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HOUSE BILL 2321

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State of Washington

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By Representatives Esser, Lantz, Constantine, Hurst, Ruderman and D. Sommers

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1 AN ACT Relating to the transmission of proxy appointments by  
2 electronic or other nonwritten means as applied to the Washington  
3 business corporation act; and amending RCW 23B.01.400, 23B.07.220, and  
4 23B.07.240.

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

6 **Sec. 1.** RCW 23B.01.400 and 1996 c 155 s 4 are each amended to read  
7 as follows:

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

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

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

14 (3) "Conspicuous" means so written that a reasonable person against  
15 whom the writing is to operate should have noticed it. For example,  
16 printing in italics or boldface or contrasting color, or typing in  
17 capitals or underlined, is conspicuous.

1 (4) "Corporation" or "domestic corporation" means a corporation for  
2 profit, which is not a foreign corporation, incorporated under or  
3 subject to the provisions of this title.

4 (5) "Deliver" includes (a) mailing and (b) for purposes of  
5 delivering a demand, consent, or waiver to the corporation or one of  
6 its officers, transmission by facsimile equipment.

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

15 (7) "Effective date of notice" has the meaning provided in RCW  
16 23B.01.410.

17 (8) "Electronic transmission" or "electronically transmitted" means  
18 any process of electronic communication not directly involving the  
19 physical transfer of paper that is suitable for the retention,  
20 retrieval, and reproduction of the transmitted information by the  
21 recipient.

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

24 ((+9)) (10) "Entity" includes a corporation and foreign  
25 corporation, not-for-profit corporation, profit and not-for-profit  
26 unincorporated association, business trust, estate, partnership, trust,  
27 and two or more persons having a joint or common economic interest, and  
28 the state, United States, and a foreign government.

29 ((+10)) (11) "Foreign corporation" means a corporation for profit  
30 incorporated under a law other than the law of this state.

31 ((+11)) (12) "Foreign limited partnership" means a partnership  
32 formed under laws other than of this state and having as partners one  
33 or more general partners and one or more limited partners.

34 ((+12)) (13) "Governmental subdivision" includes authority,  
35 county, district, and municipality.

36 ((+13)) (14) "Includes" denotes a partial definition.

37 ((+14)) (15) "Individual" includes the estate of an incompetent or  
38 deceased individual.

1       (~~(15)~~) (16) "Limited partnership" or "domestic limited  
2 partnership" means a partnership formed by two or more persons under  
3 the laws of this state and having one or more general partners and one  
4 or more limited partners.

5       (~~(16)~~) (17) "Means" denotes an exhaustive definition.

6       (~~(17)~~) (18) "Notice" has the meaning provided in RCW 23B.01.410.

7       (~~(18)~~) (19) "Person" includes an individual and an entity.

8       (~~(19)~~) (20) "Principal office" means the office, in or out of  
9 this state, so designated in the annual report where the principal  
10 executive offices of a domestic or foreign corporation are located.

11       (~~(20)~~) (21) "Proceeding" includes civil suit and criminal,  
12 administrative, and investigatory action.

13       (~~(21)~~) (22) "Public company" means a corporation that has a class  
14 of shares registered with the federal securities and exchange  
15 commission pursuant to section 12 or 15 of the securities exchange act  
16 of 1934, or section 8 of the investment company act of 1940, or any  
17 successor statute.

18       (~~(22)~~) (23) "Record date" means the date established under  
19 chapter 23B.07 RCW on which a corporation determines the identity of  
20 its shareholders and their shareholdings for purposes of this title.  
21 The determinations shall be made as of the close of business on the  
22 record date unless another time for doing so is specified when the  
23 record date is fixed.

24       (~~(23)~~) (24) "Secretary" means the corporate officer to whom the  
25 board of directors has delegated responsibility under RCW 23B.08.400(3)  
26 for custody of the minutes of the meetings of the board of directors  
27 and of the shareholders and for authenticating records of the  
28 corporation.

