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**SENATE BILL 5003**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Pedersen, Padden, Holy, Becker, Das, Braun, and King; by request of Washington State Bar Association

Prefiled 12/03/18. Read first time 01/14/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to Washington's business corporation act;  
2 amending RCW 23B.06.300, 23B.07.280, 23B.10.205, 23B.01.400,  
3 23B.12.010, and 23B.12.020; and reenacting and amending RCW  
4 23B.02.020.

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

6 **Sec. 1.** RCW 23B.02.020 and 2015 c 176 s 2112 and 2015 c 20 s 2  
7 are each reenacted and amended to read as follows:

8 (1) The articles of incorporation must set forth:

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

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

13 (c) The name and address of its initial registered agent  
14 designated in accordance with Article 4 of chapter 23.95 RCW; and

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

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

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

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

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

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

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

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

15 (f) If more than one class of shares is authorized, all shares of  
16 a class must have preferences, limitations, and relative rights  
17 identical to those of other shares of the same class under RCW  
18 23B.06.010;

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

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

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

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

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

34 (l) A shareholder of a corporation formed on or after January 1,  
35 2020, has no preemptive right to acquire the corporation's unissued  
36 shares, and a shareholder of a corporation formed before January 1,  
37 2020, has, and may waive, a preemptive right to acquire the  
38 corporation's unissued shares as provided in RCW 23B.06.300;

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

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

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

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

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

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

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

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

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

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

33 (w) (~~Directors are elected by cumulative voting~~) Shareholders  
34 of a corporation formed on or after January 1, 2020, do not have a  
35 right to cumulate their votes for directors, and shareholders of a  
36 corporation formed before January 1, 2020, have a right to cumulate  
37 their votes for directors under RCW 23B.07.280;

38 (x) Directors are elected by a plurality of votes cast by shares  
39 entitled to vote under RCW 23B.07.280, except as otherwise provided

1 in the articles of incorporation or a bylaw adopted pursuant to RCW  
2 23B.10.205;

3 (y) A corporation must have a board of directors under RCW  
4 23B.08.010;

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

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

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

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

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

22 (ee) An officer of the corporation who is not a director is  
23 entitled to mandatory indemnification under RCW 23B.08.520, and is  
24 entitled to apply for court-ordered indemnification under RCW  
25 23B.08.540, in each case to the same extent as a director under RCW  
26 23B.08.570;

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

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

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

38 (ii) Unless this title or the board of directors requires a  
39 greater vote or a vote by voting groups, an amendment to the  
40 corporation's articles of incorporation must be approved by each

1 voting group entitled to vote on the proposed amendment by two-  
2 thirds, or, in the case of a public company, a majority, of all the  
3 votes entitled to be cast by that voting group under RCW 23B.10.030;

4 (jj) A corporation's board of directors may amend or repeal the  
5 corporation's bylaws unless this title reserves this power  
6 exclusively to the shareholders in whole or in part, or unless the  
7 shareholders in amending or repealing a bylaw provide expressly that  
8 the board of directors may not amend or repeal that bylaw under RCW  
9 23B.10.200;

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

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

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

23 (nn) Unless the board of directors requires a greater vote or a  
24 vote by voting groups, a sale, lease, exchange, or other disposition  
25 of all or substantially all of the corporation's property, other than  
26 in the usual and regular course of business, must be approved by each  
27 voting group entitled to vote on such transaction by two-thirds of  
28 all votes entitled to be cast by that voting group under RCW  
29 23B.12.020; and

30 (oo) Unless the board of directors requires a greater vote or a  
31 vote by voting groups, a proposal to dissolve must be approved by  
32 each voting group entitled to vote on the dissolution by two-thirds  
33 of all votes entitled to be cast by that voting group under RCW  
34 23B.14.020.

