

# SENATE BILL REPORT

## SB 5005

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As Passed Senate, February 3, 2021

**Title:** An act relating to business corporations.

**Brief Description:** Concerning business corporations.

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

**Brief History:**

**Committee Activity:** Law & Justice: 1/12/21, 1/14/21 [DP].

**Floor Activity:**

Passed Senate: 2/3/21, 49-0.

**Brief Summary of Bill**

- Removes the requirement for consent to provide notices by electronic transmission to shareholders and directors.
- Creates the right for a shareholder to object to electronic transmission of notices.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Darneille, Holy, Kuderer, Salomon and Wagoner.

**Staff:** Tim Ford (786-7423)

**Background:** The Washington Business Corporations Act (WBCA) provides requirements for creating, organizing, and operating corporations and the relationship between shareholders, directors, and officers of the corporation. Many of the provisions of the

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

WBCA provide default rules that may be altered in the corporation's articles of incorporation or bylaws. The articles of incorporation and the bylaws are the governing documents for the corporation and set forth rules for numerous organizational and operational issues. The WBCA is modeled largely after the American Bar Association's revised Model Business Corporations Act (MBCA).

The Corporate Act Revision Committee (CARC) of the Business Law section of the Washington State Bar Association periodically reviews the WBCA and makes recommendations to keep it up to date with developments in the law and changes made to the MBCA and to corporate law in other states. CARC recommends amendments to the WBCA to change provisions governing notices and other communications given by Washington corporations to their directors and shareholders—and by directors or shareholders to the corporation. CARC is also proposing to amend a related housekeeping provision that applies to notices and other communications a Washington corporation gives to shareholders sharing a common address.

Notice by Electronic Transmission. The WBCA, as originally adopted, required notice be provided using a paper copy. The methods of delivery permitted were mail; private carrier or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment that transmits a facsimile of the notice. In 2002, the WBCA was amended in part to permit notice by electronic transmission in recognition of the growing use of email in business. However, the 2002 amendment is restrictive in that notice by electronic transmission is only valid if the director or shareholder consents to receive notices by email. Consent must be in the form of a record which designates the email or other address, location, or system to which notices could be electronically transmitted. Consent may be revoked by written notice by the person who consents, or consent is deemed revoked where the corporation is unable to deliver two consecutive notices by electronic transmission and that inability becomes known to the corporation. As an exception, a corporation may give notices by email or other electronic transmission to a director without obtaining a director's consent if the articles of incorporation or bylaws authorize or require notices or other communications to be delivered by email.

**Summary of Bill:** Corporations may give notices and other communications to shareholders and directors by email and other forms of electronic transmission without obtaining their consent. If a corporation previously gave notices to a shareholder only by mail or other methods of delivery not involving electronic transmission, the corporation must notify the shareholder it intends to give notices by electronic transmission before starting them.

A notice may not be given by email or other electronic transmission:

- to a shareholder after the shareholder notifies the corporation in writing of an objection to receiving notice by email or other electronic transmission; or
- to a shareholder or director after the corporation is unable to deliver two consecutive notices by email or other electronic transmission to the email address, network, or

processing system, and the inability becomes known to the corporation.

Technical amendments are made to the definitions of electronic record and electronic transmission.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**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:** PRO: The Washington Business Corporation Act is an enabling statute that is not meant to dictate a lot of rules, but to enable shareholders to set up corporations as they want. This change seems to be consistent with the trend in law and the world toward recognizing that most people are better served by electronic notice rather than paper. The corporate act revisions committee of the bar association are volunteers and do a great job of recommending changes to update the corporate statute.

The bill changes the law for corporate electronic notices from an opt in to an opt out system for its members. Corporations no longer are required to obtain consent. This follows the lead of the state of Delaware where 80 percent of all companies are incorporated. Many companies are communicating electronically already, but may be unaware that the law requires consent. Those companies who understand they need consent are using paper because it is difficult to track down shareholders and get consent. Electronic communications are happening now and this change makes sense. Very few shareholders opt in for electronic communications.

OTHER: How will this affect condo associations?

**Persons Testifying:** PRO: Senator Jamie Pedersen, Prime Sponsor; Michael Hutchings, Washington State Bar Association, Corporate Act Revision Committee.

OTHER: Raelene Schifano, citizen.

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