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**SENATE BILL 5005**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Pedersen, Padden, and Mullet; by request of Washington State Bar Association

AN ACT Relating to business corporations; amending RCW 23B.01.400, 23B.01.410, 23B.01.420, and 23B.08.210; and reenacting and amending RCW 23B.07.040.

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

**Sec.**  RCW 23B.01.400 and 2020 c 57 s 39 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

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

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

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

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

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

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

(7) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with RCW 23B.01.410, by electronic transmission.

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

(9) "Document" means:

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

(b) An electronic record.

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

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

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

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

(14) "Electronic transmission" or "electronically transmitted" means internet transmission, telephonic transmission, electronic mail transmission, transmission of a telegram, cablegram, or datagram, the use of, or participation in, one or more electronic networks or databases including one or more distributed electronic networks or databases, or any other form or process of communication, not directly involving the physical transfer of paper or another tangible medium, which:

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) "Includes" denotes a partial definition.

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

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

(26) "Means" denotes an exhaustive definition.

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

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

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

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

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

(32) "Qualified director" means (a) with respect to a director's conflicting interest transaction as defined in RCW 23B.08.700, any director who does not have either (i) a conflicting interest respecting the transaction, or (ii) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction; (b) with respect to RCW 23B.08.735, a qualified director under (a) of this subsection if the business opportunity were a director's conflicting interest transaction; and (c) with respect to RCW 23B.02.020((~~(5)(k)~~)) (2)(g), a director who is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply, or (ii) who has a familial, financial, professional, or employment relationship with another officer to whom the limitation or elimination would apply, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the limitation or elimination.

(33) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 23B.01.410 and 2020 c 57 s 40 are each amended to read as follows:

(1) A notice under this title must be in writing, except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws. A notice includes material that this title or the corporation's articles of incorporation or bylaws requires to accompany the notice. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under this title must be in English.

(2) A notice or other communication may be given by any method of delivery, except that electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or other communication may be given by means of a broad nonexclusionary distribution to the public, which may include a newspaper of general circulation in the area where published; radio, television, or other form of public broadcast communication; or other methods of distribution that the corporation has previously identified to its shareholders.

(3) A notice or other communication to a domestic or foreign corporation registered to do business in this state may be delivered to the corporation's registered agent or to the secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its foreign registration statement.

(4) ((~~A notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (10) of this section; except that if the articles of incorporation or bylaws authorize or require delivery of notices of meetings of directors by electronic transmission, then no consent to delivery of such notices by electronic transmission is required.~~

~~(5) Any consent under subsection (4) of this section may be revoked by the person who consented by written notice to the person to whom the consent was delivered. Any such consent is deemed revoked if:~~

~~(a) The corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent; and~~

~~(b) Such~~)) Except to the extent otherwise provided in subsection (5) of this section, a notice or other communication may be given by electronic mail or other electronic transmission, subject to subsection (10) of this section if applicable. If a corporation previously gave notices under this title to a shareholder only by mail or other methods of delivery not involving electronic transmission, the corporation must notify the shareholder that it intends to give notices under this title to the shareholder by electronic transmission before the corporation first commences giving notice under this title to the shareholder by electronic transmission. The inadvertent failure to give this notice will not invalidate any meeting or other corporate action.

(5) A notice may not be given by electronic mail or other electronic transmission:

(a) To a shareholder after the shareholder notifies the corporation in writing of an objection to receiving notice by electronic mail or other electronic transmission; or

(b) To a shareholder or director after the corporation is unable to deliver two consecutive notices by electronic mail or other electronic transmission to the electronic mail address, network, or processing system for the shareholder or director, and the inability becomes known to the secretary or to the transfer agent, or other person responsible for the giving of notice or other communications. The inadvertent failure to ((~~treat such~~)) discover this inability ((~~as a revocation~~)) will not invalidate any meeting or other corporate action.

(6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(a) If by electronic mail, it is directed to the recipient's electronic mail address, including, in the case of a shareholder, to the shareholder's electronic mail address as it appears in the corporation's records;

(b) If by posting on an electronic network, upon the later of ((~~such posting and the~~)):

(i) The posting; and

(ii) The delivery of separate notice to the recipient of such specific posting together with comprehensible instructions regarding how to obtain access to the posting on the electronic network; and

(c) If by any other electronic transmission, it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission and it is in a form capable of being processed by that system.

(7) Receipt of an electronic acknowledgment from an information processing system described in subsection (6)(c) of this section establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(8) An electronic transmission is received under this section even if no person is aware of its receipt.