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

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

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

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

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

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

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

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

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

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

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

28 (k) A board of directors may create one or more committees and  
29 appoint members of the board of directors to serve on them under RCW  
30 23B.08.250; and

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

36 (5) The articles of incorporation may contain the following  
37 provisions:

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

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

1 (c) Provisions not inconsistent with law related to the  
2 management of the business and the regulation of the affairs of the  
3 corporation;

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

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

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

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

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

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

23 (j) A director's personal liability to the corporation or its  
24 shareholders for monetary damages for conduct as a director may be  
25 eliminated or limited under RCW 23B.08.320; and

26 (k) A provision limiting or eliminating any duty of a director or  
27 any other person to offer the corporation the right to have or  
28 participate in any, or one or more classes or categories of, business  
29 opportunities, prior to the pursuit or taking of the opportunity by  
30 the director or other person. However, if such provision applies to  
31 an officer or related person (as such term is defined in RCW  
32 23B.08.700) of an officer, the board of directors, by action of  
33 qualified directors taken in compliance with the same procedures as  
34 are set forth in RCW 23B.08.720 and taken subsequent to the inclusion  
35 of such provision in the articles of incorporation, (i) must approve  
36 the application of such provision to an officer or a related person  
37 of that officer, and (ii) may condition the application of such  
38 provision to such officer or related person of that officer on any  
39 basis.

1 (6) The articles of incorporation or the bylaws may contain the  
2 following provisions:

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

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

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

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

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

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

20 **Sec. 2.** RCW 23B.06.300 and 2002 c 297 s 19 are each amended to  
21 read as follows:

22 (1) The shareholders of a corporation do not have a preemptive  
23 right to acquire the corporation's unissued shares except to the  
24 extent the articles of incorporation provide otherwise or as set  
25 forth in subsection (2) of this section. A statement included in the  
26 articles of incorporation that "the corporation elects to have  
27 preemptive rights," or words of similar import, means that the  
28 provisions set forth in subsection (3) of this section apply except  
29 to the extent that the articles of incorporation provide otherwise.

30 (2) Unless the articles of incorporation provide otherwise, the  
31 shareholders of a corporation formed before January 1, 2020, have a  
32 preemptive right to acquire the corporation's unissued shares.

33 (3) If shareholders of a corporation have a preemptive right to  
34 acquire the corporation's unissued shares under this section, the  
35 following provisions apply:

36 (a) Unless the articles of incorporation provide otherwise, ((and  
37 subject to the limitations in subsections (3) and (4) of this  
38 section, the shareholders of a corporation have a)) such preemptive  
39 right((τ)) is granted on uniform terms and conditions prescribed by



1 the board of directors to provide a fair and reasonable opportunity  
2 to exercise the right, to acquire proportional amounts of the  
3 corporation's unissued shares upon the decision of the board of  
4 directors to issue them.

5 ~~((2))~~ (b) Unless the articles of incorporation provide  
6 otherwise, a shareholder may waive the shareholder's preemptive  
7 right. A waiver evidenced by an executed record is irrevocable even  
8 though it is not supported by consideration.

9 ~~((3))~~ (c) Unless the articles of incorporation provide  
10 otherwise, there is no preemptive right with respect to:

11 ~~((a))~~ (i) Shares issued as compensation to directors, officers,  
12 agents, ~~((or))~~ employees, or other service providers of the  
13 corporation, or its subsidiaries or affiliates;

14 ~~((b))~~ (ii) Shares issued to satisfy conversion or option rights  
15 created to provide compensation to directors, officers, agents, or  
16 employees of the corporation, or its subsidiaries or affiliates;

17 ~~((c))~~ (iii) Shares issued pursuant to the corporation's initial  
18 plan of financing; and

19 ~~((d))~~ (iv) Shares ~~((sold otherwise than for))~~ issued for  
20 consideration other than money.

