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**SUBSTITUTE SENATE BILL 6037**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Pedersen, Wellman, Rivers, Keiser, Dhingra, Kuderer, Cleveland, Saldaña, Randall, Darneille, Rolfes, Das, Frockt, Carlyle, Wilson, C., Hunt, and Stanford; by request of Washington State Bar Association)

AN ACT Relating to business corporations; amending RCW 23B.02.020, 23B.02.060, 23B.01.200, 23B.06.010, 23B.06.240, 23B.08.030, 23B.08.735, 23B.09.020, 23B.10.060, 23B.11.010, 23B.11.020, 23B.07.210, 23B.06.030, and 23B.07.040; adding a new section to chapter 23B.08 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  A new section is added to chapter 23B.08 RCW to read as follows:

(1) Beginning no later than January 1, 2022, each public company must have a gender-diverse board of directors or that public company must comply with the requirements in subsection (2) of this section. For purposes of this section, a public company is deemed to have a gender-diverse board of directors if, for at least two hundred seventy days of the fiscal year preceding the applicable annual meeting of shareholders, individuals who self-identify as women comprised at least twenty-five percent of the directors serving on the board of directors.

(2) If a public company does not have a gender-diverse board of directors as specified in subsection (1) of this section for at least two hundred seventy days of the fiscal year preceding the applicable annual meeting of shareholders, the public company must deliver to its shareholders a board diversity discussion and analysis, which meets the requirements of subsection (3) of this section. This information must be delivered to all shareholders entitled to vote at that annual meeting of shareholders no fewer than ten nor more than sixty days before the date of that meeting.

(3) If a public company is required under subsection (2) of this section to deliver to its shareholders a board diversity discussion and analysis, the discussion and analysis must include information regarding the public company's approach to developing and maintaining diversity on its board of directors. At a minimum, this discussion and analysis should include the following information:

(a) A discussion regarding how the board of directors, or an appropriate committee thereof, considered the representation of any diverse groups in identifying and nominating candidates for election as directors in connection with the last annual meeting of shareholders, and if the board of directors, or an appropriate committee thereof, did not consider the representation of any diverse groups, the discussion should explain the reasons it did not;

(b) A discussion regarding any policy adopted by the board of directors, or an appropriate committee thereof, relating to identifying and nominating members of any diverse groups for election as directors, and if the board of directors, or an appropriate committee thereof, has not adopted such a policy, the discussion should explain the reasons it has not; and

(c) A discussion of the public company's use of mechanisms of refreshment of the board of directors, such as term limits and mandatory retirement age policies for its directors, and if the public company does not use any such mechanisms, the discussion should explain the reasons it does not.

(4) The requirements of subsection (2) of this section are satisfied if a public company:

(a) Posts the information required by subsection (3) of this section on the public company's principal internet web site address or another electronic network (either separate from, or in combination or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law); or

(b) Includes the information required by subsection (3) of this section in a proxy statement filed in accordance with 17 C.F.R. Sec. 240.14a-1 through 17 C.F.R. Sec. 240.14a-101, or in an information statement filed in accordance with 17 C.F.R. Sec. 240.14c-1 through 17 C.F.R. Sec. 240.14c-101.

(5) This section does not apply to any public company:

(a) That does not have outstanding shares of any class or series listed on a United States national securities exchange;

(b) That is an "emerging growth company" or a "smaller reporting company" as defined in 17 C.F.R. Sec. 240.12b-2;

(c) Of which voting shares entitled to cast votes comprising more than fifty percent of the voting power of the public company are held by a person or group of persons;

(d) Of which its articles of incorporation authorize the election of all or a specified number of directors by one or more separate voting groups in accordance with RCW 23B.08.040; or

(e) That is not required by this chapter or the rules of any United States national securities exchange to hold an annual meeting of shareholders.

(6) The failure of a public company to comply with this section does not affect the validity of any corporate action. Nothing in this section alters the general standards for any director of a public company.

(7) The exclusive remedy for any failure of a public company to comply with this section is that any shareholder of that public company entitled to vote in the election of directors at an annual meeting, after notice to the public company, may apply to the superior court of the county in which the public company's registered office is located for an order to deliver to shareholders the information required by subsection (3) of this section if the public company fails to furnish that information in accordance with this section, in which case the court, after notice to the public company, may summarily order the public company to furnish to shareholders that information.