29       (~~(24)~~) (25) "Shares" means the units into which the proprietary  
30 interests in a corporation are divided.

31       (~~(25)~~) (26) "Shareholder" means the person in whose name shares  
32 are registered in the records of a corporation or the beneficial owner  
33 of shares to the extent of the rights granted by a nominee certificate  
34 on file with a corporation.

35       (~~(26)~~) (27) "Sign" or "signature" includes any manual, facsimile,  
36 conformed, or electronic signature.

37       (28) "State," when referring to a part of the United States,  
38 includes a state and commonwealth, and their agencies and governmental

1 subdivisions, and a territory and insular possession, and their  
2 agencies and governmental subdivisions, of the United States.

3 ~~((27))~~ (29) "Subscriber" means a person who subscribes for shares  
4 in a corporation, whether before or after incorporation.

5 ~~((28))~~ (30) "United States" includes a district, authority,  
6 bureau, commission, department, and any other agency of the United  
7 States.

8 ~~((29))~~ (31) "Voting group" means all shares of one or more  
9 classes or series that under the articles of incorporation or this  
10 title are entitled to vote and be counted together collectively on a  
11 matter at a meeting of shareholders. All shares entitled by the  
12 articles of incorporation or this title to vote generally on the matter  
13 are for that purpose a single voting group.

14 **Sec. 2.** RCW 23B.07.220 and 1989 c 165 s 70 are each amended to  
15 read as follows:

16 (1) A shareholder may vote the shareholder's shares in person or by  
17 proxy.

18 (2) A shareholder or the shareholder's agent or attorney-in-fact  
19 may appoint a proxy to vote or otherwise act for the shareholder by  
20 ((signing an appointment form, either personally or by the  
21 shareholder's attorney in fact or agent)):

22 (a) Executing a writing authorizing another person or persons to  
23 act for the shareholder as proxy. Execution may be accomplished by the  
24 shareholder or the shareholder's authorized officer, director,  
25 employee, or agent signing the writing or causing his or her signature  
26 to be affixed to the writing by any reasonable means including, but not  
27 limited to, by facsimile signature; or

28 (b) Authorizing another person or persons to act for the  
29 shareholder as proxy by transmitting or authorizing the transmission of  
30 an electronic transmission to the person who will be the holder of the  
31 proxy or to a proxy solicitation firm, proxy support service  
32 organization, or like agent duly authorized by the person who will be  
33 the holder of the proxy to receive the transmission, provided that the  
34 electronic transmission must either set forth or be submitted with  
35 information from which it can be determined that the electronic  
36 transmission was authorized by the shareholder. If it is determined  
37 that the electronic transmission is valid, the inspectors of election  
38 or, if there are no inspectors, any officer or agent of the corporation

1 making that determination on behalf of the corporation shall specify  
2 the information upon which they relied. The corporation shall require  
3 the holders of proxies received by electronic transmission to provide  
4 to the corporation copies of the electronic transmission and the  
5 corporation shall retain copies of the electronic transmission for a  
6 reasonable period of time after the election provided that they are  
7 retained for at least sixty days.

8 (3) An appointment of a proxy is effective when a signed  
9 appointment form or telegram, cablegram, recorded telephone call,  
10 voicemail, or other electronic transmission of the appointment is  
11 received by the ((secretary or other)) inspectors of election or the  
12 officer or agent of the corporation authorized to tabulate votes. An  
13 appointment is valid for eleven months unless a longer period is  
14 expressly provided in the appointment ((form)).

15 (4) An appointment of a proxy is revocable by the shareholder  
16 unless the appointment indicates that it is irrevocable and the  
17 appointment is coupled with an interest. Appointments coupled with an  
18 interest include the appointment of:

19 (a) A pledgee;

20 (b) A person who purchased or agreed to purchase the shares;

21 (c) A creditor of the corporation who extended it credit under  
22 terms requiring the appointment;

23 (d) An employee of the corporation whose employment contract  
24 requires the appointment; or

25 (e) A party to a voting agreement created under RCW 23B.07.310.

