

HOUSE BILL REPORT

SB 5005

As Reported by House Committee On:
Civil Rights & Judiciary

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:

Civil Rights & Judiciary: 3/10/21, 3/12/21 [DP].

Brief Summary of Bill

- Amends the Washington Business Corporations Act to address delivery of notices, consents, or other communications by electronic mail or other electronic transmissions.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 16 members: Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Davis, Entenman, Goodman, Kirby, Klippert, Orwall, Peterson, Thai, Valdez and Walen.

Staff: Edie Adams (786-7180).

Background:

The Washington Business Corporations Act (WBCA) provides procedures and requirements for the organization and operation of corporations and the relationship

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between shareholders, directors, and officers of the corporation. These include requirements governing notices and other communications given by a corporation to its directors and shareholders, or by directors and shareholders to the corporation. Notice includes material that the WBCA requires to accompany the notice.

A notice or other communication may be delivered by electronic transmission if consented to by the recipient, except that consent is not required for electronic transmission of notices of meetings of directors if the articles of incorporation or bylaws authorize notice to directors by electronic transmission. A person may revoke the consent by written notice to the person to whom the consent was delivered. Consent is deemed revoked if the corporation is unable to electronically transmit two consecutive notices and this inability becomes known to the secretary of the corporation or other person responsible for sending the notice.

A corporation may send a single copy of a notice or other record to an address shared by multiple shareholders. Each shareholder sharing the common address must consent to the single copy of the notice or other record. The single copy may be addressed to the shareholders as a group or to each shareholder individually. A shareholder may revoke consent to delivery of a single copy of notices and other records, and the corporation must send individual copies of notices or other records within 30 days of the shareholder's revocation. If the single copy of notice or other records is provided by electronic transmission, each shareholder consenting to shared notice must also consent to receipt of notice by electronic transmission.

Summary of Bill:

Notices and other communications under the WBCA may be sent by electronic mail or other electronic transmissions to directors and shareholders without the need for consent. A corporation that previously gave notices to a shareholder by mail or other means of delivery not involving electronic transmission must notify the shareholder that it intends to provide notice by electronic transmission before the corporation first starts giving notice to the shareholder by electronic transmission. A corporation may not provide notice by electronic transmission: (i) to a shareholder who has notified the corporation in writing of an objection to receiving notice by electronic transmission; or (ii) to a shareholder or director after the corporation is unable to deliver two consecutive notices and this inability becomes known to the corporation. Notice includes material that the corporation's articles of incorporation or bylaws require to accompany the notice.

Provisions governing providing a single copy of a notice or other record to an address shared by multiple shareholders are revised. The corporation may address the notice in any manner to which each of the shareholders has consented. Language governing revocation of consent to receive a single copy and consent to delivery of notice by electronic transmission is updated. A shareholder is deemed to consent to receiving delivery of single

copies of notices or records at a common address unless the shareholder delivers a written objection within 60 days of receiving notice from the corporation of its intention to deliver single copies of notices and other records to shareholders who share a common address.

With respect to provisions allowing corporate action to be approved by shareholders without a meeting if evidenced by written consent, written consent in the form of an electronic transmission is deemed to have been executed by a shareholder if it indicates the shareholder's present intent to approve the corporate action and contains information indicating it was transmitted by the shareholder.

The definitions of "electronic record" and "electronic transmission" are revised to clarify requirements regarding when a record is not retrievable in paper form by the recipient.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Corporate Act Revision Committee of the Washington State Bar Association reviews the WBCA every year to look for opportunities for improvement and to help keep Washington law in line with Delaware law so that Washington remains one of the best places to organize corporations. The bill establishes an opt-in, rather than an opt-out, approach to electronic notices. This change recognizes that people communicate electronically in today's world. This change needs to be made for a couple of practical reasons. First, many corporations are doing this anyway, not realizing that they are falling into a trap of not meeting the requirements of the statute. Second, some companies are not providing electronic notices because of the difficulties of obtaining consent. There is an important safeguard in the bill. When a corporation first changes to providing electronic notices, it must let shareholders know and give them the opportunity to object.

(Opposed) None.

Persons Testifying: Senator Pedersen, prime sponsor; and Michael Hutchings, Washington State Bar Association Corporate Act Revision Committee.

Persons Signed In To Testify But Not Testifying: None.