(8) For the purposes of this section:

(a) "Diverse groups" means women, racial minorities, and historically underrepresented groups.

(b) "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a public company.

(c) "Voting shares" means shares of all classes of a public company entitled to vote generally in the election of directors.

**Sec.**  RCW 23B.02.020 and 2019 c 141 s 1 are each amended to read as follows:

(1) The articles of incorporation must ((~~set forth~~)) include:

(a) A corporate name for the corporation that satisfies the requirements of Article 3 of chapter 23.95 RCW;

(b) The number of shares the corporation is authorized to issue in accordance with RCW 23B.06.010 and 23B.06.020;

(c) The name and address of ((~~its~~)) the corporation's initial registered agent designated in accordance with Article 4 of chapter 23.95 RCW; and

(d) The name and address of each incorporator in accordance with RCW 23B.02.010.

(2) ((~~The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.~~

~~(3) Unless its articles of incorporation provide otherwise, a corporation is governed by the following provisions:~~

~~(a) The board of directors may adopt bylaws to be effective only in an emergency as provided by RCW 23B.02.070;~~

~~(b) A corporation has the purpose of engaging in any lawful business under RCW 23B.03.010;~~

~~(c) A corporation has perpetual existence and succession in its corporate name under RCW 23B.03.020;~~

~~(d) A corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including itemized powers under RCW 23B.03.020;~~

~~(e) All shares are of one class and one series, have unlimited voting rights, and are entitled to receive the net assets of the corporation upon dissolution under RCW 23B.06.010 and 23B.06.020;~~

~~(f) If more than one class of shares is authorized, all shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class under RCW 23B.06.010;~~

~~(g) If the board of directors is authorized to designate the number of shares in a series, the board may, after the issuance of shares in that series, reduce the number of authorized shares of that series under RCW 23B.06.020;~~

~~(h) The board of directors must approve any issuance of shares under RCW 23B.06.210;~~

~~(i) Shares may be issued pro rata and without consideration to shareholders under RCW 23B.06.230;~~

~~(j) Shares of one class or series may not be issued as a share dividend with respect to another class or series, unless there are no outstanding shares of the class or series to be issued, or a majority of votes entitled to be cast by such class or series approve as provided in RCW 23B.06.230;~~

~~(k) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation under RCW 23B.06.240;~~

~~(l) A shareholder of a corporation formed on or after January 1, 2020, has no preemptive right to acquire the corporation's unissued shares, and a shareholder of a corporation formed before January 1, 2020, has, and may waive, a preemptive right to acquire the corporation's unissued shares as provided in RCW 23B.06.300;~~

~~(m) Shares of a corporation acquired by it may be reissued under RCW 23B.06.310;~~

~~(n) The board may authorize and the corporation may make distributions not prohibited by statute under RCW 23B.06.400;~~

~~(o) The preferential rights upon dissolution of certain shareholders will be considered a liability for purposes of determining the validity of a distribution under RCW 23B.06.400;~~

~~(p) Corporate action may be approved by shareholders by unanimous consent of all shareholders entitled to vote on the corporate action, unless the approval of a lesser number of shareholders is permitted as provided in RCW 23B.07.040, which shareholder consent shall be in the form of a record;~~

~~(q) Unless this title requires otherwise, the corporation is required to give notice only to shareholders entitled to vote at a meeting and the notice for an annual meeting need not include the purpose for which the meeting is called under RCW 23B.07.050;~~

~~(r) A corporation that is a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;~~

~~(s) Subject to statutory exceptions, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting under RCW 23B.07.210;~~

~~(t) A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum, unless the title provides otherwise under RCW 23B.07.250 and 23B.07.270;~~

~~(u) Corporate action on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the corporate action exceed the votes cast opposing the corporate action, unless this title requires a greater number of affirmative votes under RCW 23B.07.250;~~

~~(v) All shares of one or more classes or series that are entitled to vote will be counted together collectively on any matter at a meeting of shareholders under RCW 23B.07.260;~~

~~(w) Shareholders of a corporation formed on or after January 1, 2020, do not have a right to cumulate their votes for directors, and shareholders of a corporation formed before January 1, 2020, have a right to cumulate their votes for directors under RCW 23B.07.280;~~

