

SENATE BILL REPORT

SB 5004

As Amended by House, March 20, 2023

Title: An act relating to making updates to the Washington business corporation act.

Brief Description: Making updates to the Washington business corporation act.

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

Brief History:

Committee Activity: Law & Justice: 1/10/23, 1/12/23 [DP].

Floor Activity: Passed Senate: 1/25/23, 49-0.

Passed House: 3/20/23, 96-0.

Brief Summary of Bill

- Clarifies the mechanics for implementing a stock split.
- Enables holding company reorganization transactions and establishes requirements for such transactions.
- Clarifies when shareholder approval of a plan of merger or share exchange is not required.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

Background: The Washington Business Corporation Act. The Washington Business Corporation Act (WBCA) provides requirements for creating, organizing, and operating

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corporations and the relationship between shareholders, directors, and officers of the corporation. Many of the provisions of the WBCA 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 WBCA is modeled largely after the American Bar Association's revised Model Business Corporation Act. The Corporate Act Revision Committee of the Business Law section of the Washington State Bar Association periodically reviews the WBCA and makes recommendations to keep it up to date.

Stock Splits. A forward stock split occurs when a company issues additional shares of stock to its current shareholders, increasing the total number of outstanding shares by a specified ratio based on the shares they held previously, and as a result, proportionally decreasing the per share price or value of the stock. The overall market value of the company remains the same after a forward stock split.

A company carrying out a reverse stock split decreases the number of its outstanding shares, and as a result, the share price or value per share increases proportionately. The overall market value of the company remains the same after a reverse stock split.

Holding Company Reorganizations. A holding company reorganization is a transaction in which a holding company becomes the sole shareholder of an existing company. The reorganization occurs when an existing corporation merges with a third affiliated corporation formed by the holding company to carry out the reorganization. The result is that the shareholders of the original existing company become shareholders of the new holding company, and the original existing company becomes a wholly owned subsidiary of the new holding company.

Mergers. Generally, a plan of merger between corporations must be approved by shareholders. A medium-form merger involves a two-step transaction that involves a front-end tender offer followed by a back-end merger which dispenses with the requirement of shareholder approval.

Summary of Bill: Stock Splits. Shares may be issued as a share dividend or upon a stock split, reclassification of outstanding shares into shares of another class or series, or conversion of outstanding shares into shares of another class or series. These shares are fully paid and nonassessable.

Corporations may effect a stock split by an amendment to their articles of incorporation stating the effect of the stock split on the outstanding shares of the affected class of shareholders. Corporations may initiate a forward or reverse stock split without shareholder approval if the corporations only have one class of shares outstanding. All other stock splits must be proposed by a corporation's board of directors and be approved by the shareholders entitled to vote on the amendment. The record date determines the shareholders affected by a stock split and is either the date on which the amendment takes effect, or a date fixed by

the board of directors on or after the effective date of the amendment.

Holding Company Reorganizations. Unless a company's articles of incorporation provide otherwise, an existing corporation—the parent constituent corporation— may merge with or into a direct wholly owned subsidiary—the subsidiary constituent corporation—of the existing corporation's holding company. The transaction is not subject to approval by the parent constituent corporation's shareholders if:

- the plan of merger expressly permits or requires the merger to be effected under the requirements of this act;
- the parties are all Washington corporations;
- the holding company was, at all times, a direct wholly owned subsidiary of the parent constituent corporation;
- the subsidiary constituent corporation was a direct wholly owned subsidiary of the holding company and an indirect wholly owned subsidiary of the parent constituent corporation;
- the parent constituent corporation and the subsidiary constituent corporation are the only parties to the merger;
- the surviving corporation becomes or remains a direct wholly owned subsidiary of the holding company;
- each share of the parent constituent corporation is converted into a share of the holding company having the same designations and relative preferences, rights, and limitations;
- the organizational documents of the holding company contain identical provisions as the parent constituent corporation;
- the organizational documents of the surviving corporation contains provisions that would preserve the rights of the parent constituent corporation's shareholders to approve transactions that would have required shareholder approval had the holding company reorganization not taken place;
- the directors of the parent constituent corporation remain the directors of the holding company immediately after the transaction; and
- the shareholders of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes because of the transaction.

The transaction does not limit or extinguish the right of a shareholder to bring a derivative action.

Mergers. Technical changes are made to clarify that shareholder approval is generally not required for medium-form mergers involving a public company, as well as for mergers between a subsidiary corporation and a parent corporation that owns at least 90 percent of the outstanding shares of each class of the subsidiary corporation.

Appropriation: None.

Fiscal Note: Not requested.

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

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

Staff Summary of Public Testimony: PRO: Every year, the Corporate Act Revision Committee reviews the Model Business Corporation Act to make sure it stays up to date, so that Washington remains a favorable jurisdiction for corporations. The changes in this bill will keep Washington up to speed with corporate developments in Delaware. It creates a cleaner, streamlined way for a company in Washington to have a holding company structure. Companies may currently undergo a holding company restructure, but it is costly and requires shareholder approval, which leads to companies reincorporating in Delaware. This bill provides protections for stockholders so that everyone remains in the same position as they were before a holding company restructure. The bill also clarifies the process to enact stock splits.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Michael Hutchings, WSBA Corporate Act Revision Committee.

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

EFFECT OF HOUSE AMENDMENT(S):

- Makes clarifying changes to language in the provision requiring shareholder approval of mergers, including by adding a specific exception for holding company reorganization transactions.