

Hansen 57

96 LSO-1034

HOUSE BILL

0230

HB0030

AN ACT relating to the Wyoming Business Corporation Act; authorizing shareholder agreements as specified; providing procedures for shareholder derivative proceedings; authorizing the election to purchase shares as an alternative to judicial dissolution of a corporation; specifying exceptions from the imposition of tax on corporations; specifying authorized provisions in articles of incorporation relating to liability of directors; modifying provisions relating to indemnification of corporate directors and officers in certain cases; specifying procedures relating to judicial dissolution; conforming related provisions; providing definitions; and providing for an effective date.

Introduced by:

HOUSE ACTION ON HOUSE BILL

3/20 ☒ Introduced
Aye 50 No 10 Ex 0 Ab 0
☒ Read First Time and Ref. to
Committee No. 7
☐ Failed Introduction
Aye ___ No ___ Ex ___ Ab ___
Returned from Committee No. ___
with Recommendation:
☐ Do Pass; ☐ Amend & Do
Pass; ☐ Do Not Pass;
☐ W/O Recomm; ☐ Re-Refer to
Committee No. ___
Re-referred to Committee No. ___
Returned from Committee No. ___
with Recommendation:
☐ Do Pass; ☐ Amend & Do
Pass; ☐ Do Not Pass;
☐ W/O Recomm; ☐ Re-Refer to
Committee No. ___
Considered in Comm. of Whole
☐ Amended
☐ Recommended Do Pass
☐ Failed Comm. of Whole
☐ Indefinitely Postponed
☐ Other: ___
Read Second Time
☐ Amended
☐ Do Pass
☐ Do Not Pass
☐ Accelerated to 3rd Rdg.
Read Third Time
☐ Amended
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
☐ Held for Reconsideration
Motion to Reconsider
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
Third Reading Vote
(On Reconsideration)
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
Sent to Senate (No Amendments)
Sent to LSO for Engrossing
ENGROSSED
Sent to Senate

SENATE ACTION ON HOUSE BILL

Received. Read First Time.
Referred to Committee No. ___
Returned from Committee No. ___
with Recommendation:
☐ Do Pass; ☐ Amend & Do
Pass; ☐ Do Not Pass;
☐ W/O Recomm; ☐ Re-Refer to
Committee No. ___
Re-referred to Committee No. ___
Returned from Committee No. ___
with Recommendation:
☐ Do Pass; ☐ Amend & Do
Pass; ☐ Do Not Pass;
☐ W/O Recomm; ☐ Re-Refer to
Committee No. ___
Considered in Comm. of Whole
☐ Amended
☐ Recommended Do Pass
☐ Failed Comm. of Whole
☐ Indefinitely Postponed
☐ Other: ___
Read Second Time
☐ Amended
☐ Do Pass
☐ Do Not Pass
☐ Accelerated to 3rd Rdg.
Read Third Time
☐ Amended
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
☐ Held for Reconsideration
Motion to Reconsider
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
Third Reading Vote
(On Reconsideration)
☐ Passed ☐ Failed
Aye ___ No ___ Ex ___ Ab ___
Sent to House

Sent for Enrolling
HEA No. ___
Signed by Speaker
Signed by President
Approved by Governor
Chapter No. ___

HOUSE BILL 0230

INTRODUCED

HOUSE BILL NO. HB0030

Wyoming Business Corporation Act-amends.

Sponsored by: Representative(s) HANES and Senator(s)
APPLEGATE, MAXFIELD and MILLER

A BILL

for

1 AN ACT relating to the Wyoming Business Corporation Act;
2 authorizing shareholder agreements as specified; providing
3 procedures for shareholder derivative proceedings;
4 authorizing the election to purchase shares as an
5 alternative to judicial dissolution of a corporation;
6 specifying exceptions from the imposition of tax on
7 corporations; specifying authorized provisions in articles
8 of incorporation relating to liability of directors;
9 modifying provisions relating to indemnification of
10 corporate directors and officers in certain cases;
11 specifying procedures relating to judicial dissolution;
12 conforming related provisions; providing definitions; and
13 providing for an effective date.

14

1 *Be It Enacted by the Legislature of the State of Wyoming:*

2

3 **Section 1.** W.S. 17-16-732, 17-16-741 through
4 17-16-747, 17-16-859, 17-16-1434 and 17-16-1634 are created
5 to read:

6

7 **17-16-732. Shareholder Agreements.**

8

9 (a) An agreement among the shareholders of a
10 corporation that complies with this section is effective
11 among the shareholders and the corporation even though it is
12 inconsistent with one (1) or more other provisions of this
13 act in that it:

14

15 (i) Eliminates the board of directors or
16 restricts the discretion or powers of the board of
17 directors;

18

19 (ii) Governs the authorization or making of
20 distributions whether or not in proportion to ownership of
21 shares, subject to the limitations in W.S. 17-16-640;

22

1 (iii) Establishes who shall be directors or
2 officers of the corporation, or their terms of office or
3 manner of selection or removal;

4

5 (iv) Governs, in general or in regard to specific
6 matters, the exercise or division of voting power by or
7 between the shareholders and directors or by or among any of
8 them, including use of weighted voting rights or director
9 proxies;

10

11 (v) Establishes the terms and conditions of any
12 agreement for the transfer or use of property or the
13 provision of services between the corporation and any
14 shareholder, director, officer or employee of the
15 corporation or among any of them;

16

17 (vi) Transfers to one (1) or more shareholders or
18 other persons all or part of the authority to exercise the
19 corporate powers or to manage the business and affairs of
20 the corporation, including the resolution of any issue about
21 which there exists a deadlock among directors or
22 shareholders;

1

2 (vii) Requires dissolution of the corporation at
3 the request of one (1) or more of the shareholders or upon
4 the occurrence of a specified event or contingency; or

5

6 (viii) Otherwise governs the exercise of the
7 corporate powers or the management of the business and
8 affairs of the corporation or the relationship among the
9 shareholders, the directors and the corporation, or among
10 any of them, and is not contrary to public policy.