~~(x) Directors are elected by a plurality of votes cast by shares entitled to vote under RCW 23B.07.280, except as otherwise provided in the articles of incorporation or a bylaw adopted pursuant to RCW 23B.10.205;~~

~~(y) A corporation must have a board of directors under RCW 23B.08.010;~~

~~(z) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors under RCW 23B.08.010;~~

~~(aa) The shareholders may remove one or more directors with or without cause under RCW 23B.08.080;~~

~~(bb) A vacancy on the board of directors may be filled by the shareholders or the board of directors under RCW 23B.08.100;~~

~~(cc) A corporation shall indemnify a director who was wholly successful in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding under RCW 23B.08.520;~~

~~(dd) A director of a corporation who is a party to a proceeding may apply for indemnification of reasonable expenses incurred by the director in connection with the proceeding to the court conducting the proceeding or to another court of competent jurisdiction under RCW 23B.08.540;~~

~~(ee) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director under RCW 23B.08.570;~~

~~(ff) The corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director under RCW 23B.08.570;~~

~~(gg) A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific approval of its board of directors, or contract under RCW 23B.08.570;~~

~~(hh) A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder approval under RCW 23B.10.020;~~

~~(ii) Unless this title or the board of directors requires a greater vote or a vote by voting groups, an amendment to the corporation's articles of incorporation must be approved by each voting group entitled to vote on the proposed amendment by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group under RCW 23B.10.030;~~

~~(jj) A corporation's board of directors may amend or repeal the corporation's bylaws unless this title reserves this power exclusively to the shareholders in whole or in part, or unless the shareholders in amending or repealing a bylaw provide expressly that the board of directors may not amend or repeal that bylaw under RCW 23B.10.200;~~

~~(kk) Unless this title or the board of directors require a greater vote or a vote by voting groups, a plan of merger or share exchange must be approved by each voting group entitled to vote on the merger or share exchange by two-thirds of all the votes entitled to be cast by that voting group under RCW 23B.11.030;~~

~~(ll) Approval by the shareholders of the sale, lease, exchange, or other disposition of all, or substantially all, the corporation's property in the usual and regular course of business is not required under RCW 23B.12.010;~~

~~(mm) Approval by the shareholders of the mortgage, pledge, dedication to the repayment of indebtedness, or other encumbrance of any or all of the corporation's property, whether or not in the usual and regular course of business, is not required under RCW 23B.12.010;~~

~~(nn) Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.12.020; and~~

~~(oo) Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.14.020.~~

~~(4) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:~~

~~(a) The board of directors may approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;~~

~~(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;~~

~~(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;~~

~~(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;~~

~~(e) Members of the board of directors may participate in a meeting of the board by any means of similar communication by which all directors participating can hear each other during the meeting under RCW 23B.08.200;~~

~~(f) Corporate action permitted or required by this title to be taken at a board of directors' meeting may be approved without a meeting if approved by all members of the board under RCW 23B.08.210;~~

~~(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;~~

~~(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;~~

~~(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;~~

~~(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;~~

~~(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and~~

~~(l) Unless approved by the shareholders, a corporation may indemnify, or make advances to, a director for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director only to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580.~~

~~(5)~~)) The articles of incorporation may ((~~contain the following provisions~~)) include:

(a) The names and addresses of the individuals who are to serve as initial directors;

(b) The par value of any authorized shares or classes of shares;

(c) Provisions not inconsistent with law ((~~related to the management of~~)) regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and ((~~the regulation of~~)) regulating the affairs of the corporation; or

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(d) Any provision that under this title is required or permitted to be set forth in the bylaws;

(e) ((~~Provisions not inconsistent with law defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;~~

~~(f) Provisions authorizing corporate action to be approved by consent of less than all of the shareholders entitled to vote on the corporate action, in accordance with RCW 23B.07.040;~~

~~(g) If the articles of incorporation authorize dividing shares into classes, the election of all or a specified number of directors may be effected by the holders of one or more authorized classes of shares under RCW 23B.08.040;~~

~~(h) The terms of directors may be staggered under RCW 23B.08.060;~~

~~(i) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under RCW 23B.06.010;~~

~~(j) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under RCW 23B.08.320~~)) A provision eliminating or limiting a director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director in accordance with RCW 23B.08.320;

(f) A provision permitting or making obligatory indemnification of a director made a party to a proceeding, or advancement or reimbursement of expenses incurred by a director in a proceeding to the extent permitted by RCW 23B.08.560; and