21 ~~((4))~~ (d) Unless the articles of incorporation provide  
22 otherwise:

23 ~~((a))~~ (i) Holders of shares of any class without general voting  
24 rights but with preferential rights to distributions or assets have  
25 no preemptive rights with respect to shares of any class; and

26 ~~((b))~~ (ii) Holders of shares of any class with general voting  
27 rights but without preferential rights to distributions or assets  
28 have no preemptive rights with respect to shares of any class with  
29 preferential rights to distributions or assets unless the shares with  
30 preferential rights are convertible into or carry a right to  
31 subscribe for or acquire shares without preferential rights.

32 ~~((5))~~ (e) Unless the articles of incorporation provide  
33 otherwise, shares subject to preemptive rights that are not acquired  
34 by shareholders may be issued to any person for a period of one year  
35 after being offered to shareholders at a consideration set by the  
36 board of directors that is not lower than the consideration set for  
37 the exercise of preemptive rights. An offer at a lower consideration  
38 or after the expiration of one year is subject to the shareholders'  
39 preemptive rights.

1       (~~(6)~~) (f) For purposes of this section, "shares" includes a  
2 security convertible into or carrying a right to subscribe for or  
3 acquire shares.

4       **Sec. 3.** RCW 23B.07.280 and 2009 c 189 s 21 are each amended to  
5 read as follows:

6       (1) Shareholders do not have a right to cumulate their votes for  
7 directors unless the articles of incorporation provide otherwise or  
8 as set forth in subsection (2) of this section. A statement included  
9 in the articles of incorporation that "[all] [a designated voting  
10 group of] shareholders are entitled to cumulate their votes for  
11 directors," or words of similar import, means that the shareholders  
12 designated are entitled to multiply the number of votes they are  
13 entitled to cast by the number of directors for whom they are  
14 entitled to vote and to cast the product for a single candidate or  
15 distribute the product among two or more candidates.

16       (2) With respect to a corporation formed before January 1, 2020,  
17 unless otherwise provided in the articles of incorporation,  
18 shareholders entitled to vote at any election of directors are  
19 entitled to cumulate votes by multiplying the number of votes they  
20 are entitled to cast by the number of directors for whom they are  
21 entitled to vote and to cast the product for a single candidate or  
22 distribute the product among two or more candidates.

23       (~~(2)~~) (3) Shares otherwise entitled to vote cumulatively may  
24 not be voted cumulatively at a particular meeting unless:

25       (a) The meeting notice or proxy statement accompanying the notice  
26 states conspicuously that cumulative voting is authorized; or

27       (b) A shareholder who has the right to cumulate the shareholder's  
28 votes gives notice to the corporation not less than seventy-two hours  
29 before the time set for the meeting of the shareholder's intent to  
30 cumulate votes during the meeting, and if one shareholder gives this  
31 notice all other shareholders in the same voting group participating.

32       (4) Unless otherwise provided in the articles of incorporation  
33 or in a bylaw adopted under RCW 23B.10.205, in any election of  
34 directors the candidates elected are those receiving the largest  
35 numbers of votes cast by the shares entitled to vote in the election,  
36 up to the number of directors to be elected by such shares.

37       **Sec. 4.** RCW 23B.10.205 and 2009 c 189 s 36 are each amended to  
38 read as follows:

1 (1) Unless the articles of incorporation specifically prohibit  
2 the adoption of a bylaw pursuant to this section((7)) or alter the  
3 vote specified in RCW 23B.07.280(~~(2)~~) (4), or (~~allow for or do not~~  
4 ~~exclude~~) cumulative voting is authorized, a public company may elect  
5 in its bylaws to be governed in the election of directors as follows:

6 (a) Each vote entitled to be cast may be voted for, voted  
7 against, or withheld for one or more candidates up to that number of  
8 candidates that is equal to the number of directors to be elected but  
9 without cumulating the votes, or a shareholder may indicate an  
10 abstention for one or more candidates;

