
HOUSE BILL 2321

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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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