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**SENATE BILL 6037**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**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

Prefiled 12/03/19. Read first time 01/13/20. Referred to Committee on Law & Justice.

1 AN ACT Relating to business corporations; amending RCW  
2 23B.02.020, 23B.02.060, 23B.01.200, 23B.06.010, 23B.06.240,  
3 23B.08.030, 23B.08.735, 23B.09.020, 23B.10.060, 23B.11.010,  
4 23B.11.020, 23B.07.210, 23B.06.030, and 23B.07.040; adding a new  
5 section to chapter 23B.08 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 23B.08  
8 RCW to read as follows:

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

18 (2) If a public company does not have a gender-diverse board of  
19 directors as specified in subsection (1) of this section for at least  
20 two hundred seventy days of the fiscal year preceding the applicable  
21 annual meeting of shareholders, the public company must deliver to

1 its shareholders a board diversity discussion and analysis, which  
2 meets the requirements of subsection (3) of this section. This  
3 information must be delivered to all shareholders entitled to vote at  
4 that annual meeting of shareholders no fewer than ten nor more than  
5 sixty days before the date of that meeting.

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

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

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

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

30 (4) The requirements of subsection (2) of this section will be  
31 satisfied if a public company:

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

38 (b) Includes the information required by subsection (3) of this  
39 section in a proxy statement filed in accordance with 17 C.F.R. Sec.  
40 240.14a-1 through 17 C.F.R. Sec. 240.14a-101, as amended from time to

1 time, or in an information statement filed in accordance with 17  
2 C.F.R. Sec. 240.14c-1 through 17 C.F.R. Sec. 240.14c-101, as amended  
3 from time to time.

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

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

7 (b) That is an "emerging growth company" or a "smaller reporting  
8 company" as defined in 17 C.F.R. Sec. 240.12b-2, as amended from time  
9 to time;

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

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

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

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

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

34 (8) For the purposes of this section:

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

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

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

1       **Sec. 2.** RCW 23B.02.020 and 2019 c 141 s 1 are each amended to  
2 read as follows:

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

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

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

8       (c) The name and address of ~~((its))~~ the corporation's initial  
9 registered agent designated in accordance with Article 4 of chapter  
10 23.95 RCW; and

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

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

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

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

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

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

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

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

31       ~~(f) If more than one class of shares is authorized, all shares of  
32 a class must have preferences, limitations, and relative rights  
33 identical to those of other shares of the same class under RCW  
34 23B.06.010;~~

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

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

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

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

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

10       ~~(l) A shareholder of a corporation formed on or after January 1,~~  
11 ~~2020, has no preemptive right to acquire the corporation's unissued~~  
12 ~~shares, and a shareholder of a corporation formed before January 1,~~  
13 ~~2020, has, and may waive, a preemptive right to acquire the~~  
14 ~~corporation's unissued shares as provided in RCW 23B.06.300;~~

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

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

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

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

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

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

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

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

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

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

9       ~~(w) Shareholders of a corporation formed on or after January 1,~~  
10 ~~2020, do not have a right to cumulate their votes for directors, and~~  
11 ~~shareholders of a corporation formed before January 1, 2020, have a~~  
12 ~~right to cumulate their votes for directors under RCW 23B.07.280;~~

13       ~~(x) Directors are elected by a plurality of votes cast by shares~~  
14 ~~entitled to vote under RCW 23B.07.280, except as otherwise provided~~  
15 ~~in the articles of incorporation or a bylaw adopted pursuant to RCW~~  
16 ~~23B.10.205;~~

17       ~~(y) A corporation must have a board of directors under RCW~~  
18 ~~23B.08.010;~~

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

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

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

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

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

36       ~~(ee) An officer of the corporation who is not a director is~~  
37 ~~entitled to mandatory indemnification under RCW 23B.08.520, and is~~  
38 ~~entitled to apply for court-ordered indemnification under RCW~~  
39 ~~23B.08.540, in each case to the same extent as a director under RCW~~  
40 ~~23B.08.570;~~

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

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

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

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

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

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

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

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

37       ~~(nn) Unless the board of directors requires a greater vote or a~~  
38 ~~vote by voting groups, a sale, lease, exchange, or other disposition~~  
39 ~~of all or substantially all of the corporation's property, other than~~  
40 ~~in the usual and regular course of business, must be approved by each~~

1 ~~voting group entitled to vote on such transaction by two-thirds of~~  
2 ~~all votes entitled to be cast by that voting group under RCW~~  
3 ~~23B.12.020; and~~

4 ~~(oo) Unless the board of directors requires a greater vote or a~~  
5 ~~vote by voting groups, a proposal to dissolve must be approved by~~  
6 ~~each voting group entitled to vote on the dissolution by two-thirds~~  
7 ~~of all votes entitled to be cast by that voting group under RCW~~  
8 ~~23B.14.020.~~