11 (b) To be elected, a candidate must have received the number,  
12 percentage, or level of votes specified in the bylaws; provided that  
13 holders of shares entitled to vote in the election and constituting a  
14 quorum are present at the meeting. Except in a contested election as  
15 provided in (e) of this subsection, a candidate who does not receive  
16 the number, percentage, or level of votes specified in the bylaws but  
17 who was a director at the time of the election shall continue to  
18 serve as a director for a term that shall terminate on the date that  
19 is the earlier of (i) the date specified in the bylaw, but not longer  
20 than ninety days from the date on which the voting results are  
21 determined pursuant to RCW 23B.07.035(2), or (ii) the date on which  
22 an individual is selected by the board of directors to fill the  
23 office held by such director, which selection shall be deemed to  
24 constitute the filling of a vacancy by the board to which RCW  
25 23B.08.100 applies;

26 (c) A bylaw adopted pursuant to this section may provide that  
27 votes cast against and/or withheld as to a candidate are to be taken  
28 into account in determining whether the number, percentage, or level  
29 of votes required for election has been received. Unless the bylaw  
30 specifies otherwise, only votes cast are to be taken into account and  
31 a ballot marked "withheld" in respect to a share is deemed to be a  
32 vote cast. Unless the bylaws specify otherwise, shares otherwise  
33 present at the meeting but for which there is an abstention or as to  
34 which no authority or direction to vote in the election is given or  
35 specified, are not deemed to be votes cast in the election;

36 (d) The board of directors may select any qualified individual to  
37 fill the office held by a director who did not receive the specified  
38 vote for election referenced in (b) of this subsection; and

39 (e) Unless the bylaw specifies otherwise, a bylaw adopted  
40 pursuant to this subsection (1) shall not apply to an election of

1 directors by a voting group if (i) at the expiration of the time  
2 fixed under a provision requiring advance notification of director  
3 candidates, or (ii) absent such a provision, at a time fixed by the  
4 board of directors which is not more than fourteen days before notice  
5 is given of the meeting at which the election is to occur, there are  
6 more candidates for election by the voting group than the number of  
7 directors to be elected, one or more of whom are properly proposed by  
8 shareholders. An individual shall not be considered a candidate for  
9 purposes of this subsection (1)(e) if the board of directors  
10 determines before the notice of meeting is given that such  
11 individual's candidacy does not create a bona fide election contest.

12 (2) A bylaw containing an election to be governed by this section  
13 may be repealed or amended:

14 (a) If originally adopted by the shareholders, only by the  
15 shareholders, unless the bylaw otherwise provides; or

16 (b) If adopted by the board of directors, by the board of  
17 directors or the shareholders.

18 **Sec. 5.** RCW 23B.01.400 and 2017 c 28 s 12 are each amended to  
19 read as follows:

20 Unless the context clearly requires otherwise, the definitions in  
21 this section apply throughout this title.

22 (1) "Articles of incorporation" include amended and restated  
23 articles of incorporation and articles of merger.

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

26 (3) "Conspicuous" means so prepared that a reasonable person  
27 against whom the record is to operate should have noticed it. For  
28 example, printing in italics or boldface or contrasting color, or  
29 typing in capitals or underlined, is conspicuous.

30 (4) "Controlling interest" means ownership of an entity's  
31 outstanding shares or interests in such number as to entitle the  
32 holder at the time to elect a majority of the entity's directors or  
33 other governors without regard to voting power which may thereafter  
34 exist upon a default, failure, or other contingency.

35 (5) "Corporate action" means any resolution, act, policy,  
36 contract, transaction, plan, adoption or amendment of articles of  
37 incorporation or bylaws, or other matter approved by or submitted for  
38 approval to a corporation's incorporators, board of directors or a  
39 committee thereof, or shareholders.