(9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(a) If in a physical form, the earliest of when it is actually received, or when it is left at:

(i) A shareholder's address as it appears in the corporation's records;

(ii) A director's residence or usual place of business; or

(iii) The corporation's principal office;

(b) If mailed to a shareholder, upon deposit in the United States mail with first-class postage prepaid and correctly addressed to the shareholder's mailing address as it appears in the corporation's records;

(c) If mailed to a recipient other than a shareholder, the earliest of when it is actually received, or:

(i) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) Five days after it is deposited in the United States mail with first-class postage prepaid and correctly addressed to the recipient;

(d) If sent by air courier, when dispatched and correctly addressed to a shareholder's mailing address as it appears in the corporation's records;

(e) If ((~~an~~)) sent by electronic mail or any other electronic transmission, when it is received as provided in subsection (6) of this section; and

(f) If oral, when communicated.

(10) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) The electronic transmission is otherwise retrievable in perceivable form; and

(b) The sender and the recipient have consented in writing to the use of such form of electronic transmission.

(11) Notwithstanding anything to the contrary in this section or any other section of this title, ((~~if~~)) when this title requires that a notice be given to shareholders ((~~be accompanied by certain material, a public company may satisfy such a requirement, whether or not a shareholder has consented to receive electronically transmitted notice, by (a) posting the material~~)), a public company may satisfy this requirement, by: (a) Posting the notice, and any material that this title or the corporation's articles of incorporation or bylaws requires to accompany the notice, on an electronic network (either separate from, or in combination with or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law) at or prior to the time that the notice under (b) of this subsection is delivered to the public company's shareholders entitled to receive the notice, and (b) ((~~delivering~~)) mailing to the public company's shareholders entitled to receive the notice a separate ((~~record~~)) notice of the posting ((~~(which record may accompany, or be contained in, the notice)~~)), together with comprehensible instructions regarding how to obtain access to the posting on the electronic network. In such a case, the notice and any accompanying material posted on the electronic network is deemed to have been delivered to the public company's shareholders at the time the ((~~notice to the shareholders is effective under~~)) separate notice required under (b) of this subsection is effective as provided in subsection (9) of this section. A public company that elects pursuant to this ((~~section~~)) subsection to post on an electronic network any notice or any material ((~~required by this title~~)) that this title or the corporation's articles of incorporation or bylaws requires to accompany a notice to shareholders is required, at its expense, to provide a copy of the notice and the material in a tangible medium (alone or in combination or as part of any other materials the public company has posted on the electronic network in compliance with federal law) to any shareholder entitled to such a notice who so requests.

(12) If this title prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of this title, those requirements govern. The articles of incorporation or bylaws may ((~~authorize or~~)) require delivery of notices of meetings of directors by electronic mail or other electronic transmission.

(13) In the event that any provisions of this title are deemed to modify, limit, or supersede the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., the provisions of this title will control to the maximum extent permitted by section 102(a)(2) of that federal act.

**Sec.**  RCW 23B.01.420 and 2020 c 57 s 41 are each amended to read as follows:

(1) A corporation has delivered written notice or any other report or statement to all shareholders of record who share a common address if all of the following requirements are met:

(a) The corporation delivers one copy of the notice, report, or statement to the common address;

(b) The corporation addresses the notice, report, or statement to the shareholders who share that address either as a group or to each of the shareholders individually or in any other manner to which each of those shareholders has consented; and

(c) Each of those shareholders consents to delivery of a single copy of such notice, report, or statement to the shareholders' common address((~~, and the corporation notifies each shareholder of the duration of that shareholder's consent, and explains the manner by which the shareholder can revoke the consent~~)).

(2) For purposes of this section, "address" means a street address, a post office box number, a facsimile telephone number, an address, location, or system for electronic transmissions, an ((~~email~~)) electronic mail address, or another similar destination to which ((~~records~~)) documents are delivered.

(3) ((~~If a shareholder delivers written notice of revocation to consent to delivery of a single copy of any notice, report, or statement to a common address, or delivers written notice to the corporation that the shareholder wishes to receive an individual copy of any notice, report, or statement, the corporation shall begin sending individual copies to that~~)) Any consent described in subsection (1) of this section is revocable by any shareholder who delivers written notice of revocation to the corporation. If the written notice of revocation is delivered, the corporation must begin providing individual notices, reports, or statements to the revoking shareholder within thirty days after delivery of the written notice of revocation.

(4) ((~~Prior to the delivery of notice by electronic transmission to a common address, each shareholder consenting to receive notice under this section must also have consented to the receipt of notices by electronic transmission as provided in RCW 23B.01.410.~~)) Any shareholder who fails to object by written notice to the corporation, within 60 days of written notice by the corporation of its intention to deliver single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (1) of this section, will be deemed to have consented to receiving single copies at the common address, on condition that the notice of intention explains that consent may be revoked and the method for revoking consent.