11

12 (b) An agreement authorized by this section shall be:

13

14 (i) Set forth:

15

16 (A) In the articles of incorporation or
17 bylaws and approved by all persons who are shareholders at
18 the time of the agreement; or

19

20 (B) In a written agreement that is signed by
21 all persons who are shareholders at the time of the
22 agreement and is made known to the corporation.

1

2 (ii) Subject to amendment only by all persons who
3 are shareholders at the time of the amendment, unless the
4 agreement provides otherwise; and

5

6 (iii) Valid for ten (10) years, unless the
7 agreement provides otherwise.

8

9 (c) The existence of an agreement authorized by this
10 section shall be noted conspicuously on the front or back of
11 each certificate for outstanding shares or on the
12 information statement required by W.S. 17-16-626(b). If at
13 the time of the agreement the corporation has shares
14 outstanding represented by certificates, the corporation
15 shall recall the outstanding certificates and issue
16 substitute certificates that comply with this subsection.
17 The failure to note the existence of the agreement on the
18 certificate or information statement shall not affect the
19 validity of the agreement or any action taken pursuant to
20 it. Any purchaser of shares who, at the time of purchase,
21 did not have knowledge of the existence of the agreement
22 shall be entitled to rescission of the purchase. A

1 purchaser shall be deemed to have knowledge of the existence
2 of the agreement if its existence is noted on the
3 certificate or information statement for the shares in
4 compliance with this subsection and, if the shares are not
5 represented by a certificate, the information statement is
6 delivered to the purchaser at or prior to the time of
7 purchase of the shares. An action to enforce the right of
8 rescission authorized by this subsection must be commenced
9 within the earlier of ninety (90) days after discovery of
10 the existence of the agreement or two (2) years after the
11 time of purchase of the shares.

12

13 (d) An agreement authorized by this section shall
14 cease to be effective when shares of the corporation are
15 listed on a national securities exchange or regularly traded
16 in a market maintained by one (1) or more members of a
17 national or affiliated securities association. If the
18 agreement ceases to be effective for any reason, the board
19 of directors may, if the agreement is contained or referred
20 to in the corporation's articles of incorporation or bylaws,
21 adopt an amendment to the articles of incorporation or

1 bylaws, without shareholder action, to delete the agreement
2 and any references to it.

3

4 (e) An agreement authorized by this section that
5 limits the discretion or powers of the board of directors
6 shall relieve the directors of, and impose upon the person
7 or persons in whom such discretion or powers are vested,
8 liability for acts or omissions imposed by law on directors
9 to the extent that the discretion or powers of the directors
10 are limited by the agreement.

11

12 (f) The existence or performance of an agreement
13 authorized by this section shall not be a ground for
14 imposing personal liability on any shareholder for the acts
15 or debts of the corporation even if the agreement or its
16 performance treats the corporation as if it were a
17 partnership or results in failure to observe the corporate
18 formalities otherwise applicable to the matters governed by
19 the agreement.

20

21 (g) Incorporators or subscribers for shares may act as
22 shareholders with respect to an agreement authorized by this

1 section if no shares have been issued when the agreement is
2 made.

3

4 **17-16-741. Standing.**

5

6 (a) A shareholder may not commence or maintain a
7 derivative proceeding unless the shareholder:

8

9 (i) Was a shareholder of the corporation at the
10 time of the act or omission complained of, or became a
11 shareholder through transfer by operation of law from one
12 who was a shareholder at the time; and

13

14 (ii) Fairly and adequately represents the
15 interests of the corporation in enforcing the right of the
16 corporation.

17

18 **17-16-742. Demand.**

19

20 (a) No shareholder may commence a derivative
21 proceeding until:

22

1 (i) A written demand has been made upon the
2 corporation to take suitable action; and

3

4 (ii) Ninety (90) days have expired from the date
5 the demand was made unless the shareholder has earlier been
6 notified that the demand has been rejected by the
7 corporation or unless irreparable injury to the corporation
8 would result by waiting for the expiration of the ninety
9 (90) day period.

10

11 **17-16-743. Stay of proceedings.** If the corporation
12 commences an inquiry into the allegations made in the demand
13 or complaint, the court may stay any derivative proceeding
14 for such period as the court deems appropriate.

15

16 **17-16-744. Dismissal.**

17

18 (a) A derivative proceeding shall be dismissed by the
19 court on motion by the corporation if one (1) of the groups
20 specified in subsection (b) or (f) of this section has
21 determined in good faith after conducting a reasonable
22 inquiry upon which its conclusions are based that the

1 maintenance of the derivative proceeding is not in the best
2 interests of the corporation.

3

4 (b) Unless a panel is appointed pursuant to subsection
5 (f) of this section, the determination under subsection (a)
6 of this section shall be made by:

7

8 (i) A majority vote of independent directors
9 present at a meeting of the board of directors if the
10 independent directors constitute a quorum; or

11

12 (ii) A majority vote of a committee consisting of
13 two (2) or more independent directors appointed by a
14 majority vote of independent directors present at a meeting
15 of the board of directors, whether or not such independent
16 directors constituted a quorum.