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

5 (7) "Deliver" includes (a) mailing, (b) for purposes of  
6 delivering a demand, consent, notice, or waiver to the corporation or  
7 one of its officers, directors, or shareholders, transmission by  
8 facsimile equipment, and (c) for purposes of delivering a demand,  
9 consent, notice, or waiver to the corporation or one of its officers,  
10 directors, or shareholders under RCW 23B.01.410 or chapter 23B.07,  
11 23B.08, 23B.11, 23B.13, 23B.14, or 23B.16 RCW delivery by electronic  
12 transmission.

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

21 (9) "Effective date of notice" has the meaning provided in RCW  
22 23B.01.410.

23 (10) "Electronic transmission" means an electronic communication  
24 (a) not directly involving the physical transfer of a record in a  
25 tangible medium and (b) that may be retained, retrieved, and reviewed  
26 by the sender and the recipient thereof, and that may be directly  
27 reproduced in a tangible medium by such a sender and recipient.

28 (11) "Electronically transmitted" means the initiation of an  
29 electronic transmission.

30 (12) "Employee" includes an officer but not a director. A  
31 director may accept duties that make the director also an employee.

32 (13) "Entity" includes a corporation and foreign corporation,  
33 not-for-profit corporation, business trust, estate, trust,  
34 partnership, limited liability company, association, joint venture,  
35 two or more persons having a joint or common economic interest, the  
36 state, United States, and a foreign governmental subdivision, agency,  
37 or instrumentality, or any other legal or commercial entity.

38 (14) "Execute," "executes," or "executed" means (a) signed with  
39 respect to a written record or (b) electronically transmitted along  
40 with sufficient information to determine the sender's identity with

1 respect to an electronic transmission, or (c) with respect to a  
2 record to be filed with the secretary of state, in compliance with  
3 the standards for filing with the office of the secretary of state as  
4 prescribed by the secretary of state.

5 (15) "Foreign corporation" means a corporation for profit  
6 incorporated under a law other than the law of this state.

7 (16) "Foreign limited partnership" means a partnership formed  
8 under laws other than of this state and having as partners one or  
9 more general partners and one or more limited partners.

10 (17) "General social purpose" means the general social purpose  
11 for which a social purpose corporation is organized as set forth in  
12 the articles of incorporation of the corporation in accordance with  
13 RCW 23B.25.040(1)(c).

14 (18) "Governmental subdivision" includes authority, county,  
15 district, and municipality.

16 (19) "Governor" has the meaning given that term in RCW 23.95.105.

17 (20) "Includes" denotes a partial definition.

18 (21) "Individual" includes the estate of an incompetent or  
19 deceased individual.

20 (22) "Limited partnership" or "domestic limited partnership"  
21 means a partnership formed by two or more persons under the laws of  
22 this state and having one or more general partners and one or more  
23 limited partners.

24 (23) "Means" denotes an exhaustive definition.

25 (24) "Notice" has the meaning provided in RCW 23B.01.410.

26 (25) "Person" means an individual, corporation, business trust,  
27 estate, trust, partnership, limited liability company, association,  
28 joint venture, government, governmental subdivision, agency, or  
29 instrumentality, or any other legal or commercial entity.

30 (26) "Principal office" means the office, in or out of this  
31 state, so designated in the annual report where the principal  
32 executive offices of a domestic or foreign corporation are located.

33 (27) "Proceeding" includes civil suit and criminal,  
34 administrative, and investigatory action.

35 (28) "Public company" means a corporation that has a class of  
36 shares registered with the federal securities and exchange commission  
37 pursuant to section 12 or 15 of the securities exchange act of 1934,  
38 or section 8 of the investment company act of 1940, or any successor  
39 statute.

