.** RCW 23B.06.210 and 2009 c 189 s 8 are each amended to
25 read as follows:

26 (1) The powers granted in this section to the board of directors
27 may be reserved to the shareholders by the articles of incorporation.

28 (2) Any issuance of shares must be approved by the board of
29 directors. Shares may be issued (~~for~~):

30 (a) For consideration determined by the board of directors from
31 time to time consisting of any tangible or intangible property or
32 benefit to the corporation, including cash, promissory notes,
33 services performed, contracts for services to be performed, or other
34 securities of the corporation; or

35 (b) As a share dividend or upon a stock split, reclassification
36 of outstanding shares into shares of another class or series, or
37 conversion of outstanding shares into shares of another class or
38 series.

1 (3) A good faith determination by the board of directors that the
2 consideration received or to be received for the shares to be issued
3 is adequate is conclusive insofar as the adequacy of consideration
4 relates to whether the shares are validly issued, fully paid and
5 nonassessable. When the board of directors has made such a
6 determination and the corporation has received the consideration, the
7 shares issued therefor are fully paid and nonassessable. Shares
8 issued as a share dividend or upon a stock split, reclassification of
9 outstanding shares into shares of another class or series, or
10 conversion of outstanding shares into shares of another class or
11 series are fully paid and nonassessable.

12 (4) The corporation may place in escrow shares issued for a
13 contract for future services or benefits or a promissory note, or
14 make other arrangements to restrict the transfer of the shares, and
15 may credit distributions in respect to the shares against their
16 purchase price, until the services are performed, the benefits are
17 received, or the note is paid. If the services are not performed, the
18 benefits are not received, or the note is not paid, the shares
19 escrowed or restricted and the distributions credited may be canceled
20 in whole or part.

21 (5) Where it cannot be determined that outstanding shares are
22 fully paid and nonassessable, there shall be a conclusive presumption
23 that such shares are fully paid and nonassessable if the board of
24 directors makes a good faith determination that there is no
25 substantial evidence that the full consideration for such shares has
26 not been paid.

27 NEW SECTION. Sec. 3. A new section is added to chapter 23B.06
28 RCW to read as follows:

29 (1) A corporation may effect a stock split by means of an
30 amendment to the articles of incorporation stating the effect of the
31 stock split on the outstanding shares of the affected class.

32 (2) An amendment to the articles of incorporation to effect a
33 stock split may, but is not required to, include a change in the
34 authorized shares of the affected class.

35 (3) Except for a forward stock split that complies with RCW
36 23B.10.020(4)(a) or a reverse stock split that complies with RCW
37 23B.10.020(4)(b), an amendment to the articles of incorporation to
38 effect a stock split must be approved in accordance with RCW
39 23B.10.030 and, if applicable, RCW 23B.10.040.

1 (4) The board of directors may fix the record date for
2 determining shareholders affected by a stock split, which date may
3 not precede the date on which the amendment to the articles of
4 incorporation effecting the stock split becomes effective in
5 accordance with RCW 23.95.210. If the board of directors does not fix
6 the record date for determining shareholders affected by a stock
7 split, the record date is the date on which the amendment to the
8 articles of incorporation effecting the stock split becomes effective
9 in accordance with RCW 23.95.210.

10 **Sec. 4.** RCW 23B.10.020 and 2009 c 189 s 31 are each amended to
11 read as follows:

12 Unless the articles of incorporation provide otherwise, a
13 corporation's board of directors may adopt one or more amendments to
14 the corporation's articles of incorporation without shareholder
15 approval:

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

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

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

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

25 (a) Effect a forward stock split of, or change the number of
26 authorized shares of that class in proportion to a forward stock
27 split of, or (~~stock~~) share dividend in, the corporation's
28 outstanding shares; or

29 (b) Effect a reverse stock split of the corporation's outstanding
30 shares (~~and~~) if the number of authorized shares of that class (~~in~~
31 ~~the same proportions~~) is proportionately reduced by the amendment;

32 (5) To change the corporate name; or

33 (6) To make any other change expressly permitted by this title to
34 be made without shareholder approval.

35 **Sec. 5.** RCW 23B.11.030 and 2022 c 42 s 108 are each amended to
36 read as follows:

37 (1) After (~~adopting~~) a plan of merger or share exchange has
38 been adopted in accordance with RCW 23B.11.020 or 23B.11.040, the

1 board of directors of each corporation party to the merger, ~~((and))~~
2 or the board of directors of the corporation whose shares will be
3 acquired in the share exchange, shall submit the plan ~~((of merger))~~
4 for approval by the shareholders, except as provided in subsection
5 (7) or (9) of this section ~~((, or share exchange for approval by its~~
6 ~~shareholders))~~ or as provided in RCW 23B.11.040 or section 6 of this
7 act.

