

# HOUSE BILL REPORT

## HB 2301

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to authorizing electronic notice and other communications under the Washington business corporation act.

**Brief Description:** Authorizing electronic notice and other communications under the Washington business corporation act.

**Sponsors:** Representatives Lantz and Esser.

**Brief History:**

**Committee Activity:**

Judiciary: 1/15/02, 1/22/02 [DPS].

**Brief Summary of Substitute Bill**

- Authorizes the Secretary of State to adopt rules for the electronic filing of corporate documents.
- Authorizes filings, notices, consents and other forms of communication between corporations, shareholders and directors to be made by electronic transmission.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Hurst, Vice Chair; Carrell, Ranking Minority Member; Boldt, Dickerson, Esser, Jarrett, Lovick and Lysen.

**Staff:** Edie Adams (786-7180).

**Background:**

The Washington Business Corporations Act (WBCA) provides rules and requirements on the organization and operation of corporations and the relationship between shareholders, directors and officers of the corporation.

The WBCA requires that a number of documents of the corporation be filed with the Secretary of State. Examples of documents that must be filed include: articles of

incorporation; written consent, or resignation, of the corporation's registered agent; articles of amendment or restatement; articles of merger or share exchange; and articles of dissolution. The Secretary of State files a document by stamping or endorsing "Filed" on the original and document copy. The Secretary of State must then deliver the document copy to the corporation or provide a written explanation if it refuses to file a document.

There are many provisions of the WBCA that require notices, consents or other communications to be given between the corporation, shareholders and directors. For example, action may be taken by shareholders or directors without having a meeting under certain circumstances as long as the action is evidenced by written consent of the shareholders or directors. Shareholders and directors may waive specified notice requirements by written consent. In addition, shareholders may cause a special meeting to be held under certain circumstances if the required number of shareholders sign, date and deliver written demands for the meeting.

A corporation must maintain a registered office and registered agent in the state. A registered agent may be an individual, or a domestic or foreign corporation or not-for-profit corporation, whose business office is identical with the corporation's registered office.

The Corporate Act Revision Committee of the Washington Bar Association studied the potential use of electronic transmission of communications between corporations, shareholders and directors and recommends that electronic transmission of certain notices, consents and other communications should be allowed in addition to the traditional written format. In addition, the committee recommends the authorization of electronic filing with the Secretary of State and other changes with respect to registered offices and agents and proxy appointments.

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### **Summary of Substitute Bill:**

The WBCA is amended to authorize filings, notices, consents and other forms of communication between corporations, shareholders and directors to be made by electronic transmission. Various other amendments are made to provisions relating to registered offices and registered agents and to proxy appointments.

The Secretary of State may permit records to be filed through electronic transmission and may adopt rules to establish the circumstances and requirements of an electronic filing system. The Secretary of State may deliver a record of the filing, or a record of a refusal to file, by electronic transmission if the corporation designates an electronic transmission address, location or system and the Secretary of State elects to provide the record by electronic transmission.

Changes are made to provisions setting forth general requirements relating to various notices required under the WBCA. The requirement that notice be in writing is changed to a requirement that notice be provided in the form of a "record," which is defined as any information in a tangible medium or in an electronic transmission. Notice to a shareholder or director may be electronically transmitted if the shareholder or director consents to electronically transmitted notice and designates an address, location or system for delivery of the electronic transmission. Notice to a shareholder or director may include material that the WBCA requires to be included with the notice. Electronically transmitted notice may be provided by posting the notice on an electronic network and delivering a separate record of the posting and how to obtain access to the posting.

A shareholder or director may revoke consent to receive notice by electronic transmission by delivering a revocation to the corporation in the form of a record. In addition, the consent of a shareholder or director is 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.

Notice in a tangible medium by a corporation to a shareholder is effective when mailed with first-class postage or when dispatched by air courier. Notice in an electronic transmission is effective when it is transmitted to an electronic transmission address, location or system designated by the recipient or when posted to a network and a separate record of the posting has been delivered to the recipient.

References throughout the WBCA to "document" are replaced with references to "record." References to "written" and "signed" in various provisions relating to consents, demands and notices are removed and replaced with requirements that the consents, demands and notices be in the form of a "record" that is "executed." "Execute" is defined as follows: for written records, if the record is signed; for electronic transmissions, if it contains sufficient information to determine the sender's identity; and for records to be filed with SOS, if they comply with filing rules adopted by the Secretary of State. These notices, consents and demands are authorized to be electronically transmitted as long as the recipient has consented and designated an electronic transmission address, location or system.

The types of entities that may be a registered agent of a corporation are expanded to include a domestic or foreign limited liability company whose business office is identical with the corporation's registered office.

A shareholder's proxy appointment may be made by recorded telephone call or voice mail, in addition to by electronic transmission.

Changes are made to the definitions of "electronic transmission," "entity," and "deliver." Definitions are provided for "tangible medium," "writing" and "written."

**Substitute Bill Compared to Original Bill:**

The substitute bill makes a number of technical changes to correct drafting errors, omissions and inaccuracies.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The purpose of this bill is to recognize the dramatic changes in technology and how they affect business practices. This bill will help keep Washington on the leading edge. This will help both small, closely held corporations and large corporations alike. The bill contains safeguards to electronic notice, consents and other communications by requiring that the recipient consent to electronic notice by providing an electronic address and by establishing procedures for revoking that consent. The changes are consistent with the provisions of federal law so federal preemption is not an issue. The bill also allows the Secretary of State to permit electronic filings. This will help eliminate some geographic barriers by allowing people to file over the Internet.

**Testimony Against:** None.

**Testified:** Representative Lantz, prime sponsor; John Reed, Washington State Bar Association; and Mike Ricchio, Office of the Secretary of State.