1 (29) "Qualified director" means (a) with respect to a director's  
2 conflicting interest transaction as defined in RCW 23B.08.700, any  
3 director who does not have either (i) a conflicting interest  
4 respecting the transaction, or (ii) a familial, financial,  
5 professional, or employment relationship with a second director who  
6 does have a conflicting interest respecting the transaction, which  
7 relationship would, in the circumstances, reasonably be expected to  
8 exert an influence on the first director's judgment when voting on  
9 the transaction; (b) with respect to RCW 23B.08.735, a qualified  
10 director under (a) of this subsection if the business opportunity  
11 were a director's conflicting interest transaction; and (c) with  
12 respect to RCW 23B.02.020(5)(k), a director who is not a director (i)  
13 to whom the limitation or elimination of the duty of an officer to  
14 offer potential business opportunities to the corporation would  
15 apply, or (ii) who has a familial, financial, professional, or  
16 employment relationship with another officer to whom the limitation  
17 or elimination would apply, which relationship would, in the  
18 circumstances, reasonably be expected to exert an influence on the  
19 director's judgment when voting on the limitation or elimination.

20 (30) "Record" means information inscribed on a tangible medium or  
21 contained in an electronic transmission.

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

28 (32) "Registered office" means the address of the corporation's  
29 registered agent.

30 (33) "Secretary" means the corporate officer to whom the board of  
31 directors has delegated responsibility under RCW 23B.08.400(3) for  
32 custody of the minutes of the meetings of the board of directors and  
33 of the shareholders and for authenticating records of the  
34 corporation.

35 (34) "Shareholder" means the person in whose name shares are  
36 registered in the records of a corporation or the beneficial owner of  
37 shares to the extent of the rights granted by a nominee certificate  
38 on file with a corporation.

39 (35) "Shares" means the units into which the proprietary  
40 interests in a corporation are divided.

1 (36) "Social purpose" includes any general social purpose and any  
2 specific social purpose.

3 (37) "Social purpose corporation" means a corporation that has  
4 elected to be governed as a social purpose corporation under chapter  
5 23B.25 RCW.

6 (38) "Specific social purpose" means the specific social purpose  
7 or purposes for which a social purpose corporation is organized as  
8 set forth in the articles of incorporation of the corporation in  
9 accordance with RCW 23B.25.040(2)(a).

10 (39) "State," when referring to a part of the United States,  
11 includes a state and commonwealth, and their agencies and  
12 governmental subdivisions, and a territory and insular possession,  
13 and their agencies and governmental subdivisions, of the United  
14 States.

15 (40) "Subscriber" means a person who subscribes for shares in a  
16 corporation, whether before or after incorporation.

17 (41) "Subsidiary" means an entity in which the corporation has,  
18 directly or indirectly, a controlling interest.

19 (42) "Tangible medium" means a writing, copy of a writing, or  
20 facsimile, or a physical reproduction, each on paper or on other  
21 tangible material.

22 (43) "United States" includes a district, authority, bureau,  
23 commission, department, and any other agency of the United States.

24 (44) "Voting group" means all shares of one or more classes or  
25 series that under the articles of incorporation or this title are  
26 entitled to vote and be counted together collectively on a matter at  
27 a meeting of shareholders. All shares entitled by the articles of  
28 incorporation or this title to vote generally on the matter are for  
29 that purpose a single voting group.

30 (45) "Writing" does not include an electronic transmission.

31 (46) "Written" means embodied in a tangible medium.

32 **Sec. 6.** RCW 23B.12.010 and 2017 c 28 s 10 are each amended to  
33 read as follows:

34 (1) (~~A corporation may on the terms and conditions and for the~~  
35 ~~consideration determined by the board of directors~~) Unless the  
36 articles of incorporation provide otherwise, approval by a  
37 corporation's shareholders is not required:

38 (a) To sell, lease, exchange, or otherwise dispose of (~~all~~)  
39 any or (~~substantially~~) all (~~of~~) of (~~its~~) the corporation's



1 property and assets in the usual and regular course of its business;  
2 or

3 (b) To mortgage, pledge, dedicate to the repayment of  
4 indebtedness, whether with or without recourse, or otherwise encumber  
5 any or all of ((its)) the corporation's property and assets,  
6 regardless of whether or not ~~((any of))~~ these actions are in the  
7 usual and regular course of its business.