17

18 (c) None of the following shall by itself cause a
19 director to be considered not independent for purposes of
20 this section:

21

1 (i) The nomination or election of the director by
2 persons who are defendants in the derivative proceeding or
3 against whom action is demanded;

4

5 (ii) The naming of the director as a defendant in
6 the derivative proceeding or as a person against whom action
7 is demanded; or

8

9 (iii) The approval by the director of the act
10 being challenged in the derivative proceeding or demand if
11 the act resulted in no personal benefit to the director.

12

13 (d) If a derivative proceeding is commenced after a
14 determination has been made rejecting a demand by a
15 shareholder, the complaint shall allege with particularity
16 facts establishing either:

17

18 (i) That a majority of the board of directors did
19 not consist of independent directors at the time the
20 determination was made; or

21

1 (ii) That the requirements of subsection (a) of
2 this section have not been met.

3

4 (e) If a majority of the board of directors does not
5 consist of independent directors at the time the
6 determination is made, the corporation shall have the burden
7 of proving that the requirements of subsection (a) of this
8 section have been met. If the majority of the board of
9 directors consists of independent directors at the time the
10 determination is made, the plaintiff shall have the burden
11 of proving that the requirements of subsection (a) of this
12 section have not been met.

13

14 (f) The court may appoint a panel of one (1) or more
15 independent persons upon motion by the corporation to make a
16 determination whether the maintenance of the derivative
17 proceeding is in the best interests of the corporation. In
18 such case, the plaintiff shall have the burden of proving
19 that the requirements of subsection (a) of this section have
20 not been met.

21

1 **17-16-745. Discontinuance or settlement.** A derivative
2 proceeding may not be discontinued or settled without the
3 court's approval. If the court determines that a proposed
4 discontinuance or settlement will substantially affect the
5 interests of the corporation's shareholders or a class of
6 shareholders, the court shall direct that notice be given to
7 the shareholders affected.

8

9 **17-16-746. Payment of expenses.**

10

11 (a) On termination of the derivative proceeding the
12 court may:

13

14 (i) Order the corporation to pay the plaintiff's
15 reasonable expenses, including counsel fees, incurred in the
16 proceeding if it finds that the proceeding resulted in a
17 substantial benefit to the corporation;

18

19 (ii) Order the plaintiff to pay any defendant's
20 reasonable expenses, including counsel fees, incurred in
21 defending the proceeding if it finds that the proceeding was

1 commenced or maintained without reasonable cause or for an
2 improper purpose; or

3

4 (iii) Order a party to pay an opposing party's
5 reasonable expenses, including counsel fees, incurred
6 because of the filing of a pleading, motion or other paper,
7 if it finds that the pleading, motion or other paper was not
8 well grounded in fact, after reasonable inquiry, or
9 warranted by existing law or a good faith argument for the
10 extension, modification or reversal of existing law and was
11 interposed for an improper purpose, such as to harass or to
12 cause unnecessary delay or needless increase in the cost of
13 litigation.

14

15 **17-16-747. Applicability to foreign corporations.** In
16 any derivative proceeding in the right of a foreign
17 corporation, the matters covered by this subarticle shall be
18 governed by the laws of the jurisdiction of incorporation of
19 the foreign corporation except for W.S. 17-16-743, 17-16-745
20 and 17-16-746.

21

1 **17-16-859. Exclusivity of subarticle.** A corporation
2 may provide indemnification or advance expenses to a
3 director or an officer only as permitted by this subarticle.

4

5 **17-16-1434. Election to purchase in lieu of**
6 **dissolution.**

7

8 (a) In a proceeding under W.S. 17-16-1430(a)(ii) to
9 dissolve a corporation that has no shares listed on a
10 national securities exchange or regularly traded in a market
11 maintained by one (1) or more members of a national or
12 affiliated securities association, the corporation may elect
13 or, if it fails to elect, one (1) or more shareholders may
14 elect to purchase all shares owned by the petitioning
15 shareholder at the fair value of the shares. An election
16 pursuant to this section shall be irrevocable unless the
17 court determines that it is equitable to set aside or modify
18 the election.

19

20 (b) An election to purchase pursuant to this section
21 may be filed with the court at any time within ninety (90)
22 days after the filing of the petition under W.S.

1 17-16-1430(a)(ii) or at such later time as the court in its
2 discretion may allow. If the election to purchase is filed
3 by one (1) or more shareholders, the corporation shall,
4 within ten (10) days thereafter, give written notice to all
5 shareholders, other than the petitioner. The notice must
6 state the name and number of shares owned by the petitioner
7 and the name and number of shares owned by each electing
8 shareholder and must advise the recipients of their right to
9 join in the election to purchase shares in accordance with
10 this section. Shareholders who wish to participate must
11 file notice of their intention to join in the purchase no
12 later than thirty (30) days after the effective date of the
13 notice to them. All shareholders who have filed an election
14 or notice of their intention to participate in the election
15 to purchase thereby become parties to the proceeding and
16 shall purchase in proportion to their ownership of shares as
17 of the date the first election was filed, unless they
18 otherwise agree or the court otherwise directs. After an
19 election has been filed by the corporation or one (1) or
20 more shareholders, the proceeding under W.S.
21 17-16-1430(a)(ii) may not be discontinued or settled, nor
22 may the petitioning shareholder sell or otherwise dispose of

1 his shares, unless the court determines that it would be
2 equitable to the corporation and the shareholders, other
3 than the petitioner, to permit such discontinuance,
4 settlement, sale or other disposition.

