

TITLE 7

CORPORATIONS AND PARTNERSHIPS

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Chapter 56

2013 EDITION

Duties of Secretary of State

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56.005 [1963 c.580 §10; repealed by 1987 c.414 §172]

§§4,14; 1995 c.215 §2; 1995 c.689 §35; 1997 c.775 §87; 1999 c.486 §1; 1999 c.652 §2]

GENERALLY

56.006 “Office” defined. “Office,” when used in this chapter to refer to the administrative unit directed by the Secretary of State, means the Office of Secretary of State. [1987 c.414 §53]

56.010 [Repealed by 1963 c.580 §103]

56.012 [1963 c.580 §§11,12; repealed by 1987 c.414 §172]

56.014 Secretary of State as filing officer; duties. (1) The Secretary of State is the filing officer under ORS chapters 58, 60, 62, 63, 65, 67, 70, 554, 647, 648 and 649 and ORS 128.560 to 128.600 and 661.210 to 661.280.

(2) The duties, powers and authority of the Secretary of State under this chapter apply to the Secretary of State’s functions under ORS chapters 58, 60, 62, 63, 65, 67, 70, 554, 647, 648 and 649 and ORS 128.560 to 128.600 and 661.210 to 661.280. [1987 c.414 S.55; 1993 c.66 §1; 1995 c.215 §1; 1995 c.689 §34; 1997 c.775 §86; 1999 c.652 §1]

56.015 [1955 c.349 §1; 1957 c.80 §1; repealed by 1963 c.580 §103]

56.016 Filing facsimile transmissions and other reproductions of documents; rules; fees. (1) Notwithstanding any provisions of ORS chapters 58, 60, 62, 63, 65, 67, 70, 554, 647, 648 and 649 or ORS 128.560 to 128.600 or 661.210 to 661.280 relating to the Secretary of State as the filing officer:

(a) A document may be delivered to the office of the Secretary of State for filing by electronic facsimile transmission if the original document is otherwise acceptable for filing.

(b) Any other reproduction of a document may be delivered to the office of the Secretary of State for filing if the original document is otherwise acceptable for filing.

(c) A document delivered under paragraph (a) or (b) of this subsection need not be accompanied by a true copy of the document. After filing a document delivered under paragraph (a) or (b) of this subsection, the Secretary of State shall return an acknowledgment of filing to the domestic or foreign business entity or its representative.

(2) Subsection (1) of this section applies only to documents delivered to the office of the Secretary of State for filing under ORS chapters 58, 60, 62, 63, 65, 67, 70, 554, 647, 648 and 649 and ORS 128.560 to 128.600 and 661.210 to 661.280.

(3) The Secretary of State by rule may establish fees for receiving and sending acknowledgment of filing of documents delivered for filing under this section. [1993 c.66

56.018 Power of Secretary of State in performing business registry functions. For purposes of performing business registry functions, the Secretary of State shall have the power:

(1) To organize and reorganize, as necessary, the Office of Secretary of State as the Secretary of State deems necessary to conduct and administer the business registry functions.

(2) To appoint all subordinate officers and employees of the Secretary of State’s office and prescribe their duties and fix their compensation, subject to the applicable provisions of the State Personnel Relations Law. Subject to any other applicable law regulating travel expenses, the officers and employees of the office engaging in business registry functions shall be allowed such reasonable and necessary travel and other expenses as may be incurred in the performance of their duties. [1963 c.580 §13; 1987 c.414 §56; 1993 c.66 §2]

56.020 [Amended by 1961 c.280 §4; repealed by 1963 c.580 §103]

56.022 Authority of Secretary of State to carry out business registry functions; rules. The Secretary of State shall have the power and authority reasonably necessary to enable the Secretary of State to carry out business registry functions and other duties imposed on the Secretary of State under ORS chapters 58, 60, 62, 63, 65, 67, 70, 554, 647, 648 and 649 and ORS 128.560 to 128.600 and 661.210 to 661.280, including the authority to promulgate rules governing the procedure and form for submitting documents to be filed by the Secretary of State and the procedure and form for filing and retaining the documents and any other records required to be kept. [1985 c.728 §5; 1987 c.414 §57; 1995 c.215 §3; 1995 c.689 §36; 1997 c.775 §88; 1999 c.652 §3]