((~~(k)~~)) (g) A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, prior to the pursuit or taking of the opportunity by the director or other person in accordance with RCW 23B.08.735(1)(b). ((~~However, if such provision applies to an officer or related person (as such term is defined in RCW 23B.08.700) of an officer, the board of directors, by action of qualified directors taken in compliance with the same procedures as are set forth in RCW 23B.08.720 and taken subsequent to the inclusion of such provision in the articles of incorporation, (i) must approve the application of such provision to an officer or a related person of that officer, and (ii) may condition the application of such provision to such officer or related person of that officer on any basis.~~

~~(6)~~)) (3) The articles of incorporation ((~~or the bylaws may contain the following provisions:~~

~~(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;~~

~~(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080;~~

~~(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240;~~

~~(d) If the corporation is registered as an investment company under the investment company act of 1940, a provision limiting the requirement to hold an annual meeting of shareholders as provided in RCW 23B.07.010(2); and~~

~~(e) If the corporation is registered as an investment company under the investment company act of 1940, a provision establishing terms of directors which terms may be longer than one year as provided in RCW 23B.05.050.~~

~~(7) The articles of incorporation need not set forth any of the corporate powers enumerated in this title~~)) need not set forth any of the corporate powers enumerated in this title.

(4) Provisions in the articles of incorporation may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with RCW 23B.01.200(3).

**Sec.**  RCW 23B.02.060 and 2011 c 328 s 1 are each amended to read as follows:

(1) The incorporators or board of directors of a corporation ((~~shall~~)) must adopt initial bylaws for the corporation.

(2) ((~~The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.~~

~~(3) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:~~

~~(a) The board of directors may approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;~~

~~(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;~~

~~(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;~~

~~(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;~~

~~(e) Members of the board of directors may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200;~~

~~(f) Corporate action permitted or required by this title to be approved at a board of directors' meeting may be approved without a meeting if the corporate action is approved by all members of the board under RCW 23B.08.210;~~

~~(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;~~

~~(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;~~

~~(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;~~

~~(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;~~

~~(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and~~

~~(l) Unless approved by shareholders, a corporation may indemnify, or make advances to, a director only for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580 under RCW 23B.08.590.~~

~~(4)~~)) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation to the extent the provision does not infringe upon or limit the exclusive authority of the board of directors under RCW 23B.08.010(2)(b) or otherwise conflict with this title or any other law, the articles of incorporation, or a shareholders' agreement authorized by RCW 23B.07.320.

**Sec.**  RCW 23B.01.200 and 2015 c 176 s 2101 are each amended to read as follows:

(1) A ((~~record~~)) document required or permitted by this title to be filed in the office of the secretary of state must satisfy the requirements of Article 2 of chapter 23.95 RCW, this section, and any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

(2) Unless otherwise indicated in this title, all ((~~records~~)) documents delivered to the secretary of state for filing must be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(3) Whenever a provision of this title permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) The manner in which the facts will operate upon the terms of the plan or filed document must be included in the plan or filed document.

(b) The facts may include:

(i) Any of the following that is available in a nationally recognized news or information medium, either in print or electronically: Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(ii) A determination or action by any person or body, including the corporation, its board of directors, an officer, an employee, or an agent of the corporation, or any other party to a plan or filed document; or

(iii) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(c) As used in this subsection (3):

(i) "Filed document" means a document filed by the secretary of state under any provision of this title, except chapter 23B.15 RCW or RCW 23.95.255 with respect to business corporations.

(ii) "Plan" means a plan of conversion, merger, or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) The name and address of any person required in a filed document;

(ii) The registered agent of any entity required in a filed document;

(iii) The duration of the corporation's existence, if less than perpetual;

(iv) The number of authorized shares and designation of each class or series of shares;

(v) The effective date of a filed document; and

(vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(e) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document and that fact is not ascertainable by reference to a source described in (b)(i) of this subsection or another publicly available or accessible document, then the corporation must either (i) notify the affected shareholders of the fact, or (ii) file with the secretary of state articles of amendment to the filed document stating the fact, in either case promptly after the time when the fact is first ascertainable or thereafter changes.

