

SENATE BILL REPORT

SB 5786

As Reported by Senate Committee On:
Law & Justice, January 25, 2024

Title: An act relating to making updates to the Washington business corporation act.

Brief Description: Making updates to the Washington business corporation act.

Sponsors: Senators Pedersen, Padden, Mullet, Nobles and Salomon; by request of Washington State Bar Association.

Brief History:

Committee Activity: Law & Justice: 1/15/24, 1/25/24 [DPS].

Brief Summary of First Substitute Bill

- Amends the Washington Business Corporation Act (WBCA) provisions on mergers and share exchanges to substantially mirror provisions in the current version of the Model Business Corporation Act.
- Makes various changes to conform the WBCA with the Model Business Corporation Act.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5786 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

Background: Washington Business Corporations Act. The Washington Business Corporation Act (WBCA) provides requirements for creating, organizing, and operating

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corporations and the relationship between shareholders, directors, and officers of the corporation.

The WBCA is largely modeled after the American Bar Association's revised Model Business Corporation Act (MBCA). The Corporate Act Revision Committee (CARC) of the Washington State Bar Association periodically reviews the WBCA and makes recommendations to keep it up to date.

Mergers and Share Exchanges. A merger is the traditional form for combining entities by operation of law. In a merger, a domestic business corporation may merge with one or more entities. The entity resulting from the merger may be one of the parties to the merger, or a new corporation or entity created by the merger.

A share exchange is a transaction in which the acquiring entity acquires all the shares or eligible interests of one or more classes or series of shares or eligible interests of the acquired entity. A share exchange allows a corporate combination so the separate existence of one or more parties to the combination does not cease, although another corporation or other entity obtains ownership of the shares or interests of those parties.

Summary of Bill (First Substitute): Mergers and Share Exchanges. *Definitions.* Terms related to mergers and share exchanges are defined.

Authorization for Mergers. Domestic corporations are authorized to merge with each other or other entities. Mergers must be in accordance with a plan of merger. A corporation's articles of incorporation or public organic record may be amended by a merger. A plan of merger may be amended with the consent of the parties to the merger, and there are additional requirements for amendments to a plan of merger previously approved by a party's shareholders.

Authorization for Share Exchanges. An acquiring entity is authorized to acquire all the shares or eligible interests of one or more classes or series of shares of an acquired entity. Share exchanges must be in accordance with a plan of share exchange. A plan of share exchange may be amended with the consent of the parties to the share exchange.

Approval Requirements for Mergers or Share Exchanges. A plan of merger or share exchange must be approved by a domestic corporation's board of directors. Subject to certain exceptions, a plan of merger must be approved by the shareholders of a domestic corporation that is a party to a merger and a plan of share exchange must be approved by shareholders of the class or series being acquired in a share exchange.

If approval by the shareholders is required and such approval will occur at a meeting, a notice of a meeting is required to be sent to all shareholders. A copy or summary of the articles of incorporation and bylaws of a surviving domestic corporation or the organic rules of a surviving other entity must be included in the notice.

Domestic corporations formed before August 1, 2024, may approve a plan of merger or share exchange with the approval of two-thirds of shareholders of each voting group entitled to vote, unless the article of incorporation requires a different vote.

Domestic corporations formed on or after August 1, 2024, may approve of a plan of merger or share exchange with the approval of a majority of shareholders of each voting group entitled to vote, unless the article of incorporation requires a different vote.

If shareholders are subject to new owner liability as a result of a merger or share exchange, approval of a plan of merger or share exchange requires the express written consent of each shareholder to become subject to the new owner liability, except when a shareholder already has substantially identical owner liability for a domestic corporation.

A domestic parent corporation that owns at least 90 percent of a subsidiary may merge with a subsidiary or merge the subsidiary into another 90-percent-owned domestic corporation without approval of the board of directors or shareholders of the subsidiary corporation.