5

6 (c) If, within sixty (60) days of the filing of the
7 first election, the parties reach agreement as to the fair
8 value in terms of purchase of the petitioner's shares, the
9 court shall enter an order directing the purchase of
10 petitioner's shares upon the terms and conditions agreed to
11 by the parties.

12

13 (d) If the parties are unable to reach an agreement as
14 provided for in subsection (c) of this section, the court,
15 upon application of any party, shall stay the W.S.
16 17-16-1430(a)(ii) proceedings and determine the fair value
17 of the petitioner's shares as of the day before the date on
18 which the petition under W.S. 17-16-1430(a)(ii) was filed or
19 as of such other date as the court deems appropriate under
20 the circumstances.

21

1 (e) Upon determining the fair value of the shares, the
2 court shall enter an order directing the purchase upon such
3 terms and conditions as the court deems appropriate, which
4 may include payment of the purchase price in installments,
5 where necessary in the interest of equity, provision for
6 security to assure payment of the purchase price and any
7 additional costs, fees and expenses as may have been
8 awarded, and, if the shares are to be purchased by the
9 shareholders, the allocation of shares among them. In
10 allocating petitioner's shares among holders of different
11 classes of shares, the court should attempt to preserve the
12 existing distribution of voting rights among holders of
13 different classes insofar as practicable and may direct that
14 the holders of a specific class or classes shall not
15 participate in the purchase. Interest may be allowed at the
16 rate and from the date determined by the court to be
17 equitable, but if the court finds that the refusal of the
18 petitioning shareholder to accept an offer of payment was
19 arbitrary or otherwise not in good faith, no interest shall
20 be allowed. If the court finds that the petitioning
21 shareholder had probable grounds for relief under W.S.
22 17-16-1430(a)(ii)(B) or (D), it may award to the petitioning

1 shareholder reasonable fees and expenses of counsel and of
2 any experts employed by him.

3

4 (f) Upon entry of an order under subsection (c) or (e)
5 of this section, the court shall dismiss the petition to
6 dissolve the corporation under W.S. 17-16-1430, and the
7 petitioning shareholder shall no longer have any rights or
8 status as a shareholder of the corporation, except the right
9 to receive the amounts awarded to him by the order of the
10 court which shall be enforceable in the same manner as any
11 other judgment.

12

13 (g) The purchase order pursuant to subsection (e) of
14 this section shall be made within ten (10) days after the
15 date the order becomes final unless before that time the
16 corporation files with the court a notice of its intention
17 to adopt articles of dissolution pursuant to W.S. 17-16-1402
18 and 17-16-1403, which articles must then be adopted and
19 filed within fifty (50) days thereafter. Upon filing of
20 such articles of dissolution, the corporation shall be
21 dissolved in accordance with provisions of W.S. 17-16-1405
22 through 17-16-1407, and the order entered pursuant to

1 subsection (e) of this section shall no longer be of any
2 force or effect, except that the court may award the
3 petitioning shareholder reasonable fees and expenses in
4 accordance with the provisions of the last sentence of
5 subsection (e) of this section and the petitioner may
6 continue to pursue any claims previously asserted on behalf
7 of the corporation.

8

9 (h) Any payment by the corporation pursuant to an
10 order under subsection (c) or (e) of this section, other
11 than an award of fees and expenses pursuant to subsection
12 (e) of this section, is subject to the provisions of W.S.
13 17-16-640.

14

15 **17-16-1634. Imposition of tax on corporations.**
16 Corporations whose activities within the state are solely
17 confined to the maintenance and management of their
18 intangible investments or of intangible investments of
19 corporations or business trusts registered as investment
20 companies under the Investment Company Act of 1940, as
21 amended (15 U.S.C. § 80a-1 et seq.) and the collection and
22 distribution of the income from such investments or from

1 tangible property physically located outside the state shall
2 be subject to taxation at the minimum level established
3 under W.S. 17-16-1630(a)(i). For the purpose of this
4 subsection "intangible investments" shall include, without
5 limitation, investments in stocks, bonds, notes and other
6 debt obligations (including debt obligations of affiliated
7 corporations), patents, patent applications, trademarks,
8 trade names and similar types of intangible assets.

9
10 **Section 2.** W.S. 17-16-202(b)(iii) and by creating a
11 new paragraph (iv), 17-16-740 by creating a new subsection
12 (f), 17-16-801(a) and (b), 17-16-850, 17-16-851(a) and (d),
13 17-16-852, 17-16-853(a)(intro), (i) and (ii), (b) and (c),
14 17-16-854, 17-16-855(a), (b)(i), (iii), (iv) and (c), 17-16-
15 856 through 17-16-858 and 17-16-1431 by creating a new
16 subsection (d) are amended to read:

17

18 **17-16-202. Articles of incorporation.**

19

20 (b) The articles of incorporation may set forth:

21

1 (iii) Any provision that under this act is
2 required or permitted to be set forth in the bylaws; and

3
4 (iv) A provision eliminating or limiting the
5 liability of a director to the corporation or its
6 shareholders for money damages for any action taken, or any
7 failure to take any action, as a director, except liability
8 for:

9
10 (A) The amount of financial benefit received
11 by a director to which he is not entitled;

12
13 (B) An intentional infliction of harm on the
14 corporation or shareholders;

15
16 (C) A violation of W.S. 17-16-833; or

17
18 (D) An intentional violation of criminal
19 law.

