

SENATE BILL REPORT

SB 5034

As Reported by Senate Committee On:
Law & Justice, January 21, 2021

Title: An act relating to nonprofit corporations.

Brief Description: Concerning nonprofit corporations.

Sponsors: Senators Pedersen, Padden and Mullet; by request of Washington State Bar Association.

Brief History:

Committee Activity: Law & Justice: 1/14/21, 1/21/21 [DPS].

Brief Summary of First Substitute Bill

- Repeals the Washington Nonprofit Corporation Act and proposes a comprehensive revision.
- Applies to both new and existing nonprofit corporations.
- Modernizes the act loosely based on the American Bar Association's Model Nonprofit Corporation Act.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5034 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Darneille, Holy, Kuderer, Salomon and Wagoner.

Staff: Tim Ford (786-7423)

Background: The Washington Nonprofit Corporation Act (WNCA) was enacted in 1967 and establishes requirements regarding the organization and operation of nonprofit

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

corporations. Nonprofit corporations may be organized for any lawful purposes, including but not limited to charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and for professional, commercial, industrial or trade associations. Many of the provisions of the WNCA provide default rules that may be altered in the corporation's articles of incorporation or bylaws. The articles of incorporation and the bylaws are the governing documents for the corporation and set forth rules for numerous organizational and operational issues.

The Nonprofit Corporations Committee (NCC) of the Business Law section of the Washington State Bar Association periodically reviews the WNCA and makes recommendations to keep it up to date with developments in the law and changes made to the American Bar Association's Model Nonprofit Corporations Act and to changes in other states' nonprofit corporations act. The NCC recommends amendments to the WNCA to modernize the act.

Summary of Bill (First Substitute): The new act creates a more efficient process for the electronic transmission of notices and meeting procedures. The act contains more comprehensive rules governing members and directors, and it updates record keeping and filing requirements with the secretary of state. The act defines members, their rights, and their powers, and includes provisions for delegates acting in a representative capacity.

The new act protects charitable assets of nonprofit corporations and comprehensively addresses the authority of the attorney general to investigate and intervene to protect charitable assets. However, the attorney general may not take action or investigate a religious corporation unless the attorney general:

- knows of facts that property held by the religious corporation for charitable purposes is about to be distributed in violation of the act;
- the board of directors of the religious corporation has requested the attorney general's involvement; or
- knows of facts indicating the religious corporation has no directors in office.

Derivative member actions was removed from the draft originally reviewed at a Kitsap County work session by this committee on September 20, 2019.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Section 1408 corrects a reference to section 1407 that should be 1406.
- Section 1505 adds language that a court may modify a restriction upon application by a corporation.
- Section 1606 removes language requiring the court to act on an expedited basis.
- Section 2113 adds language clarifying that a court order is in any proceeding involving a corporation or upon application from the corporation for the termination

- of a member of the corporation.
- Section 3108 adds language clarifying that a court order amending articles of incorporation is in a proceeding relating to the corporation.
 - Section 3511 removes guardian and guardian ad litem and inserts special representative to represent the interests of all claimants.
 - Section 4203 requires a petitioner in a contested corporate action to provide notice of the proceeding to every other person affected by the proceeding.
 - Section 2403 adds language that a director of a nonprofit corporation must be an individual of at least sixteen years of age.
 - Section 2404 adds restrictive language that the number of directors on a board of directors who are under 18 years of age may not exceed three or one-third of the total number of directors then in office, whichever is fewer.
 - Section 2504 adds restrictive language that a quorum shall not be present at any time during a meeting unless a majority of the directors present are at least 18 years of age.
 - New Section 2707 adds restrictive language that no director under 18 years of age may execute any document on behalf of the corporation or bind the corporation to any other party without written concurrence of another director at least 18 years of age with authority to execute documents or bind the corporation.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The law on non-profit corporations needs updating. The volunteer lawyers from the bar association have been working on this legislation for more than ten years. This is a comprehensive rewrite of the law. First, we wanted to modernize the provisions related to electronic notice, record keeping, agency filings, the affairs of boards of directors and corporate officers, and provisions relating to fundamental transactions. Second, charitable assets are protected better than under current law. It clarifies how the attorney general may use its supervisory authority to protect charitable assets. Third, it improve the relations between boards and their members.

This modernization is much needed and bipartisan. Official notification has not been updated in 50 years. Email notifications are standard and this bill recognizes it. Non-profits are vital to our communities and to fighting the COVID- 19 pandemic.

It clarifies the attorney general's authority over charitable assets and creates a consistent source of funding that will permit the attorney general to prioritize this important work and to provide education.

OTHER: I'm in favor of this bill overall however, I have some concerns. I am mostly concerned with homeowners associations (HOA) and how these laws apply to them. They are nonprofit organizations but need some special rules. Members of HOA's should be able to communicate with each other, and records that must be kept should include member email addresses for use by all members. Requests for records from HOA's should be allowed to be requested electronically rather than requiring you to make a request in person at the HOA main office.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Daniel Parkhurst, Washington Nonprofits; David Lawson, Nonprofit Corporations Subcommittee, Business Law Section, Washington State Bar Association; Karl Johanson, Non Profit Insurance Program; Judith Andrews, Washington State Bar Association Nonprofit Corporations Committee and Washington Nonprofits; Robert Colton, Washington State Office of the Attorney General; Lynda Atkins, Washington State Office of the Attorney General; Brian Newberry, Girl Scouts.

OTHER: Raelene Schifano, citizen; Patrick Johansen, Rise Up Washington.

Persons Signed In To Testify But Not Testifying: No one.