Group Voting. Separate group voting is required on a plan of merger if shares would be converted under the plan into shares, other securities, interests, or any other consideration. Separate group voting is required on a plan of share exchange by each class or series of shares included in the exchange. Separate group voting rights may be allowed, limited, or eliminated by the articles of incorporation.

Two-Step Transactions and Holding Company Reorganizations. Processes for two-step transactions for mergers are maintained. Two-step transactions for share exchanges are authorized.

Processes for holding company reorganizations are maintained.

Articles of Merger and Share Exchange. After a plan of merger or share exchange is approved, articles of merger or share exchange, respectively, must be executed by each entity. The articles of merger and share exchange are effective on the date and at the time of filing unless a later effective date is specified in the articles within 90 days after the date an article is filed.

Effects of Mergers and Share Exchanges. The parties that merge become one. The surviving entity becomes the owner of all property and contract rights, privileges and immunities, and all the liabilities of each other party to the merger. All pending proceedings involving either the surviving entity or a party whose separate existence ceased because of the merger are continued. Shares or interests in each entity that is a party to the merger are converted in accordance with the terms of the merger.

When a share exchange becomes effective, shares or interests in the acquired entity to be

exchanged for shares, other securities, interests, or any other consideration are entitled only to the rights provided to them in the plan of share exchange or any other applicable law.

The impacts of mergers and share exchanges on new owner liability are described.

Abandoning Mergers and Share Exchanges. A domestic corporation may abandon a merger or share exchange without shareholder approval, prior to the merger or share exchange becoming effective.

Other Changes to the Washington Business Corporation Act. *Definitions.* Definitions applicable to the entire WBCA are provided.

Quorum and Voting. Articles of incorporation may not provide a lower quorum whenever WBCA requires a particular quorum. Voting by separate voting groups are governed by rules for amendments of the article of incorporation. Amendments to the articles of incorporation that changes a quorum or voting requirement must meet the same quorum requirement and be approved by the same vote and voting group required to take action under the requirements then in effect or proposed to be approved, whichever is greater.

Board of Directors. Procedures related to removing a director and quorum of a board of directors are clarified.

Approval of Other Corporate Actions. A plan of entity conversion must be approved by shareholders that would be required to approve a plan of merger and separate voting groups, unless the articles of incorporation or board of directors requires a greater vote.

Amendments to a corporation's articles of incorporation follow a similar procedure as approval of a plan of merger or share exchange, except in the case of public companies formed before August 1, 2024, which may approve an amendment to the articles of incorporation by majority vote of shareholders of each voting group entitled to vote.

Disposition of a corporation's property may be approved in a similar procedure as approval of a plan of merger or share exchange.

Social Purpose Corporation. A corporation may become a social purpose corporation in accordance with a plan of election. A plan of election must include an amendment to the articles of incorporation. A plan of election must be approved by the board of directors, and at least a two-thirds vote of shareholders of each voting group entitled to vote, unless the articles of incorporation or board of directors requires a greater vote.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Removes mergers that would result in new created entities.

- Removes share exchanges involving other entities.
- Replaces requirement for statement of abandonment with statement of withdrawal.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 24, 2024.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The mergers and exchange statutes were originally patterned on the 1984 version of the Model Business Corporation Act (MBCA). Since that time, the American Bar Association made a number of changes. This bill would align the merger and share exchange statutes with the current MBCA. From a technical standpoint, these changes represent a good improvement over the current Washington Business Corporation Act, especially for mergers between domestic corporations and foreign entities. The changes to the voting threshold requirement only apply to corporations formed after August 1, 2024. So, these changes are not upending the voting thresholds of previously established corporations. The Corporations and Charities Division of the Office of the Secretary of State support the bill, but would request an effective date of July 1, 2025.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Eric DeJong, Corporate Act Revision Committee of the WSBA Business Law Section; Brian Hatfield, Office of Secretary of State.

Persons Signed In To Testify But Not Testifying: No one.