20
21 **17-16-740. Subarticle definitions.**

22

1 (f) As used in this subarticle:

2

3 (i) "Derivative proceeding" means a civil suit in
4 the right of a domestic corporation or, to the extent
5 provided in W.S. 17-16-747, in the right of a foreign
6 corporation;

7

8 (ii) "Shareholder" includes a beneficial owner
9 whose shares are held in a voting trust or held by a nominee
10 on the beneficial owner's behalf.

11

12 **17-16-801. Requirement for and duties of board of**
13 **directors.**

14

15 (a) Except as provided in ~~subsection (c) of this~~
16 ~~section~~ W.S. 17-16-732, each corporation shall have a board
17 of directors.

18

19 (b) All corporate powers shall be exercised by or
20 under the authority of, and the business and affairs of the
21 corporation managed under the direction of, its board of
22 directors, subject to any limitation set forth in the

1 articles of incorporation or in an agreement authorized
2 under W.S. 17-16-732.

3

4 **17-16-850. Subarticle definitions.**

5

6 (a) In this subarticle:

7

8 (i) "Corporation" includes any domestic or
9 foreign predecessor entity of a corporation in a merger; ~~or~~
10 ~~other transaction in which the predecessor's existence~~
11 ~~ceased upon consummation of the transaction;~~

12

13 (ii) "Director" or "officer" means an individual
14 who is or was a director or officer, respectively, of a
15 corporation or ~~an individual~~ who, while a director or
16 officer of ~~a the~~ corporation, is or was serving at the
17 corporation's request as a director, officer, partner,
18 trustee, employee or agent of another ~~foreign or domestic~~ or
19 foreign corporation, partnership, joint venture, trust,
20 employee benefit plan or other ~~enterprise~~ entity. A
21 director or officer is considered to be serving an employee
22 benefit plan at the corporation's request if his duties to

1 the corporation also impose duties on, or otherwise involve
2 services by, him to the plan or to participants in or
3 beneficiaries of the plan. "Director" or "officer"
4 includes, unless the context requires otherwise, the estate
5 or personal representative of a director or officer;

6

7 (iii) "Disinterested director" means a director
8 who, at the time of a vote referred to in W.S. 17-16-853(c)
9 or a vote or selection referred to in W.S. 17-16-855(b) or
10 (c), is not:

11

12 (A) A party to the proceeding; or

13

14 (B) An individual having a familial,
15 financial, professional or employment relationship with the
16 director whose indemnification or advance for expenses is
17 the subject of the decision being made, which relationship
18 would, in the circumstances, reasonably be expected to exert
19 an influence on the director's judgment when voting on the
20 decision being made.

21

1 ~~(iii)~~(iv) "Expenses" ~~include~~ includes counsel
2 fees;

3
4 ~~(iv)~~(v) "Liability" means the obligation to pay a
5 judgment, settlement, penalty, fine, ~~(including an excise~~
6 tax assessed with respect to an employee benefit plan), or
7 reasonable expenses incurred with respect to a proceeding;

8
9 ~~(v)~~(vi) "Party" ~~includes~~ means an individual who
10 was, is or is threatened to be made, a ~~named~~-defendant or
11 respondent in a proceeding;

12
13 ~~(vi)~~(vii) "Proceeding" means any threatened,
14 pending or completed action, suit or proceeding, whether
15 civil, criminal, administrative, arbitrative or
16 investigative and whether formal or informal.

17
18 **17-16-851. Authority to indemnify.**

19
20 (a) Except as otherwise provided in ~~subsection (d)~~ of
21 this section, a corporation may indemnify an individual ~~made~~

1 who is a party to a proceeding because he is ~~or was~~ a
2 director against liability incurred in the proceeding if:

3

4 (i) He conducted himself in good faith; and

5

6 (ii) He reasonably believed that his conduct was
7 in or at least not opposed to the corporation's best
8 interests; and

9

10 (iii) In the case of any criminal proceeding, he
11 had no reasonable cause to believe his conduct was
12 unlawful; or

13

14 (iv) He engaged in conduct for which broader
15 indemnification has been made permissible or obligatory
16 under a provision of the articles of incorporation, as
17 authorized by W.S. 17-16-202(b).

18

19 (d) Unless ordered by a court under W.S.
20 17-16-854(a)(iii) a corporation may not indemnify a director
21 under this section:

22

1 (i) In connection with a proceeding by or in the
2 right of the corporation, ~~in which the director was adjudged~~
3 ~~liable to the corporation except for reasonable expenses~~
4 incurred in connection with the proceeding if it is
5 determined that the director has met the standard of conduct
6 under subsection (a) of this section; or

7
8 (ii) In connection with any ~~other~~ proceeding
9 ~~charging improper personal benefit to him, whether or not~~
10 ~~involving action in his official capacity, in with respect~~
11 to conduct for which he was adjudged liable on the basis
12 that ~~personal~~ he received a financial benefit was ~~improperly~~
13 ~~received by him to which he was not entitled.~~

14
15 **17-16-852. Mandatory indemnification.** ~~Unless limited~~
16 ~~by its articles of incorporation, A~~ corporation shall
17 indemnify a director who was ~~wholly~~ successful, on the
18 merits or otherwise, in the defense of any proceeding to
19 which he was a party because he is ~~or was~~ a director of the
20 corporation against reasonable expenses incurred by him in
21 connection with the proceeding.