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

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

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

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

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

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

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

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

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

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

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



1 ~~(k) A board of directors may create one or more committees and~~  
2 ~~appoint members of the board of directors to serve on them under RCW~~  
3 ~~23B.08.250; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 ~~((~~(k)~~)) (g) A provision limiting or eliminating any duty of a~~  
12 ~~director or any other person to offer the corporation the right to~~  
13 ~~have or participate in any, or one or more classes or categories of,~~  
14 ~~business opportunities, prior to the pursuit or taking of the~~  
15 ~~opportunity by the director or other person in accordance with RCW~~  
16 ~~23B.08.735(1)(b). ((However, if such provision applies to an officer~~  
17 ~~or related person (as such term is defined in RCW 23B.08.700) of an~~  
18 ~~officer, the board of directors, by action of qualified directors~~  
19 ~~taken in compliance with the same procedures as are set forth in RCW~~  
20 ~~23B.08.720 and taken subsequent to the inclusion of such provision in~~  
21 ~~the articles of incorporation, (i) must approve the application of~~  
22 ~~such provision to an officer or a related person of that officer, and~~  
23 ~~(ii) may condition the application of such provision to such officer~~  
24 ~~or related person of that officer on any basis.~~

25 ~~(6)) (3) The articles of incorporation ((or the bylaws may~~  
26 ~~contain the following provisions:~~

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

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

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

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

38 ~~(e) If the corporation is registered as an investment company~~  
39 ~~under the investment company act of 1940, a provision establishing~~

1 terms of directors which terms may be longer than one year as  
2 provided in RCW 23B.05.050.

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

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

9 **Sec. 3.** RCW 23B.02.060 and 2011 c 328 s 1 are each amended to  
10 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ~~(k) A board of directors may create one or more committees and~~  
11 ~~appoint members of the board of directors to serve on them under RCW~~  
12 ~~23B.08.250; and~~

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

18 ~~(4))~~ The bylaws of a corporation may contain any provision for  
19 managing the business and regulating the affairs of the corporation  
20 to the extent the provision does not infringe upon or limit the  
21 exclusive authority of the board of directors under RCW  
22 23B.08.010(2)(b) or otherwise conflict with this title or any other  
23 law, the articles of incorporation, or a shareholders' agreement  
24 authorized by RCW 23B.07.320.

25 **Sec. 4.** RCW 23B.01.200 and 2015 c 176 s 2101 are each amended to  
26 read as follows:

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

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

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

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

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

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

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

8 (b) The facts may include:

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

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

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

20 (c) For purposes of this subsection:

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

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

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

28 (i) The name and address of any person required in a filed  
29 record;

30 (ii) The registered agent of any entity required in a filed  
31 record;

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

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

36 (v) The effective date of a filed record; and

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

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

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

17 **Sec. 5.** RCW 23B.06.010 and 1998 c 104 s 1 are each amended to  
18 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

32 **Sec. 6.** RCW 23B.06.240 and 1998 c 104 s 3 are each amended to  
33 read as follows:

34 (1) Unless the articles of incorporation provide otherwise, a  
35 corporation may issue rights, options, or warrants for the purchase  
36 of shares of the corporation. The board of directors shall determine  
37 the terms upon which the rights, options, or warrants are issued,  
38 their form and content, and the terms and conditions relating to  
39 their exercise, including the time or times, the conditions

1 precedent, and the consideration for which and the holders by whom  
2 the rights, options, or warrants may be exercised.

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

22 **Sec. 7.** RCW 23B.08.030 and 2009 c 189 s 23 are each amended to  
23 read as follows:

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

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

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

37 **Sec. 8.** RCW 23B.08.735 and 2015 c 20 s 5 are each amended to  
38 read as follows:



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

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

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

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

20 except that, in the case of both (a)(i) and (ii) of this subsection,  
21 rather than making "required disclosure" as defined in RCW  
22 23B.08.700(4), in each case the director or officer must have made  
23 prior disclosure to those acting on behalf of the corporation of all  
24 material facts concerning the business opportunity that are then  
25 known to the director or officer; or

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

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

10 **Sec. 9.** RCW 23B.09.020 and 2014 c 83 s 10 are each amended to  
11 read as follows:

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

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

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

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

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

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

28 **Sec. 10.** RCW 23B.10.060 and 2009 c 189 s 32 are each amended to  
29 read as follows:

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

33 (1) The name of the corporation;

34 (2) The text of each amendment adopted;

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

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

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

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

7 (7) If an amendment is being filed pursuant to RCW  
8 23B.01.200(3)(e), a statement to that effect.

9 **Sec. 11.** RCW 23B.11.010 and 1989 c 165 s 131 are each amended to  
10 read as follows:

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

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

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

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

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

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

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

27 (b) Other provisions relating to the merger.

28 (4) The terms of a plan of merger may be made dependent on facts  
29 objectively ascertainable outside the plan in accordance with RCW  
30 23B.01.200(3).

31 **Sec. 12.** RCW 23B.11.020 and 1989 c 165 s 132 are each amended to  
32 read as follows:

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

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

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

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

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

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

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

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

15 **Sec. 13.** RCW 23B.07.210 and 1989 c 165 s 69 are each amended to  
16 read as follows:

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

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

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

38 (4) Redeemable shares are not entitled to vote after delivery of  
39 written notice of redemption is effective and a sum sufficient to

1 redeem the shares has been deposited with a bank, trust company, or  
2 other financial institution under an irrevocable obligation to pay  
3 the holders the redemption price on surrender of the shares.