26 (5) The death or incapacity of the shareholder appointing a proxy  
27 does not affect the right of the corporation to accept the proxy's  
28 authority unless notice of the death or incapacity is received by the  
29 ((secretary or other)) officer or agent of the corporation authorized  
30 to tabulate votes before the proxy exercises the proxy's authority  
31 under the appointment.

32 (6) An appointment made irrevocable under subsection (4) of this  
33 section is revoked when the interest with which it is coupled is  
34 extinguished.

35 (7) A transferee for value of shares subject to an irrevocable  
36 appointment may revoke the appointment if the transferee did not know  
37 of its existence when the transferee acquired the shares and the  
38 existence of the irrevocable appointment was not noted conspicuously on

1 the certificate representing the shares or on the information statement  
2 for shares without certificates.

3 (8) Subject to RCW 23B.07.240 and to any express limitation on the  
4 proxy's authority (~~(appearing on the face of)~~) stated in the  
5 appointment form or electronic transmission, a corporation is entitled  
6 to accept the proxy's vote or other action as that of the shareholder  
7 making the appointment.

8 **Sec. 3.** RCW 23B.07.240 and 1989 c 165 s 72 are each amended to  
9 read as follows:

10 (1) If the name signed on a vote, consent, waiver, or proxy  
11 appointment corresponds to the name of a shareholder, the corporation,  
12 if acting in good faith, is entitled to accept the vote, consent,  
13 waiver, or proxy appointment and give it effect as the act of the  
14 shareholder.

15 (2) If the name signed on a vote, consent, waiver, or proxy  
16 appointment does not correspond to the name of its shareholder, the  
17 corporation, if acting in good faith, is nevertheless entitled to  
18 accept the vote, consent, waiver, or proxy appointment and give it  
19 effect as the act of the shareholder if:

20 (a) The shareholder is an entity and the name signed purports to  
21 be that of an officer, partner, or agent of the entity;

22 (b) The name signed purports to be that of an administrator,  
23 executor, guardian, or conservator representing the shareholder and, if  
24 the corporation requests, evidence of fiduciary status acceptable to  
25 the corporation has been presented with respect to the vote, consent,  
26 waiver, or proxy appointment;

27 (c) The name signed purports to be that of a receiver or trustee  
28 in bankruptcy of the shareholder and, if the corporation requests,  
29 evidence of this status acceptable to the corporation has been  
30 presented with respect to the vote, consent, waiver, or proxy  
31 appointment;

32 (d) The name signed purports to be that of a pledgee, beneficial  
33 owner, or attorney-in-fact of the shareholder and, if the corporation  
34 requests, evidence acceptable to the corporation of the signatory's  
35 authority to sign for the shareholder has been presented with respect  
36 to the vote, consent, waiver, or proxy appointment; or

37 (e) Two or more persons are the shareholder as cotenants or  
38 fiduciaries and the name signed purports to be the name of at least one

1 of the coowners and the person signing appears to be acting on behalf  
2 of all the coowners.

3 (3) The corporation is entitled to reject a vote, consent, waiver,  
4 or proxy appointment if the secretary or other officer or agent  
5 authorized to tabulate votes, acting in good faith, has reasonable  
6 basis for doubt about the validity of the signature on it or about the  
7 signatory's authority to sign for the shareholder.

8 (4) The corporation and its officer or agent who accepts or rejects  
9 a vote, consent, waiver, or proxy appointment in good faith and in  
10 accordance with the standards of this section or RCW 23B.07.220(2) are  
11 not liable in damages to the shareholder for the consequences of the  
12 acceptance or rejection.

13 (5) Corporate action based on the acceptance or rejection of a  
14 vote, consent, waiver, or proxy appointment under this section, or RCW  
15 23B.07.220(2) is valid unless a court of competent jurisdiction  
16 determines otherwise.

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