8 (2) Unless the articles of incorporation ~~((require it, approval~~  
9 ~~by the shareholders of a transaction described in subsection (1) of~~  
10 ~~this section is not required.~~

11 ~~(3) A dedication of a)~~ provide otherwise, approval by a  
12 corporation's shareholders is not required to dedicate the  
13 corporation's property and assets to the repayment of its creditors  
14 ~~((may be effected by the board of directors))~~ through an assignment  
15 for the benefit of creditors in accordance with chapter 7.08 RCW ~~((or~~  
16 ~~by obtaining))~~ that is approved by the board of directors, or by the  
17 appointment of a general receiver in ((accordance with)) a proceeding  
18 under chapter 7.60 RCW~~((, and))~~ that is approved by the board of  
19 directors. The assumption of control over the corporation's property  
20 and assets by an assignee for the benefit of creditors or by a  
21 general receiver relieves the directors of any further duties with  
22 respect to the liquidation of the corporation's property and assets  
23 or the application of any property and assets or proceeds toward  
24 satisfaction of the claims of creditors.

25 **Sec. 7.** RCW 23B.12.020 and 2017 c 28 s 11 are each amended to  
26 read as follows:

27 (1) ~~((A corporation may sell,))~~ Except as provided in subsection  
28 (11) of this section, a sale, lease, exchange, or ((otherwise dispose  
29 of all, or substantially all, of its)) other disposition of a  
30 corporation's property and assets, ((otherwise)) other than in the  
31 usual and regular course of its business, ~~((on the terms and~~  
32 ~~conditions and for the consideration determined by the corporation's~~  
33 ~~board of directors. Except as provided in subsection (8) of this~~  
34 ~~section, a transaction described in this subsection))~~ requires  
35 approval of the corporation's shareholders if the disposition would  
36 leave the corporation without a significant continuing business  
37 activity.

38 (2) A continuing business activity will be conclusively presumed  
39 to represent a significant continuing business activity if, for the

1 corporation and its subsidiaries on a consolidated basis, it  
2 represented at least:

3 (a) Twenty-five percent of total assets at the end of the most  
4 recently completed fiscal year; and

5 (b) Either: (i) Twenty-five percent of income from continuing  
6 operations before taxes, or (ii) twenty-five percent of revenues from  
7 continuing operations, in each case for the most recently completed  
8 fiscal year.

9 (3) No presumption that a disposition will leave the corporation  
10 without a significant continuing business activity will arise from  
11 the fact that the corporation's continuing business activity does not  
12 equal or exceed any of the percentages set forth in subsection (2) of  
13 this section.

14 (4) The determination of whether or not a continuing business  
15 activity constitutes a significant continuing business under  
16 subsection (2) of this section may be based either on financial  
17 statements prepared on the basis of accounting practices and  
18 principles that are reasonable in the circumstances or, in the case  
19 of subsection (2)(a) of this section, on a fair valuation or other  
20 method that is reasonable in the circumstances.

21 (5) For a (~~transaction~~) disposition to be approved by a  
22 corporation's shareholders:

23 (a) The board of directors must approve the disposition and  
24 submit the proposed (~~transaction to~~) disposition for approval by  
25 the shareholders (~~for their approval~~);

26 (b) The board of directors must recommend the proposed  
27 (~~transaction~~) disposition to the shareholders unless (i) the board  
28 of directors determines that because of (~~conflict~~) conflicts of  
29 interest or other special circumstances it should make no  
30 recommendation or (ii) RCW 23B.08.245 applies, and in either case the  
31 board of directors communicates the basis for so proceeding to the  
32 shareholders; and

33 (c) The shareholders entitled to vote on the proposed disposition  
34 must approve the (~~transaction~~) proposed disposition as provided in  
35 subsection (8) of this section.

