

authorized by the issuing organization) by the persons, corporations or associations with whom the organization has entered into such written agreements.

Passed the House April 16, 1971.

Passed the Senate April 15, 1971.

Approved by the Governor April 26, 1971.

Filed in Office of Secretary of State April 27, 1971.

CHAPTER 38

[Engrossed Senate Bill No. 564]

BUSINESS CORPORATIONS

AN ACT Relating to business corporations; amending section 6, chapter 53, Laws of 1965 as amended by section 8, chapter 190, Laws of 1967 and RCW 23A.08.030; amending section 73, chapter 53, Laws of 1965 and RCW 23A.20.010; amending section 74, chapter 53, Laws of 1965 and RCW 23A.20.020; amending section 77, chapter 53, Laws of 1965 and RCW 23A.20.050; amending section 2, chapter 83, Laws of 1969, 1st ex. session and RCW 23A.08.480; and adding a new section to chapter 53, Laws of 1965 and to chapter 23A.08 RCW.

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

Section 1. Section 6, chapter 53, Laws of 1965 as amended by section 8, chapter 190, Laws of 1967 and RCW 23A.08.030 are each amended to read as follows:

A corporation shall have the right to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles of incorporation so permit or with the affirmative vote of the holders of at least a majority of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor: PROVIDED, That a Regulated Investment Company registered under the Investment Company Act of 1940, or any similar federal statute, shall have the right to purchase its own shares out of unreserved and unrestricted capital surplus whether or not the articles of incorporation so provide and without prior shareholder approval.

To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such

shares the restriction shall be removed pro tanto.

Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

(1) Eliminating fractional shares.

(2) Collecting or compromising indebtedness to the corporation.

(3) Paying dissenting shareholders entitled to payment for their shares under the provisions of this title.

(4) Effecting, subject to the other provisions of this title, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

Sec. 2. Section 73, chapter 53, Laws of 1965 and RCW 23A.20.010 are each amended to read as follows:

Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this title.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(2) The terms and conditions of the proposed merger.

(3) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

Sec. 3. Section 74, chapter 53, Laws of 1965 and RCW 23A.20.020 are each amended to read as follows:

Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this title.

The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to

consolidate, which is hereinafter designated as the new corporation.

(2) The terms and conditions of the proposed consolidation.

(3) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or of any other corporation or, in whole or in part, into cash or other property.

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this title.

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

Sec. 4. Section 77, chapter 53, Laws of 1965 and RCW 23A.20.050 are each amended to read as follows:

(1) Any corporation owning at least ninety-five percent of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) The name of the subsidiary corporation and the name of the corporation owning at least ninety-five percent of its shares, which is hereinafter designated as the surviving corporation.

(b) The manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property, or the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed in triplicate by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of its officers signing such articles, and shall set forth:

(a) The plan of merger;

(b) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares triplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in

this title prescribed:

(a) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof;

(b) File one of such originals in his office; and

(c) Issue a certificate of merger to which he shall affix one of such originals.

(5) The certificate of merger, together with the original of the articles of merger affixed thereto by the secretary of state, and the other original, shall be returned to the surviving corporation or its representative. Such remaining original shall then be filed in the office of the auditor of the county in which the registered office of the corporation is situated. The original affixed to the certificate of merger shall be retained by the corporation.

NEW SECTION. Sec. 5. There is added to chapter 53, Laws of 1965 and to chapter 23A.08 RCW a new section to read as follows:

Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option. If such rights or options are to be issued to directors, officers or employees as such of the corporation or of any subsidiary thereof, and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan approved or ratified by such a vote of shareholders. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.

Sec. 6. Section 51, chapter 53, Laws of 1965 as last amended by section 2, chapter 83, Laws of 1969, 1st ex. session and RCW 23A.08.480 are each amended to read as follows:

Every corporation hereafter organized under this title, shall within thirty days after it shall have filed its articles of incorporation with the county auditor of the county in which the corporation has its registered office, and every corporation

heretofore or hereafter organized under the laws of the territory or state of Washington and any foreign corporation authorized to do business in Washington shall, ((within thirty days after its annual meeting)) at the time it is required to pay its annual license fee and at such additional times as it may elect, file with the secretary of state and with the county auditor of the county in which said corporation has its registered office an annual report, sworn to by its president and attested by its secretary, containing, as of the date of execution of the report:

(1) The name of the corporation and the state or county under the laws of which it is incorporated.

(2) The address of the registered office of the corporation in this state including street and number and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this state.

(4) The names and respective addresses of the directors and officers of the corporation.

The secretary of state shall file such annual report in his office for the fee of one dollar. If any corporation shall fail to comply with the foregoing provisions of this section and more than one year shall have elapsed from the date of the filing of the last report, service of process against such corporation may be made by serving duplicate copies upon the secretary of state. Upon such service being made, the secretary of state shall forthwith mail one of such duplicate copies of such process to such corporation at its registered office or its last known address, as shown by the records of his office.

For every violation of this section there shall become due and owing to the state of Washington the sum of twenty-five dollars which sum shall be collected by the secretary of state who shall call upon the attorney general to institute a civil action for the recovery thereof if necessary.

Passed the Senate March 31, 1971.

Passed the House April 21, 1971.

Approved by the Governor April 28, 1971.

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