22

1 **17-16-853. Advance for expenses.**

2

3 (a) A corporation may, before final disposition of a
4 proceeding, advance funds to pay for or reimburse the
5 reasonable expenses incurred by a director who is a party to
6 a proceeding ~~in advance of final disposition of the~~
7 ~~proceeding because he is a director if he delivers to the~~
8 corporation:

9

10 (i) ~~The director furnishes the corporation A~~
11 written affirmation of his good faith belief that he has met
12 the standard of conduct described in W.S. 17-16-851 or that
13 the proceeding involves conduct for which liability has been
14 eliminated under a provision of the articles of
15 incorporation as authorized by W.S. 17-16-202(b)(iv); and

16

17 (ii) ~~The director furnishes the corporation a His~~
18 written undertaking, ~~executed personally or on his behalf,~~
19 to repay ~~the advance~~ any funds advanced if he is not
20 entitled to mandatory indemnification under W.S. 17-16-852
21 and it is ultimately determined that he ~~did~~ has not meet ~~met~~
22 the standard of conduct, and described in W.S. 17-16-852.

1

2 (b) The undertaking required by paragraph (a)(ii) of
3 this section shall be an unlimited general obligation of the
4 director but need not be secured and may be accepted without
5 reference to the financial ability of the director to make
6 repayment.

7

8 (c) ~~Determinations and Authorizations of payments~~
9 under this section shall be made; ~~in the manner specified in~~
10 ~~W.S. 17-16-855.~~

11

12 (i) By the board of directors:

13

14 (A) If there are two (2) or more
15 disinterested directors, by a majority vote of all the
16 disinterested directors (a majority of whom shall for such
17 purpose constitute a quorum) or by a majority of the members
18 of a committee of two (2) or more disinterested directors
19 appointed by such a vote; or

20

21 (B) If there are fewer than two (2)
22 disinterested directors, by the vote necessary for action by

1 the board in accordance with W.S. 17-16-824(c), in which
2 authorization directors who do not qualify as disinterested
3 directors may participate; or

4

5 (ii) By the shareholders, but shares owned by or
6 voted under the control of a director who at the time does
7 not qualify as a disinterested director may not be voted on
8 the authorization.

9

10 **17-16-854. Court-ordered indemnification and advance**
11 **for expenses.**

12

13 ~~(a) Unless a corporation's articles of incorporation~~
14 ~~provide otherwise, A director of the corporation who is a~~
15 ~~party to a proceeding because he is a director may apply for~~
16 ~~indemnification or an advance for expenses to the court~~
17 ~~conducting the proceeding or to another court of competent~~
18 ~~jurisdiction. On After receipt of an application, the court~~
19 ~~and after giving any notice the court it considers~~
20 ~~necessary, may order indemnification if it determines the~~
21 court shall:

22

1 (i) Order indemnification if the court determines
2 that the director is entitled to mandatory indemnification
3 under W.S. 17-16-852; in which case the court shall also
4 order the corporation to pay the director's reasonable
5 expenses incurred to obtain court ordered indemnification;
6 or

7
8 (ii) ~~The director is fairly and reasonably~~
9 ~~entitled to indemnification in view of all the relevant~~
10 ~~circumstances, whether or not he met the standard of conduct~~
11 ~~set forth in W.S. 17-16-851 or was adjudged liable as~~
12 ~~described in W.S. 17-16-851(d), but if he was adjudged so~~
13 ~~liable his indemnification is limited to reasonable expenses~~
14 ~~incurred.~~ Order indemnification or advance for expenses if
15 the court determines that the director is entitled to
16 indemnification or advance for expenses pursuant to a
17 provision authorized by W.S. 17-16-858(a); or

18
19 (iii) Order indemnification or advance for
20 expenses if the court determines, in view of all the
21 relevant circumstances, that it is fair and reasonable:

22

1 (A) To indemnify the director; or

2

3 (B) To advance expenses to the director,
4 even if he has not met the standard of conduct set forth in
5 W.S. 17-16-851(a), failed to comply with W.S. 17-16-853 or
6 was adjudged liable in a proceeding referred to in W.S.
7 17-16-851(d)(i) or (ii), but if he was adjudged so liable
8 his indemnification shall be limited to reasonable expenses
9 incurred in connection with the proceeding.

10

11 (b) If the court determines that the director is
12 entitled to indemnification under subsection (a)(i) of this
13 section or to indemnification or advance for expenses under
14 subsection (a)(ii) of this section, it shall also order the
15 corporation to pay the director's reasonable expenses
16 incurred in connection with obtaining court-ordered
17 indemnification or advance for expenses. If the court
18 determines that the director is entitled to indemnification
19 or advance for expenses under subsection (a)(iii) of this
20 section, it may also order the corporation to pay the
21 director's reasonable expenses to obtain court-ordered
22 indemnification or advance for expenses.

1

2 **17-16-855. Determination and authorization of**
3 **indemnification.**

4

5 (a) A corporation may not indemnify a director under
6 W.S. 17-16-851 unless authorized ~~in the~~ for a specific case
7 proceeding after a determination has been made that
8 indemnification of the director is permissible ~~in the~~
9 ~~circumstances~~ because he has met the standard of conduct set
10 forth in W.S. 17-16-851.