4 **Sec. 14.** RCW 23B.06.030 and 2002 c 297 s 17 are each amended to  
5 read as follows:

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

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

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

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

24 **Sec. 15.** RCW 23B.07.040 and 2009 c 189 s 14 are each amended to  
25 read as follows:

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

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

31 (ii) The corporate action is approved by shareholders holding of  
32 record or otherwise entitled to vote in the aggregate not less than  
33 the minimum number of votes that would be necessary to approve such  
34 corporate action at a meeting at which all shares entitled to vote on  
35 the corporate action were present and voted, and at the time the  
36 corporate action is approved the corporation ~~((is not a public~~  
37 ~~company and))~~ is authorized to approve such corporate action under  
38 this subsection (1)(a)(ii) by a general or limited authorization

1 contained in its articles of incorporation, except that if a  
2 corporation's articles of incorporation authorize shareholders to  
3 cumulate their votes when electing directors pursuant to RCW  
4 23B.07.280, shareholders may not elect directors by approval obtained  
5 in accordance with this subsection (1)(a)(ii).

6 (b) Corporate action may be approved by shareholders without a  
7 meeting or a vote by means of execution of a single consent or  
8 multiple counterpart consents by shareholders holding of record or  
9 otherwise entitled to vote in the aggregate not less than the minimum  
10 number of votes necessary under (a)(i) or (ii) of this subsection.  
11 Any such shareholder consent must: (i) Be in the form of an executed  
12 record; (ii) indicate the date of execution of the consent by each  
13 shareholder who executes it, which date must be on or after the  
14 applicable record date determined in accordance with subsection (2)  
15 of this section; (iii) describe the corporate action being approved;  
16 (iv) when delivered to each shareholder for execution, include or be  
17 accompanied by the same material that would have been required by  
18 this title to be delivered to shareholders in or accompanying a  
19 notice of meeting at which the proposed corporate action would have  
20 been submitted for shareholder approval; and (v) be delivered to the  
21 corporation for inclusion in the minutes or filing with the corporate  
22 records in accordance with subsection (4) of this section. A  
23 shareholder may withdraw an executed shareholder consent by  
24 delivering a notice of withdrawal in the form of an executed record  
25 to the corporation prior to the time when shareholder consents  
26 sufficient to approve the corporate action have been delivered to the  
27 corporation.

28 (2) The record date for determining shareholders entitled to  
29 approve a corporate action without a meeting may be fixed under RCW  
30 23B.07.030 or 23B.07.070, but if not so fixed shall be the date of  
31 execution indicated on the earliest dated shareholder consent  
32 executed under subsection (1) of this section, even though such  
33 shareholder consent may not have been delivered to the corporation on  
34 that date.

35 (3)(a) Notice that shareholder consents are being sought under  
36 subsection (1)(a) of this section (~~shall~~) must be given, by the  
37 corporation or by another person soliciting such consents, on or  
38 promptly after the record date, to all shareholders entitled to vote  
39 on the record date who have not yet executed the shareholder consent  
40 and, if this title would otherwise require that notice of a meeting

1 of shareholders to consider the proposed corporate action be given to  
2 nonvoting shareholders, to all nonvoting shareholders as of the  
3 record date. Notice given under this subsection (3)(a) (~~shall~~) must  
4 include or be accompanied by the same information required to be  
5 included in or to accompany the shareholder consent under subsection  
6 (1)(b)(iii) and (iv) of this section.

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

17 (4) Unless the consent executed by shareholders specifies a later  
18 effective date, shareholder approval obtained under this section is  
19 effective when: (a) Executed shareholder consents sufficient to  
20 approve the proposed corporate action have been delivered to the  
21 corporation, either at an address designated by the corporation for  
22 delivery of such shareholder consents or at the corporation's  
23 registered office, or to such electronic address, location, or system  
24 as the corporation may have designated for delivery of such  
25 shareholder consents; and (b) any period of advance notice required  
26 by the corporation's articles of incorporation to be given to any  
27 nonconsenting shareholders has been satisfied. Executed shareholder  
28 consents are not effective to approve a proposed corporate action  
29 unless, within sixty days after the date of the earliest dated  
30 shareholder consent delivered to the corporation, consents executed  
31 by a sufficient number of shareholders to approve the corporate  
32 action are delivered to the corporation.

33 (5) Approval of corporate action by execution of shareholder  
34 consents under this section has the effect of a meeting vote and may  
35 be described as such in any record, except that, if the corporate  
36 action requires the filing of a certificate under any other section  
37 of this title, the certificate so filed shall state, in lieu of any  
38 statement required by that section concerning any vote of  
39 shareholders, that shareholder approval has been obtained in

1 accordance with this section and that notice to any nonconsenting  
2 shareholders has been given to the extent required by this section.

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

12 NEW SECTION. **Sec. 16.** Section 1 of this act may be known and  
13 cited as the women on corporate boards act.

--- END ---