8 (2) For a plan of merger or share exchange to be approved by
9 shareholders:

10 (a) The board of directors must recommend that the shareholders
11 approve the plan of merger or share exchange ~~((to the shareholders))~~,
12 unless (i) the board of directors determines that because of conflict
13 of interest or other special circumstances it should not make ~~((no))~~
14 such a recommendation or (ii) RCW 23B.08.245 applies, and in either
15 case the board of directors communicates the basis for so proceeding
16 to the shareholders; and

17 (b) The shareholders entitled to vote must approve the plan ~~((, or~~
18 ~~except as provided in subsection (7) of this section))~~.

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

25 (4) The corporation shall notify each shareholder, whether or not
26 entitled to vote, of the proposed shareholders' meeting in accordance
27 with RCW 23B.07.050. The notice must also state that the purpose, or
28 one of the purposes, of the meeting is to consider the plan of merger
29 or share exchange and must contain or be accompanied by a copy of the
30 plan or a summary of the material terms and conditions of the
31 proposed merger or share exchange and the consideration to be
32 received by shareholders.

33 (5) ~~((If))~~ If the plan of merger is required to be approved by
34 the shareholders, in addition to any other voting conditions imposed
35 by the board of directors under subsection (3) of this section, the
36 plan of merger must be approved by two-thirds of the voting group
37 comprising all the votes entitled to be cast on the plan, and of each
38 other voting group entitled under RCW 23B.11.035 or the articles of
39 incorporation to vote separately on the plan ~~((, or unless shareholder~~
40 ~~approval is not required under subsection (7) of this section))~~. The

1 articles of incorporation may require a greater or lesser vote than
2 that provided in this subsection, or a greater or lesser vote by
3 separate voting groups, so long as the required vote is not less than
4 a majority of all the votes entitled to be cast on the plan of merger
5 and of each other voting group entitled to vote separately on the
6 plan. Separate voting by additional voting groups is required on a
7 plan of merger under the circumstances described in RCW 23B.11.035.

8 (6) In addition to any other voting conditions imposed by the
9 board of directors under subsection (3) of this section, the plan of
10 share exchange must be approved by two-thirds of the voting group
11 comprising all the votes entitled to be cast on the plan, and of each
12 other voting group entitled under RCW 23B.11.035 or the articles of
13 incorporation to vote separately on the plan. The articles of
14 incorporation may require a greater or lesser vote than that provided
15 in this subsection, or a greater or lesser vote by separate voting
16 groups, so long as the required vote is not less than a majority of
17 all the votes entitled to be cast on the plan of share exchange and
18 of each other voting group entitled to vote separately on the plan.
19 Separate voting by additional voting groups is required on a plan of
20 share exchange under the circumstances described in RCW 23B.11.035.

21 (7) Approval by the shareholders of the surviving corporation on
22 a plan of merger is not required if:

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

26 (b) Each shareholder of the surviving corporation whose shares
27 were outstanding immediately before the effective date of the merger
28 will hold the same number of shares, with identical designations,
29 preferences, limitations, and relative rights, immediately after the
30 merger;

31 (c) The number of voting shares outstanding immediately after the
32 merger, plus the number of voting shares issuable as a result of the
33 merger, either by the conversion of securities issued pursuant to the
34 merger or the exercise of rights and warrants issued pursuant to the
35 merger, will not exceed the total number of voting shares of the
36 surviving corporation authorized by its articles of incorporation
37 immediately before the merger; and

38 (d) The number of participating shares outstanding immediately
39 after the merger, plus the number of participating shares issuable as
40 a result of the merger, either by the conversion of securities issued

1 pursuant to the merger or the exercise of rights and warrants issued
2 pursuant to the merger, will not exceed the total number of
3 participating shares authorized by its articles of incorporation
4 immediately before the merger.