36 (~~(3)~~) (6) The board of directors may condition its submission  
37 of the proposed (~~transaction~~) disposition on any basis, including  
38 the affirmative vote of holders of a specified percentage of shares  
39 held by any group of shareholders not otherwise entitled under this

1 title or the articles of incorporation to vote as a separate voting  
2 group on the proposed (~~(transaction)~~) disposition.

3 (~~(4)~~) (7) If the approval of the shareholders is to be given at  
4 a meeting, the corporation (~~(shall)~~) must notify each shareholder,  
5 whether or not entitled to vote, of the proposed shareholders'  
6 meeting (~~(at which the proposed transaction is to be submitted for~~  
7 ~~approval)~~) in accordance with RCW 23B.07.050. The notice must state  
8 that the purpose, or one of the purposes, of the meeting is to  
9 consider the (~~(sale, lease, exchange, or other)~~) proposed disposition  
10 (~~(of all, or substantially all, of the property and assets of the~~  
11 ~~corporation)~~) and contain or be accompanied by a description of the  
12 (~~(transaction)~~) proposed disposition, including a summary of the  
13 material terms and conditions thereof and the consideration to be  
14 received by the corporation.

15 (~~(5)~~) (8) In addition to any other voting conditions imposed by  
16 the board of directors under subsection (~~(3)~~) (6) of this section,  
17 the (~~(transaction)~~) proposed disposition must be approved by two-  
18 thirds of the voting group comprising all the votes entitled to be  
19 cast on the (~~(transaction)~~) proposed disposition, and of each other  
20 voting group entitled under the articles of incorporation to vote  
21 separately on the (~~(transaction)~~) proposed disposition, unless  
22 shareholder approval is not required under subsection (~~(8)~~) (11) of  
23 this section. The articles of incorporation may require a greater or  
24 lesser vote than provided in this subsection, or a greater or lesser  
25 vote by any separate voting groups provided for in the articles of  
26 incorporation, so long as the required vote is not less than a  
27 majority of all the votes entitled to be cast on the (~~(transaction)~~)  
28 proposed disposition and of each other voting group entitled to vote  
29 separately on the (~~(transaction)~~) proposed disposition.

30 (~~(6)~~) (9) After a (~~(sale, lease, exchange, or other disposition~~  
31 ~~of property and assets has been approved as required by this section,~~  
32 ~~the transaction may be abandoned, subject to any contractual rights,~~  
33 ~~without further shareholder approval, in a manner determined by the~~  
34 ~~board of directors.~~

35 ~~(7)~~) proposed disposition has been approved by the shareholders  
36 as required by this section, and at any time before the proposed  
37 disposition has been consummated, the board of directors may abandon  
38 the proposed disposition without further action by the shareholders,  
39 subject to any contractual rights of other parties relating thereto.

1        (10) A ~~((transaction))~~ disposition that constitutes a  
2 distribution is governed by RCW 23B.06.400 and not by this section.  
3        ~~((8))~~ (11) Unless the articles of incorporation otherwise  
4 require, approval by the shareholders of a parent corporation is not  
5 required for the transfer of any or all of the parent corporation's  
6 property and assets to one or more ~~((subsidiary corporations or other  
7 entities))~~ subsidiaries all of the shares or interests of which are  
8 owned, directly or indirectly, by the parent corporation.  
9        ~~((9) The sale, lease, exchange, or other disposition of all, or  
10 substantially all, the assets of one or more subsidiaries of a  
11 corporation, if not in the usual and regular course of business as  
12 conducted by that subsidiary or those subsidiaries, is to be treated  
13 as a disposition by the parent corporation within the meaning of  
14 subsection (1) of this section if the subsidiary or subsidiaries  
15 constitute all, or substantially all, the assets of the parent  
16 corporation.))~~ (12) The assets of a subsidiary are to be treated as  
17 the assets of its parent corporation for purposes of this section.

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