56.023 Approval of name of entity by Director of Department of Consumer and Business Services required in certain business registry filings; exception. (1) If a person seeks to make a business registry filing of a name with the Secretary of State under ORS chapter 58, 60, 62, 63, 65, 67, 70, 554 or 648 or ORS 128.560 to 128.600 that contains the word or words “banc,” “bancorp,” “bank,” “banker,” “banking,” “savings,” “safe deposit,” “trust,” “trustee,” “building and loan” or their equivalents in a language other than English, or a similar word or words in English or an equivalent in a language other than English, implying a business primarily engaged in the lending of money, underwriting or sale of financial products, acting as a depository institution, acting as a financial planner, financial adviser

or acting as a loan broker, the Secretary of State may not accept the name for filing without first receiving specific written approval from the Director of the Department of Consumer and Business Services under the provisions of ORS 705.635.

(2) The provisions of subsection (1) of this section do not apply if the Secretary of State is satisfied that the name at issue is in a context clearly not purporting to refer to a banking or other financial activity or not likely to mislead the public about the nature of the business or lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State of Oregon as determined by the Secretary of State. [2001 c.315 §42]

56.025 Designation of persons to sign papers. The Secretary of State may designate one or more of the clerks, deputies or assistants of the Secretary of State, in the name of the Secretary of State, to sign or countersign papers, documents, orders and certificates requiring the signature of the Secretary of State. Any paper, document, order or certificate signed in the name of the Secretary of State by the designated clerk, deputy or assistant shall have the same force and effect as if signed by the Secretary of State. [1959 c.173 §1]

56.030 [Amended by 1961 c.280 §5; repealed by 1963 c.580 §103]

56.035 Documents filed with Secretary of State; verification. (1) If a document is required by law to be verified before being submitted for filing with the Secretary of State, the document must include or be accompanied by a written declaration that the person who executes the document prepares under penalties of perjury to the effect that the person has examined the document and to the best of the person's knowledge and belief the document is true, correct and complete. An acknowledgment before a notary public or other officer is not required.

(2) The Secretary of State, before filing a document that a person submits for filing, may verify that the principal office address or the registered office address listed in the document is a physical street address and not a commercial mail receiving agency. [1971 c.200 §2; 2013 c.158 §17]

56.037 Authority of Secretary of State to refuse to file documents. (1) The Secretary of State may refuse to file a document delivered for filing under ORS chapter 58, 60, 62, 63, 65, 67, 70, 79, 87, 194, 305, 465, 466, 475, 554, 596, 634, 647, 648, 657 or 713 or under ORS 30.630, 80.115, 80.118 or 128.595 if the document contains a Social Security number, a state identification number, a driver license number, a credit or debit card

number or an account number that is not redacted.

(2) For purposes of this section, "redacted" means altered or truncated so that not more than the last four digits of a number are accessible. [2007 c.186 §2]

56.040 [Repealed by 1961 c.280 §2]

56.041 Operating Account. (1) The Operating Account is established in the General Fund of the State Treasury.

(2) The net amount accruing to the Secretary of State from all fees, charges, interest, fines, penalties and miscellaneous revenues from all sources relating to business registry functions, and moneys received by the Secretary of State under ORS chapters 79 and 194 and ORS 80.100 to 80.130, 87.246, 87.767 and 87.806 to 87.831 shall, after deduction of refunds, be paid over to the State Treasurer and deposited at least monthly in the Operating Account.

(3) Moneys deposited to the credit of the Operating Account are continuously appropriated to the Secretary of State for the expenses of carrying out the functions and duties of the Secretary of State relating to business registry, and the functions and duties of the Secretary of State under ORS chapters 79 and 194 and ORS 56.200 to 56.209, 80.100 to 80.130, 87.246, 87.767 and 87.806 to 87.831.