11

12 (b) The determination shall be made:

13

14 (i) If there are two (2) or more disinterested
15 directors, by the board of directors by majority vote of a
16 ~~quorum consisting of directors not at the time parties to~~
17 ~~the proceeding~~ all the disinterested directors (a majority
18 of whom shall for such purpose constitute a quorum), or by a
19 majority of the members of a committee of two (2) or more
20 disinterested directors appointed by such a vote;

21

22 (iii) By special legal counsel:

1

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22

(A) ~~Selected by the board of directors or its committee~~ in the manner prescribed in paragraph (i) ~~or (ii)~~ of this subsection; or

(B) If ~~a quorum of the board of~~ there are fewer than two (2) disinterested directors, ~~cannot be obtained under paragraph (i) of this subsection and a committee cannot be designated under paragraph (ii) of this subsection,~~ selected by ~~majority vote of the full board of~~ directors ~~including~~ (in which selection directors who are ~~parties~~ do not qualify as disinterested directors may participate); or

(iv) By the shareholders, but shares owned by or voted under the control of ~~directors~~ a director who are at the time ~~parties to the proceeding~~ does not qualify as a disinterested director may not be voted on the determination.

(c) Authorization of indemnification ~~and evaluation as to reasonableness of expenses~~ shall be made in the same

1 manner as the determination that indemnification is
2 permissible, except that if ~~the determination is made by~~
3 ~~special legal counsel~~ there are fewer than two (2)
4 disinterested directors, authorization of indemnification
5 ~~and evaluation as to reasonableness of expenses~~ shall be
6 made by those entitled under paragraph (b)(iii) of this
7 section to select special legal counsel.

8

9 **17-16-856. Officers.**

10

11 (a) ~~Unless a corporation's articles of incorporation~~
12 ~~provide otherwise: (i) A current or former officer of the~~
13 ~~corporation who is not a director is entitled to mandatory~~
14 ~~indemnification under W.S. 17-16-852, and is entitled to~~
15 ~~apply for court ordered indemnification under W.S.~~
16 ~~17-16-854, in each case to the same extent as a director;~~
17 ~~(ii) The A corporation may indemnify and advance expenses~~
18 ~~under this subarticle to a current or former an officer,~~
19 ~~employee or agent of the corporation who is not a director~~
20 ~~to the same extent as to a director; and (iii) A~~
21 ~~corporation may also indemnify and advance expenses to a~~

1 ~~current or former officer, employee or agent who is a party~~
2 ~~to a proceeding because he is an officer of the corporation:~~

3

4 (i) To the same extent as a director; and

5

6 (ii) If he is an officer but not a director, to
7 ~~the such further extent, consistent with public policy, that~~
8 as may be provided by ~~its~~ the articles of incorporation, the
9 bylaws, ~~general or specific action a resolution of its the~~
10 board of directors or contract, except for:

11

12 (A) Liability in connection with a
13 proceeding by or in the right of the corporation other than
14 for reasonable expenses incurred in connection with the
15 proceeding; or

16

17 (B) Liability arising out of conduct that
18 constitutes:

19

20 (I) Receipt by him of a financial
21 benefit to which he is not entitled;

22

1 (II) An intentional infliction of harm
2 on the corporation or the shareholders; or

3
4 (III) An intentional violation of
5 criminal law.

6
7 (b) The provisions of subsection (a)(ii) of this
8 section shall apply to an officer who is also a director if
9 the basis on which he is made a party to the proceeding is
10 an act or omission solely as an officer.

11
12 (c) An officer of a corporation who is not a director
13 is entitled to mandatory indemnification under W.S.
14 17-16-852, and may apply to a court under W.S. 17-16-854 for
15 indemnification or an advance for expenses, in each case to
16 the same extent to which a director may be entitled to
17 indemnification or advance for expenses under those
18 provisions.

19
20 **17-16-857. Insurance.** A corporation may purchase and
21 maintain insurance on behalf of an individual who is ~~or was~~
22 a director, or officer, ~~employee or agent~~ of the

1 corporation, or who, while a director, or officer, ~~employee~~
2 ~~or agent~~ of the corporation, ~~is or was serving~~ serves at the
3 corporation's request of the corporation as a director,
4 officer, partner, trustee, employee or agent of another
5 ~~foreign or domestic~~ or foreign corporation, partnership,
6 joint venture, trust, employee benefit plan, or other
7 ~~enterprise entity~~, against liability asserted against or
8 incurred by him in that capacity or arising from his status
9 as a director, or officer, ~~employee or agent~~, whether or not
10 the corporation would have power to indemnify or advance
11 expenses to him against the same liability under W.S.
12 ~~17-16-851 or 17-16-852~~ this subarticle.

13

14 **17-16-858. Variation by corporate action; application**
15 **of subarticle.**

16

17 (a) ~~The indemnification and advancement of expenses~~
18 ~~authorized by this section [subarticle] shall not be~~
19 ~~exclusive of any other rights to which any director,~~
20 ~~officer, employee or agent may be entitled under any bylaw,~~
21 ~~agreement, vote of shareholders or disinterested directors~~
22 ~~or otherwise, both as to any action in his official capacity~~

