



# WASHINGTON NONPROFIT CORPORATION ACT

## WHAT NONPROFIT LEADERS NEED TO KNOW—SB 5034

Washington Nonprofits supports the Washington Nonprofit Corporations Act (WNCA), SB 5034, proposed legislation that will modernize and clarify the statutes governing nonprofit corporations. The WNCA modernizes the law, protects charitable assets, and provides clarity and guidance for nonprofits. If approved in the 2021 Washington State Legislative Session, the new law would go into effect on January 1, 2022.

### WHAT CHANGES ARE PROPOSED?

#### Current Law

#### WNCA\*

### MODERNIZATION

Postal mail is required for official notifications such as announcement of special board meetings unless burdensome consent procedures are followed.

Does not allow for nonprofits to move from one state to another or convert from one entity form to another.

**Email notifications are acceptable** and expected as the default method of delivering required notifications.

**Clearer and updated electronic meeting rules** that permit telephone or videoconference meetings and use of assistive technology for people with disabilities.

Provides for new “**fundamental transactions**” that are becoming standard **nation-wide: domestication and conversion** (see below for additional info).

### PROTECTION OF CHARITABLE ASSETS

Sets out new requirements to protect charitable assets and restrict their use to the required charitable purposes, balancing effective supervision with preserving flexibility for nonprofit boards to determine how to use funds appropriately. It is not an optimal fit for nonprofits.

\$10 annual registration fee.

Sets out **new requirements to protect charitable assets and restrict their use to the required charitable purposes.**

- Adds a clear definition of “property held for charitable purposes”
- More clarity and flexibility to distribute assets to another charitable organization in the event of dissolution.
- Rules for the treatment of charitable assets in the event of other major transactions.
- Alignment with the Uniform Prudent Management of Institutional Funds Act which has been adopted in 49 states and the District of Columbia.
- Clarification regarding restricted gifts and how they can be modified.
- Defines the Attorney General’s authority to enforce the new rules, including limiting the Attorney General’s power with respect to religious organizations to preserve the constitutional separation of church and state.

**Increased annual fee** of \$60 to provide resources for both educating nonprofits regarding their legal obligations and enforcement by the Attorney General’s office.\*\* \$20 for nonprofits with revenue less than \$500K/year.

*\*The WNCA provides for flexibility. For most of these provisions, the standard applies “unless otherwise provided in the organization’s articles or bylaws.” Each organization can still set a higher standard for themselves.*

*\*\*We are advocating for additional funds dedicated to education..*

UPDATED: MARCH 10, 2021



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## CURRENT LAW

## WNCA\*

### MEMBERSHIP

Unclear, incomplete guidance for corporations with voting membership.

**A more comprehensive set of rules for membership corporations, comparable to other states.** These provisions apply to organizations that provide in their bylaws for voting members who elect the board of directors or vote on one or more fundamental transactions of the organization.

- Rules for admission and termination of members.
- Requirement for at least one member meeting per fiscal year.
- Default quorum and voting rules.

### GOVERNANCE

Does not address the issue of minor board members.

**Clearer provisions and updated language related to board governance.**

- Distinguishes between directors and trustees.
- Clearly states requirements for board size, officers.
- Default terms of one-year, default quorum and voting rules, provisions for removal of directors and officers.
- Allows for use of remote communications methods.
- Defines a board committee as a board-created committee with board-delegated power, and limited membership to board members. Other committees created by the Board that include non-board members are permitted and technically advisory.
- Conflict of interest rules.

**Allows for youth to serve as board members.** An earlier draft required that directors must be at least 18 years old.\*\*\*

### FUNDAMENTAL TRANSACTIONS

**Clearer, more detailed procedures for amendment of governing documents, merger with another organization, and ceasing operations.**

- Requirement to notify the Attorney General of intent to merge, domesticate, convert or dispose of assets.
- Clear provisions for closing a nonprofit through voluntary dissolution, administrative dissolution or judicial dissolution.

**Addition of domestication:** procedures by which a nonprofit incorporated in another state may become a Washington nonprofit corporation or move to another state.

**Addition of conversion:** procedures where a nonprofit corporation may become another type of business or a business may become a nonprofit.

### RECORD KEEPING

**More specific guidance regarding recordkeeping** and rights to inspection.

New limitations on the sharing of membership lists for commercial or solicitation purposes.

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\*\*\*Washington Nonprofits is working with youth advocates to find language that would allow for youth board membership and provide clear guidance.