(4) At the end of each month, the Secretary of State shall determine the number of business registry filings during the month for which the Secretary of State collected the fees described in ORS 56.140 (1) to (4). An amount equal to \$20 for each of those filings shall be deposited by the Secretary of State in the Operating Account. The Secretary of State shall then deposit all other moneys from the fees collected during the month under ORS 56.140 (1) to (4) in the General Fund. Amounts deposited to the General Fund under this subsection are available for general governmental expenses. [1961 c.280 §10; 1963 c.551 §16; 1981 c.633 §1; 1987 c.58 §12; 1987 c.414 §140; 1991 c.132 §1; 1991 c.425 §9; 1993 c.66 §7; 1999 c.652 §4; 2001 c.445 §160; 2003 c.785 §7; 2009 c.745 §13; 2013 c.699 §6]

56.045 [1985 c.383 §8; repealed by 1987 c.58 §15 and 1987 c.414 §172]

56.050 Copies of records as evidence. Copies of all records and papers of the Office of the Secretary of State, certified by the Secretary of State, shall be received in evidence in all cases equally and with like effect as the original. [Amended by 1953 c.549 §138; 1957 c.227 §1; 1963 c.580 §14; 1985 c.351 §1; 1985 c.728 §1; 1993 c.66 §5; 1999 c.652 §5]

56.060 Records of Secretary of State. The Secretary of State shall keep, as records of office, books showing all acts, matters and things done by the Secretary of State in per-

forming the business registry functions and duties of the Office of Secretary of State. [Amended by 1983 c.740 §6; 1985 c.728 §§2,2a; 1987 c.158 §9; 1987 c.414 §58]

56.070 [1955 c.185 §1; 1971 c.184 §1; repealed by 1999 c.652 §22]

56.080 Withdrawal of certificates issued and filings accepted; withdrawal from filing. (1) Except as provided in subsections (2), (3), (4) and (5) of this section, within one year after a filing and not less than 20 days after giving written notice to the company or individual who submitted the document, the Secretary of State may withdraw any certificate the secretary issued or document the secretary filed, except filings under ORS chapter 647, on any ground existing at the time of the filing for which the secretary could have originally refused to issue the certificate or file the document. The written notice must state the reason for the proposed withdrawal.

(2) The secretary, within one year after a filing, may withdraw from filing any document the secretary filed if the person that submitted the document advises the office that the document was submitted prematurely or by inadvertence or mistake. The person that requests the withdrawal shall accompany the request with a written statement that reflects the basis of the person's authority to request the withdrawal.

(3) The secretary, within one year after a filing, may withdraw from filing any document the secretary filed if an authorized representative of the business on behalf of which the document was filed advises the office that the document was submitted in error. The person that requests the withdrawal shall accompany the request with a notarized affidavit that states the basis of the person's authority to request the withdrawal.

(4) The secretary may withdraw without notice or hearing a certificate that the secretary issued or a document the secretary filed if the fee was paid with a check that was returned to the office for lack of sufficient funds. The withdrawal is retroactive to the date of filing.

(5) The secretary shall withdraw a certificate the secretary issued or a document the secretary filed if the secretary receives a final written order from the Director of the Department of Consumer and Business Services that establishes that the person named in the certificate or document has violated ORS 705.638, 707.005 or 707.010.

(6) Any decision under this section may be reviewed in accordance with the provisions of ORS chapter 183.

(7) A withdrawal of a document from filing under this section is retroactive to the date of the filing but does not relieve a per-

son of any liability the person may have incurred while the document was filed with the office. The Secretary of State is not required to refund any fees paid in conjunction with a document that the secretary withdraws.

(8) At any time before a delayed effective date specified in a document, the secretary shall withdraw the document at the written request of the person or persons who originally filed the document with the secretary. The document after withdrawal has no further effect and must be treated as if the document had not been filed. The person that requests the withdrawal shall accompany the request with a written statement that reflects the basis of the person's authority to request the withdrawal. [1967 c.576 §2; 1981 c.633 §2; 1983 c.717 §4; 1985 c.728 §§3,3a; 1987 c.414 §59; 1989 c.1040 §1; 1999 c.652 §6; 2001 c.315 §§39,40; 2009 c.541 §1; 2013 c.158 §18]

56.090 [1983 c.717 §2; 1987 c.414 §60; repealed by 1993 c.66 §15]

56.100 Electronic materials not subject to public records law. Except as the Secretary of State provides by rule, the following are not public records for the purposes of ORS 192.410 to 192.505:

(1) Electronic data processing programs of the office; and

(2) Electronic media used to record, process or store documents filed with the office under the business registry functions of the office. [1983 c.717 §2a; 1987 c.414 §61]

56.105 [1987 c.843 §13; repealed by 2007 c.186 §21]

56.110 Evidentiary effect of certificates and other documents issued by Secretary of State. This section applies to certificates of the Secretary of State and documents filed by the Secretary of State under the business registry functions of the Secretary of State. All certificates issued by the Secretary of State and all copies of documents filed in the office of the Secretary of State, when certified by the Secretary of State, shall be taken and received in all courts, public offices and official bodies of this state as prima facie evidence of the facts stated in the certificates or documents. A certificate by the Secretary of State as to the compliance or noncompliance of the document with the filing requirements or other provisions of law administered by the office of the Secretary of State, or as to the existence or nonexistence of the facts relating to the matters contained in the documents which would appear from the presence or absence of documents filed in the office of the Secretary of State, shall be taken and received in all courts, public offices and official bodies of this state as prima facie evidence of the existence or nonexistence of the facts stated in the certificates or documents. [1983 c.717 §3; 1987 c.94 §122; 1987 c.414 §62]

56.120 [1983 c.87 §4; repealed by 1987 c.58 §15]

56.140 Fees; waiver; rules. (1) The Secretary of State shall collect a nonrefundable fee of \$100 for each of the following documents delivered to the Secretary of State for filing:

(a) Articles of incorporation delivered for filing under ORS 58.085.

(b) Articles of incorporation delivered for filing under ORS 60.051.

(c) Articles of incorporation delivered for filing under ORS 62.511.

(d) Articles of organization delivered for filing under ORS 63.051.

(e) Applications for registration delivered for filing under ORS 67.603.

(f) Certificates of limited partnership delivered for filing under ORS 70.075.

(g) Trust documents delivered for filing under ORS 128.575.

(h) Articles of incorporation delivered for filing under ORS 554.020.

(2) The Secretary of State shall collect a nonrefundable fee of \$100 for annual reports delivered for filing by an entity subject to a fee under subsection (1) of this section, and for any other related document that the entity is allowed or required to file with the Secretary of State.

(3) The Secretary of State shall collect a nonrefundable fee of \$275 for each of the following documents delivered to the Secretary of State for filing:

(a) Applications for authority to transact business in this state delivered under ORS 58.134, 60.707, 63.707 or 67.710.

(b) Applications for registration under ORS 70.355.

(c) Annual reports delivered for filing by an entity subject to a fee under paragraph (a) or (b) of this subsection, and for any other related document that the entity is allowed or required to file with the Secretary of State.

(4) For documents other than those specified in subsections (1), (2) and (3) of this section, except as provided in ORS 65.787 (6), the Secretary of State shall collect a nonrefundable fee of \$50 for each document delivered for filing to the Secretary of State as part of the secretary's business registry functions described in ORS 56.022.

(5) The Secretary of State by rule may establish fees, in addition to those provided for in subsections (1) to (4) of this section, for:

(a) Copying any public record maintained by the secretary and relating to the

secretary's business registry functions, and for certifying the copy; and

(b) Certifying to other facts of record, including certificates of existence, relating to the secretary's business registry functions.

(6) The Secretary of State shall collect a nonrefundable fee of \$20 each time process that is related to the Secretary of State's business registry functions is served on the Secretary of State.

(7) The Secretary of State may waive collection of any fee, charge or interest or portion of a fee, charge or interest that is collectible by the Secretary of State as part of the secretary's business registry functions.

(8) The Secretary of State by rule shall establish and collect reasonable fees for the following services relating to the secretary's business registry functions:

(a) Computer generated lists on electronic data processing media.

(b) Terminal access to the files of the office.

(c) Microfilm records of the files of the office.

(d) Microfilm processing and development services.