(f) Unless the articles of incorporation, a bylaw, or a resolution adopted or approved by the board of directors or shareholders provide otherwise, articles of amendment under (e) of this subsection are deemed to be adopted or approved by the adoption or approval of the original filed document to which they relate and may be filed by the corporation without further adoption or approval by the board of directors or the shareholders.

**Sec.**  RCW 23B.06.010 and 1998 c 104 s 1 are each amended to read as follows:

(1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue.

(a) If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, voting powers, and relative rights of that class must be described in the articles of incorporation.

(b) Preferences, limitations, voting powers, or relative rights of or on any class or series of shares or the holders thereof may be made dependent upon facts objectively ascertainable outside the articles of incorporation((~~, if the manner in which such facts shall operate on the preferences, limitations, voting powers, or relative rights of such class or series of shares or the holders thereof is set forth in the articles of incorporation. "Facts ascertainable outside the articles of incorporation" includes, but is not limited to, the existence of any condition or the occurrence of any event, including, without limitation, a determination or action by any person or body, including the corporation, its board of directors, or an officer, employee, or agent of the corporation~~)) in accordance with RCW 23B.01.200(3).

(c) All shares of a class must have preferences, limitations, voting powers, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by (b) of this subsection or RCW 23B.06.020.

(2) The articles of incorporation must authorize (a) one or more classes of shares that together have unlimited voting rights, and (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this title;

(b) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event, (ii) for cash, indebtedness, securities, or other property, (iii) in a designated amount or in an amount determined in accordance with a designated formula ((~~or by reference to extrinsic data or events~~));

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) Terms of shares may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with RCW 23B.01.200(3).

(5) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section is not exhaustive.

**Sec.**  RCW 23B.06.240 and 1998 c 104 s 3 are each amended to read as follows:

(1) Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the terms and conditions relating to their exercise, including the time or times, the conditions precedent, and the consideration for which and the holders by whom the rights, options, or warrants may be exercised.

(2) The terms of rights, options, or warrants, including the time or times, the conditions precedent, and the consideration for which and the holders by whom the rights, options, or warrants may be exercised, as well as their duration (a) may preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants or invalidate or void any rights, options, or warrants and (b) may be made dependent upon facts ascertainable outside the documents evidencing them or outside the resolution or resolutions adopted by the board of directors creating such rights, options, or warrants if the manner in which those facts operate on the rights, options, or warrants or the holders thereof is clearly set forth in the documents or the resolutions. ((~~"Facts~~)) For purposes of this section, "facts ascertainable outside the documents evidencing them or outside the resolution or resolutions adopted by the board of directors creating such rights, options, or warrants" includes, but is not limited to, the existence of any condition or the occurrence of any event, including, without limitation, a determination or action by any person or body, including the corporation, its board of directors, or an officer, employee, or agent of the corporation.

**Sec.**  RCW 23B.08.030 and 2009 c 189 s 23 are each amended to read as follows:

(1) A board of directors must consist of one or more individuals((~~, with the number specified in or fixed in accordance with the articles of incorporation or bylaws~~)).

(2) Unless the articles of incorporation under RCW 23B.08.010 or an agreement among the shareholders under RCW 23B.07.320 dispense with a board of directors, the articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed.

(3) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless (a) their terms are staggered under RCW 23B.08.060, or (b) their terms are otherwise governed by RCW 23B.05.050. Directors also may be elected by execution of a shareholder consent under RCW 23B.07.040.

**Sec.**  RCW 23B.08.735 and 2015 c 20 s 5 are each amended to read as follows:

(1) If a director or officer or related person of either pursues or takes advantage, directly or indirectly, of a business opportunity, that action may not be enjoined or set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if:

(a) Before the director, officer, or related person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation, and: ((~~and~~))

(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures ((~~set forth~~)) stated in RCW 23B.08.720, as if the decision being made concerned a director's conflicting interest transaction; or

(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures ((~~set forth~~)) stated in RCW 23B.08.730, as if the decision being made concerned a director's conflicting interest transaction;

except that, in the case of both (a)(i) and (ii) of this subsection, rather than making "required disclosure" as defined in RCW 23B.08.700(4), in each case the director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director or officer; or

(b) The duty to offer the corporation the right to have or participate in the particular business opportunity or the class or category in to which that particular business opportunity falls has been limited or eliminated pursuant to a provision of the articles of incorporation ((~~(and in the case of officers and their related persons, made effective by action of qualified directors) in accordance with RCW 23B.02.020(5)(k)~~)). However, if such provision applies to an officer or related person of that officer, the board of directors, by action of qualified directors taken in compliance with the same procedures under RCW 23B.08.720 and taken subsequent to the inclusion of such provision in the articles of incorporation, (i) must approve the application of such provision to an officer or a related person of that officer, and (ii) may condition the application of such provision to such officer or related person of that officer on any basis.