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

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

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

10 (9) Unless the articles of incorporation provide otherwise,
11 approval by the shareholders of a public company is not required for
12 a plan of merger if:

13 (a) The plan of merger expressly: (i) Permits or requires the
14 merger to be effected under this subsection; and (ii) provides that,
15 if the merger is to be effected under this subsection, the merger
16 will be effected as soon as practicable following the satisfaction of
17 the requirements of (f) of this subsection;

18 (b) Another party to the merger or a parent of another party to
19 the merger makes an offer to purchase, on the terms stated in the
20 plan of merger, any and all of the outstanding shares of the
21 corporation that, absent this subsection, would be entitled to vote
22 on the plan of merger, except that the offer may exclude shares of
23 the corporation that are owned at the commencement of the offer by
24 the corporation, the offeror, or any parent of the offeror, or by any
25 wholly owned subsidiary of any of the foregoing;

26 (c) The offer discloses that the plan of merger states that the
27 merger will be effected as soon as practicable following the
28 satisfaction of the requirements of (f) of this subsection and that
29 the shares of the corporation that are not tendered in response to
30 the offer will be treated as provided in (h) of this subsection;

31 (d) The offer remains open for at least 10 days;

32 (e) The offeror purchases all shares properly tendered in
33 response to the offer and not properly withdrawn;

34 (f) The: (i) Shares purchased by the offeror in accordance with
35 the offer; (ii) shares otherwise owned by the offeror or by any
36 parent of the offeror or any wholly owned subsidiary of any of the
37 foregoing; and (iii) shares subject to an agreement that they are to
38 be transferred, contributed, or delivered to the offeror, any parent
39 of the offeror, or any wholly owned subsidiary of any of the
40 foregoing in exchange for shares or other interests in that offeror,

1 parent, or subsidiary, are collectively entitled to cast at least the
2 minimum number of votes on the merger that, absent this subsection,
3 would be required by this chapter for the approval of the merger by
4 the shareholders entitled to vote on the merger at a meeting at which
5 all shares entitled to vote on the approval were present and voted;

6 (g) The offeror or a wholly owned subsidiary of the offeror
7 merges with or into the corporation; and

8 (h) Each outstanding share of each class or series of shares of
9 the corporation that the offeror is offering to purchase in
10 accordance with the offer, and which is not purchased in accordance
11 with the offer, is to be converted in the merger into, or into the
12 right to receive, the same amount and kind of securities, eligible
13 interests, obligations, rights, cash, or other property to be paid or
14 exchanged in accordance with the offer for each share of that class
15 or series of shares that is tendered in response to the offer, except
16 that shares of the corporation that are owned by the corporation or
17 that are described in (f)(ii) or (iii) of this subsection need not be
18 converted into or exchanged for the consideration described in this
19 subsection (9)(h).

20 (10) As used in subsection (9) of this section:

21 (a) "Offer" means the offer referred to in subsection (9)(b) of
22 this section.

23 (b) "Offeror" means the person making the offer.

24 (c) "Parent" of an entity means a person that owns, directly or
25 indirectly, through one or more wholly owned subsidiaries, all of the
26 outstanding shares of or other interests in that entity.

27 (d) Shares tendered in response to the offer will be deemed to
28 have been "purchased" in accordance with the offer at the earlier
29 time as of which:

30 (i) The offeror has irrevocably accepted those shares for
31 payment; and

32 (ii) Either: (A) In the case of shares represented by
33 certificates, the offeror, or the offeror's designated depository or
34 other agent, has physically received the certificates representing
35 those shares; or (B) in the case of shares without certificates,
36 those shares have been transferred into the account of the offeror or
37 its designated depository or other agent, or an agent's message
38 relating to those shares has been received by the offeror or its
39 designated depository or other agent.

1 (e) "Wholly owned subsidiary" of a person means an entity of or
2 in which that person owns, directly or indirectly, through one or
3 more wholly owned subsidiaries, all of the outstanding shares or
4 other interests.

5 (11) After a merger or share exchange is approved, and at any
6 time before articles of merger or share exchange are filed, the
7 planned merger or share exchange may be abandoned, subject to any
8 contractual rights, without further shareholder approval, in
9 accordance with the procedure set forth in the plan of merger or
10 share exchange or, if none is set forth, in the manner determined by
11 the board of directors.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 23B.11
13 RCW to read as follows:

14 (1) The definitions in this subsection apply throughout this
15 section unless the context clearly requires otherwise.

16 (a) "Holding company" means the corporation that is or becomes
17 the direct parent of the surviving corporation of a merger
18 accomplished under this section and whose capital stock is issued in
19 that merger.

20 (b) "Parent constituent corporation" means the parent corporation
21 that merges with or into the subsidiary constituent corporation in
22 the merger.

23 (c) "Subsidiary constituent corporation" means the subsidiary
24 corporation with or into which the parent constituent corporation
25 merges in the merger.