**Sec.**  RCW 23B.07.040 and 2020 c 194 s 15 and 2020 c 57 s 50 are each reenacted and amended to read as follows:

(1)(a) Corporate action required or permitted by this title to be approved by a shareholder vote at a meeting may be approved without a meeting or a vote if either:

(i) The corporate action is approved by all shareholders entitled to vote on the corporate action; or

(ii) The corporate action is approved by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes that would be necessary to approve such corporate action at a meeting at which all shares entitled to vote on the corporate action were present and voted, and at the time the corporate action is approved the corporation is authorized to approve such corporate action under this subsection (1)(a)(ii) by a general or limited authorization contained in its articles of incorporation, except that if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to RCW 23B.07.280, shareholders may not elect directors by less than unanimous written consent.

(b) Corporate action may be approved by shareholders without a meeting or a vote if the approval is evidenced by one or more written consents:

(i) Executed by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes necessary under (a)(i) or (ii) of this subsection;

(ii) Indicating the date of execution, which date must be on or after the applicable record date determined in accordance with subsection (2) of this section;

(iii) Describing the corporate action being approved; and

(iv) Delivered to the corporation for filing by the corporation with the minutes or corporate records in accordance with subsection (4) of this section. When delivered to each shareholder for execution, the consent must include or be accompanied by the same material that would have been required by this title to be delivered to shareholders in or accompanying a notice of meeting at which the proposed corporate action would have been submitted for shareholder approval. A shareholder may withdraw an executed shareholder consent by delivering a written notice of withdrawal to the corporation prior to the time when shareholder consents sufficient to approve the corporate action have been delivered to the corporation.

(c) A written consent in the form of an electronic transmission ((~~must contain or be~~)) will be deemed to have been executed by a shareholder if it indicates that shareholder's present intent to approve the corporate action and contains or is accompanied by information from which the corporation can determine that the electronic transmission was transmitted by the shareholder and the date on which the shareholder transmitted the electronic transmission.

(2) The record date for determining shareholders entitled to approve a corporate action without a meeting may be fixed under RCW 23B.07.030 or 23B.07.070, but if not so fixed shall be the date of execution indicated on the earliest dated shareholder consent executed under subsection (1) of this section, even though such shareholder consent may not have been delivered to the corporation on that date.

(3)(a) Notice that shareholder consents are being sought under subsection (1)(a) of this section must be given, by the corporation or by another person soliciting such consents, on or promptly after the record date, to all shareholders entitled to vote on the record date who have not yet executed the shareholder consent and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date. Notice given under this subsection (3)(a) must include or be accompanied by the same information required to be included in or to accompany the shareholder consent under subsection (1)(b)(iii) and (iv) of this section.

(b) Notice that sufficient written consents have been executed to approve the proposed corporate action under either of subsection (1)(a)(i) or (ii) of this section must be given by the corporation, promptly after delivery to the corporation of written consents sufficient to approve the corporate action in accordance with subsection (4) of this section, to all shareholders entitled to vote on the record date and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date.

(4) Unless the consent executed by shareholders specifies a later time as the time at which the approval of the corporate action is to be effective, shareholder approval obtained under this section is effective when:

(a) Executed shareholder consents sufficient to approve the proposed corporate action have been delivered to the corporation in any manner authorized by RCW 23B.01.410; and

(b) Any period of advance notice required by the corporation's articles of incorporation to be given to any nonconsenting shareholders has been satisfied. No written consent is effective to approve a proposed corporate action unless, within sixty days after the earliest date on which a consent delivered to the corporation as required by this section was executed, written consents executed by a sufficient number of shareholders to approve the corporate action are delivered to the corporation.

(5) Approval of corporate action by written consents under this section has the effect of a meeting vote and may be described as such in any document, except that, if the corporate action requires the filing of a certificate under any other section of this title, the certificate so filed shall state, in lieu of any statement required by that section concerning any vote of shareholders, that shareholder approval has been obtained in accordance with this section and that notice to any nonconsenting shareholders has been given to the extent required by this section.

(6) The notice requirements in subsection (3)(a) and (b) of this section will not delay the effectiveness of approval of corporate action by written consents, and failure to comply with those notice requirements will not invalidate approval of corporate action by written consents; except that this subsection is not intended to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice in accordance with those subsections.

**Sec.**  RCW 23B.08.210 and 2020 c 57 s 59 are each amended to read as follows:

(1) Unless the articles of incorporation or bylaws provide otherwise, corporate action required or permitted by this title to be approved at a board of directors' meeting may be approved without a meeting if the corporate action is approved by all members of the board. The approval of the corporate action must be evidenced by one or more written consents describing the corporate action being approved, executed by each director either before or after the corporate action becomes effective, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A written consent in the form of an electronic transmission ((~~must contain or be~~)) will be deemed to have been executed by a director if it indicates the director's present intent to approve the corporate action and contains or is accompanied by information from which the corporation can determine that the electronic transmission was transmitted by the director and the date on which the director transmitted the electronic transmission.

(3) Corporate action is approved under this section when the last director executes the consent.

(4) A consent under this section has the effect of a meeting vote and may be described as such in any document.

**--- END ---**