1 ~~and as to action in another capacity while holding the~~
2 ~~office, and continues as to a person who has ceased to be a~~
3 ~~director, officer, employee or agent and shall inure to the~~
4 ~~benefit of the heirs, executors and administrators of that~~
5 ~~person. A corporation may, by a provision in its articles of~~
6 ~~incorporation or bylaws or in a resolution adopted or a~~
7 ~~contract approved by its board of directors or shareholders,~~
8 ~~obligate itself in advance of the act or omission giving~~
9 ~~rise to a proceeding to provide indemnification in~~
10 ~~accordance with W.S. 17-16-851 or advance funds to pay for~~
11 ~~or reimburse expenses in accordance with W.S. 17-16-853.~~
12 Any such obligatory provision shall be deemed to satisfy the
13 requirements for authorization referred to in W.S.
14 17-16-853(c) and 17-16-855(c). Any provision that obligates
15 the corporation to provide indemnification to the fullest
16 extent permitted by law shall be deemed to obligate the
17 corporation to advance funds to pay for or reimburse
18 expenses in accordance with W.S. 17-16-853 to the fullest
19 extent permitted by law, unless the provision specifically
20 provides otherwise.
21

1 ~~(b) If articles of incorporation limit indemnification~~
2 ~~or advance for expenses, indemnification and advance for~~
3 ~~expenses are valid only to the extent consistent with the~~
4 ~~articles. Any provision pursuant to subsection (a) of this~~
5 ~~section shall not obligate the corporation to indemnify or~~
6 ~~advance expenses to a director of a predecessor of the~~
7 ~~corporation, pertaining to conduct with respect to the~~
8 ~~predecessor, unless otherwise specifically provided. Any~~
9 ~~provision for indemnification or advance for expenses in the~~
10 ~~articles of incorporation, bylaws, or a resolution of the~~
11 ~~board of directors or shareholders of a predecessor of the~~
12 ~~corporation in a merger or in a contract to which the~~
13 ~~predecessor is a party, existing at the time the merger~~
14 ~~takes effect, shall be governed by W.S. 17-16-1106(a)(iii).~~

15

16 (c) A corporation may, by provision in its articles of
17 incorporation, limit any of the rights to indemnification or
18 advance for expenses created by or pursuant to this
19 subarticle.

20

21 ~~(e)-(d)~~ This subarticle does not limit a corporation's
22 power to pay or reimburse expenses incurred by a director or

1 officer in connection with his appearance as a witness in a
2 proceeding at a time when he ~~has~~ is not ~~been made a named~~
3 ~~defendant or respondent to the proceeding a party.~~

4

5 (e) This subarticle does not limit a corporation's
6 power to indemnify, advance expenses to or provide or
7 maintain insurance on behalf of an employee or agent.

8

9 **17-16-1431. Procedure for judicial dissolution.**

10

11 (d) Within ten (10) days of the commencement of a
12 proceeding under W.S. 17-16-1430(a)(ii) to dissolve a
13 corporation that has no shares listed on a national
14 securities exchange or regularly traded in a market
15 maintained by one (1) or more members of a national or
16 affiliated securities association, the corporation must send
17 to all shareholders, other than the petitioner, a notice
18 stating that the shareholders are entitled to avoid the
19 dissolution of the corporation by electing to purchase the
20 petitioner's shares under W.S. 17-16-1434 and accompanied by
21 a copy of W.S. 17-16-1434.

22

1 **Section** 3. W.S. 17-16-740 (a) through (e),
2 17-16-801(c), 17-16-834, 17-16-853 (a) (iii) and
3 17-16-855(b) (ii) are repealed.

4

5 **Section 4.** This act is effective July 1, 1996.

6

7 (END)

Wyoming business Corporation
Act-amends.

96LSO-0034.L2

FISCAL NOTE

No fiscal or personnel impact.

HB 30

FIFTY-THIRD WYOMING STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
BUDGET SESSION
1996

SEQUENCE : 4018

FEBRUARY 20 1996

BILL : HB0030
AMENDMENT:

10:52 AM

MOVED BY : HANES
TITLE :

SECONDED BY:

ACTION : TO INTRODUCE

ANDERSON.....	A	MCMURTREY.....	A
BADGETT.....	A	MOCKLER.....	A
BAKER.....	N	MOORE.....	N
BARKER.....	A	MORROW.....	A
BEBOUT.....	A	NAGEL.....	A
BENSEL.....	A	NELSON.....	A
BETTS.....	A	PARADY.....	N
BOSWELL.....	N	PARK.....	A
BOWRON.....	N	PASENEAUX.....	N
BURNS.....	A	PERKINS.....	A
CASE.....	A	PHILP.....	A
DEVIN.....	A	REED.....	A
DEWITT.....	A	ROSE.....	A
DIERCKS.....	A	ROSS.....	A
ERB.....	N	RYCKMAN.....	A
EYRE.....	A	SELBY.....	A
GAMS.....	A	SESSIONS.....	A
GARCIA.....	A	SHIPPY.....	A
HAGEMAN.....	A	SHREVE.....	A
HANES.....	A	SIMONS.....	A
HARRISON.....	A	STAFFORD.....	A
HINCHEY.....	A	STARK.....	A
HINES.....	N	TAYLOR-HORTON..	A
HUCKFELDT.....	A	TEMPEST.....	A
JOHNSON.....	A	TIPTON.....	A
LAW.....	A	TOMASSI.....	N
LUTHIE.....	A	WASSERBURGER...	A
MACMILLAN.....	A	WILFORD.....	A
MASSIE.....	A	ZANETTI.....	N
MCCONIGLEY.....	A	MR SPEAKER.....	A

VOTE REQ: 2/3 OF MEMBERSHIP REQUIRED

AYES : 50
NOES : 10
EXCUSED : 0
ABSENT : 0
CONFLICT: 0

A=AYE N=NO E=EXCUSED
X=ABSENT C=CONFLICT