26 (2) Unless the articles of incorporation provide otherwise, a
27 parent constituent corporation may merge with or into a single
28 indirect wholly owned subsidiary of the parent constituent
29 corporation without the approval of the plan of merger by the
30 shareholders of the parent constituent corporation if:

31 (a) The plan expressly permits or requires the merger to be
32 effected under this subsection;

33 (b) The holding company and the constituent corporations to the
34 merger are each organized under this title;

35 (c) At all times from its incorporation until consummation of a
36 merger under this section, the holding company was a direct wholly
37 owned subsidiary of the parent constituent corporation;

38 (d) Immediately before consummation of a merger under this
39 section, the subsidiary constituent corporation is a direct wholly

1 owned subsidiary of the holding company and an indirect wholly owned
2 subsidiary of the parent constituent corporation;

3 (e) The parent constituent corporation and the subsidiary
4 constituent corporation are the only constituent entities to the
5 merger;

6 (f) Immediately after the merger becomes effective, the surviving
7 corporation of the merger becomes or remains a direct wholly owned
8 subsidiary of the holding company;

9 (g) Each share or fraction of a share of the parent constituent
10 corporation outstanding immediately before the merger becomes
11 effective is converted in the merger into a share or equal fraction
12 of a share of the holding company having the same designations and
13 relative preferences, rights, and limitations as the share or
14 fraction of a share of the parent constituent corporation being
15 converted in the merger;

16 (h) The articles of incorporation and bylaws of the holding
17 company immediately after the merger becomes effective contain
18 provisions identical to the articles of incorporation and bylaws of
19 the parent constituent corporation immediately before the merger
20 becomes effective, other than any provisions regarding the
21 incorporator or incorporators, the corporate name, the registered
22 office and agent, the initial board of directors and the initial
23 subscribers for shares, and the provisions contained in any amendment
24 to the articles of incorporation of the parent constituent
25 corporation that were necessary to effect an exchange,
26 reclassification, or cancellation of shares if the exchange,
27 reclassification, or cancellation has become effective;

28 (i) The articles of incorporation and bylaws of the surviving
29 corporation immediately after the merger becomes effective contain
30 provisions by specific reference to this subsection requiring that
31 any corporate action by or involving the surviving corporation, other
32 than the election or removal of directors of the surviving
33 corporation, must be approved by the shareholders of the holding
34 company, or any successor by merger, by the same vote as is required
35 by this title or under the articles of incorporation or bylaws of the
36 parent constituent corporation immediately before the merger becomes
37 effective, if that corporate action would have required the approval
38 of the shareholders of the parent constituent corporation under this
39 title or under the articles of incorporation or bylaws of the parent

1 constituent corporation immediately before the merger becomes
2 effective;

3 (j) The directors of the parent constituent corporation
4 immediately before the merger becomes effective become or remain the
5 directors of the holding company immediately after the merger becomes
6 effective; and

7 (k) The shareholders of the parent constituent corporation will
8 not recognize gain or loss for United States federal income tax
9 purposes as a result of the merger, as determined by the board of
10 directors of the parent constituent corporation.

11 (3) The holding company must, promptly after the effective date
12 of a merger effected under subsection (2) of this section, notify
13 each person who was a shareholder of the parent constituent
14 corporation as of the date the board of directors approves the merger
15 that the merger has become effective. The notice must contain or be
16 accompanied by a copy of the plan of merger or a summary of the
17 material terms and conditions of the merger and the consideration to
18 be received by those shareholders.

19 (4) To the extent restrictions under chapter 23B.19 RCW applied
20 to the parent constituent corporation or any of its shareholders at
21 the effective time of the merger, those restrictions apply to the
22 holding company and its shareholders immediately after the merger
23 becomes effective as though the holding company were the parent
24 constituent corporation, and all shares of stock of the holding
25 company acquired in the merger will, for the purposes of chapter
26 23B.19 RCW, be deemed to have been acquired at the time that the
27 corresponding shares of stock of the parent constituent corporation
28 were acquired. No shareholder who, immediately before the merger
29 becomes effective, was not an acquiring person of the parent
30 constituent corporation under chapter 23B.19 RCW will, solely by
31 reason of the merger, become an acquiring person of the holding
32 company under chapter 23B.19 RCW.

33 (5) To the extent a shareholder of the parent constituent
34 corporation immediately before the merger was eligible to commence a
35 proceeding in the right of the parent constituent corporation in
36 accordance with RCW 23B.07.400, nothing in this section is deemed to
37 limit or extinguish that eligibility.

38 (6) Except as provided in subsections (2), (3), (4), and (5) of
39 this section, a merger between a parent constituent corporation and a

1 subsidiary constituent corporation is governed by the provisions of
2 this chapter applicable to mergers generally."

3 Correct the title.

EFFECT: Makes clarifying changes to language in the provision requiring shareholder approval of mergers, including by adding a specific exception for holding company reorganization transactions.

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