(2) In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (ii) of this section before taking advantage of the opportunity does not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

**Sec.**  RCW 23B.09.020 and 2014 c 83 s 10 are each amended to read as follows:

(1) A plan of entity conversion must ((~~be in a record and must~~)) include:

((~~(1)~~)) (a) The name of the domestic corporation before conversion;

((~~(2)~~)) (b) The name and form of the surviving entity after conversion;

((~~(3)~~)) (c) The terms and conditions of the conversion, including the manner and basis for converting interests in the domestic corporation into any combination of the interests, shares, obligations, or other securities of the surviving entity or any other entity or into cash or other property in whole or part; and

((~~(4)~~)) (d) The organic documents of the surviving entity as they will be in effect immediately after consummation of the conversion.

(2) The terms of a plan of conversion may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

**Sec.**  RCW 23B.10.060 and 2009 c 189 s 32 are each amended to read as follows:

A corporation amending its articles of incorporation ((~~shall~~)) must deliver to the secretary of state for filing articles of amendment ((~~setting forth~~)) stating:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If an amendment was adopted by the incorporators or board of directors without shareholder approval, a statement to that effect and that shareholder approval was not required; ((~~and~~))

(6) If shareholder approval was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 23B.10.030 and 23B.10.040; and

(7) If an amendment is being filed pursuant to RCW 23B.01.200(3)(e), a statement to that effect.

**Sec.**  RCW 23B.11.010 and 1989 c 165 s 131 are each amended to read as follows:

(1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve a plan of merger.

(2) The plan of merger must ((~~set forth~~)) include:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may ((~~set forth~~)) include:

(a) Amendments to the articles of incorporation of the surviving corporation; and

(b) Other provisions relating to the merger.

(4) The terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

**Sec.**  RCW 23B.11.020 and 1989 c 165 s 132 are each amended to read as follows:

(1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve the exchange.

(2) The plan of exchange must ((~~set forth~~)) include:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(b) The terms and conditions of the exchange; and

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may ((~~set forth~~)) include other provisions relating to the exchange.

(4) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

(5) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

**Sec.**  RCW 23B.07.210 and 1989 c 165 s 69 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) ((~~The shares~~)) Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation, directly or indirectly, or by a second corporation, domestic or foreign, and the first corporation owns, through an entity of which a majority of the voting power is held directly or indirectly((~~, a majority of the shares entitled to vote for directors of the second corporation~~)) by the corporation or which is otherwise controlled by the corporation.

(3) ((~~Subsection (2) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.~~)) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of, or otherwise belong to, the corporation directly or indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or which is otherwise controlled by the corporation.

(4) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

**Sec.**  RCW 23B.06.030 and 2002 c 297 s 17 are each amended to read as follows:

(1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection ((~~(4)~~)) (3) of this section and to RCW 23B.06.400.

(3) ((~~Redeemable shares are deemed to have been redeemed and not entitled to vote after notice of redemption is delivered to the holders in compliance with RCW 23B.01.410 and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.~~

~~(4)~~)) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

**Sec.**  RCW 23B.07.040 and 2009 c 189 s 14 are each amended to read as follows:

(1)(a) Corporate action required or permitted by this title to be approved by a shareholder vote at a meeting may be approved without a meeting or a vote if either:

(i) The corporate action is approved by all shareholders entitled to vote on the corporate action; or

(ii) The corporate action is approved by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes that would be necessary to approve such corporate action at a meeting at which all shares entitled to vote on the corporate action were present and voted, and at the time the corporate action is approved the corporation ((~~is not a public company and~~)) is authorized to approve such corporate action under this subsection (1)(a)(ii) by a general or limited authorization contained in its articles of incorporation, except that if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to RCW 23B.07.280, shareholders may not elect directors by less than unanimous written consent.

(b) Corporate action may be approved by shareholders without a meeting or a vote ((~~by means of execution of a single consent or multiple counterpart consents by~~)) if the approval is evidenced by one or more written consents:

(i) Executed by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes necessary under (a)(i) or (ii) of this subsection((~~. Any such shareholder consent must: (i) Be in the form of an executed record~~));

(ii) ((~~indicate~~)) Indicating the date of execution ((~~of the consent by each shareholder who executes it~~)), which date must be on or after the applicable record date determined in accordance with subsection (2) of this section;

(iii) ((~~describe~~)) Describing the corporate action being approved; and

(iv) ((~~when~~)) Delivered to the corporation for filing by the corporation with the minutes or corporate records in accordance with subsection (4) of this section. When delivered to each shareholder for execution, the consent must include or be accompanied by the same material that would have been required by this title to be delivered to shareholders in or accompanying a notice of meeting at which the proposed corporate action would have been submitted for shareholder approval((~~; and (v) be delivered to the corporation for inclusion in the minutes or filing with the corporate records in accordance with subsection (4) of this section~~)). A shareholder may withdraw an executed shareholder consent by delivering a written notice of withdrawal ((~~in the form of an executed record~~)) to the corporation prior to the time when shareholder consents sufficient to approve the corporate action have been delivered to the corporation.

(c) A written consent in the form of an electronic transmission must contain or be accompanied by information from which the corporation can determine that the electronic transmission was transmitted by the shareholder and the date on which the shareholder transmitted the electronic transmission.

(2) The record date for determining shareholders entitled to approve a corporate action without a meeting may be fixed under RCW 23B.07.030 or 23B.07.070, but if not so fixed shall be the date of execution indicated on the earliest dated shareholder consent executed under subsection (1) of this section, even though such shareholder consent may not have been delivered to the corporation on that date.

(3)(a) Notice that shareholder consents are being sought under subsection (1)(a) of this section ((~~shall~~)) must be given, by the corporation or by another person soliciting such consents, on or promptly after the record date, to all shareholders entitled to vote on the record date who have not yet executed the shareholder consent and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date. Notice given under this subsection (3)(a) ((~~shall~~)) must include or be accompanied by the same information required to be included in or to accompany the shareholder consent under subsection (1)(b)(iii) and (iv) of this section.

(b) Notice that sufficient ((~~shareholder~~)) written consents have been executed to approve the proposed corporate action under either of subsection (1)(a)(i) or (ii) of this section ((~~shall~~)) must be given by the corporation, promptly after delivery to the corporation of ((~~shareholder~~)) written consents sufficient to approve the corporate action in accordance with subsection (4) of this section, to all shareholders entitled to vote on the record date and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date.

(4) Unless the consent executed by shareholders specifies a later time as the time at which the approval of the corporate action is to be effective ((~~date~~)), shareholder approval obtained under this section is effective when:

(a) Executed shareholder consents sufficient to approve the proposed corporate action have been delivered to the corporation((~~, either at an address designated by the corporation for delivery of such shareholder consents or at the corporation's registered office, or to such electronic address, location, or system as the corporation may have designated for delivery of such shareholder consents~~)) in any manner authorized by RCW 23B.01.410; and

(b) ((~~any~~)) Any period of advance notice required by the corporation's articles of incorporation to be given to any nonconsenting shareholders has been satisfied. ((~~Executed shareholder consents are not~~)) No written consent is effective to approve a proposed corporate action unless, within sixty days after the earliest date ((~~of the earliest dated shareholder~~)) on which a consent delivered to the corporation as required by this section was executed, written consents executed by a sufficient number of shareholders to approve the corporate action are delivered to the corporation.

(5) Approval of corporate action by ((~~execution of shareholder~~)) written consents under this section has the effect of a meeting vote and may be described as such in any ((~~record~~)) document, except that, if the corporate action requires the filing of a certificate under any other section of this title, the certificate so filed shall state, in lieu of any statement required by that section concerning any vote of shareholders, that shareholder approval has been obtained in accordance with this section and that notice to any nonconsenting shareholders has been given to the extent required by this section.

(6) The notice requirements in subsection (3)(a) and (b) of this section will not delay the effectiveness of approval of corporate action by written consents, and failure to comply with those notice requirements will not invalidate approval of corporate action by written consents; except that this subsection is not intended to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice in accordance with those subsections.

NEW SECTION. **Sec.**  Section 1 of this act may be known and cited as the women on corporate boards act.

**--- END ---**