(e) Copies of the programs and files on paper or electronic data processing media. [1987 c.58 §7; 1987 c.414 §135; 1999 c.652 §7; 2003 c.785 §6; 2009 c.122 §1; 2009 c.745 §11]

56.150 [1987 c.58 §8; 1987 c.414 §136; repealed by 1991 c.132 §37]

56.160 Petty cash fund. The Secretary of State is authorized to establish a petty cash fund, not to exceed \$300, for the purpose of performing business registry functions. [1987 c.414 §65a]

56.170 [Formerly 57.772; 1993 c.66 §6; repealed by 1999 c.652 §22]

56.180 Business Registration Information Center; functions; rules. (1) A Business Registration Information Center is established within the Office of the Secretary of State.

(2) The primary functions of the center are:

(a) To develop a system within the center by which accurate and easily understandable information with respect to the business registration requirements of participating state agencies may be made available to persons undertaking a new business or operating an existing business;

(b) To establish a business portal as provided in subsection (3) of this section; and

(c) To advertise and make the business portal described in subsection (3) of this section and information described in this sub-

section available to all persons who request the information.

(3)(a) The center shall establish, maintain and update a business portal called the “One Stop Shop for Oregon Business” that is accessible through the Internet and that provides information, services and resources for:

(A) Starting, expanding and operating a business in Oregon or relocating a business within or to Oregon;

(B) Understanding state and local government rules, ordinances and policies that apply to business;

(C) Understanding how to classify a business for registration purposes;

(D) Registering, licensing and obtaining needed permits for a business;

(E) Obtaining information about financing and tax credits available to businesses;

(F) Understanding business taxes and rules and policies concerning taxation that apply to businesses;

(G) Obtaining information about and assistance with exporting;

(H) Obtaining information about and resources for hiring workers in Oregon;

(I) Obtaining information about public contracting;

(J) Obtaining information about and resources for business relocation;

(K) Obtaining information about and assistance with training for businesses; and

(L) Obtaining other information, services and resources related to business in Oregon.

(b) All agencies of state government, as defined in ORS 174.111, and local government, as defined in ORS 174.116, that have functions related to business registration, licensing, permitting or taxation or that otherwise can provide information for or assist with establishing, expanding, operating or relocating a business are directed to cooperate with and assist the center in performing the center’s duties under subsection (3) of this section.

(4) The Secretary of State may adopt rules necessary to implement the provisions of subsection (3) of this section. [1993 c.805 §5; 2003 c.7 §1; 2011 c.677 §1]

56.185 Oregon License Directory database; reports required; updates; rules. (1) As used in this section:

(a) “Local agency” means every county, city, school district, municipal organization, district or political subdivision, or any board, commission or agency thereof, or any other local public agency.

(b) “Small business” means a prospective, new or established business with 100 or

fewer employees that is or will be located in Oregon.

(c) “State agency” means every state office, department, division, bureau, board or commission or any other state agency.

(2) The Secretary of State shall maintain the Oregon License Directory as a searchable, statewide database containing information regarding licenses, permits and registrations for which fees and fee-related regulations are imposed on small businesses by local agencies and state agencies in Oregon. The Secretary of State shall make the Oregon License Directory available on the Internet to the public free of charge.

(3) All local agencies and state agencies that have functions related to the issuance of licenses, permits and registrations for which fees and fee-related regulations are imposed on small businesses must:

(a) Report information in a manner to be designated by the Secretary of State by rule for inclusion in the Oregon License Directory, including but not limited to information regarding the average time to process and issue licenses, permits and registrations for which fees are imposed on small businesses and the number of active licenses, permits and registrations; and

(b) Review and update the information required under paragraph (a) of this subsection on or before July 1, but not later than September 1, of each year.

(4) The Secretary of State may adopt rules necessary to implement the provisions of this section. [2013 c.580 §1]

Note: 56.185 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 56 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

OFFICE OF SMALL BUSINESS ASSISTANCE

56.200 Definitions for ORS 56.200 to 56.209. As used in ORS 56.200 to 56.209:

(1) “Small business” means a prospective, new or established business with 100 or fewer employees that is or will be located in Oregon.

(2) “State agency” means an agency of the executive department, as defined in ORS 174.112. [2013 c.699 §2]

56.203 Office of Small Business Assistance; functions; confidentiality; rules.

(1) The Office of Small Business Assistance is established within the Office of Secretary of State. The Secretary of State shall employ and appoint personnel necessary to perform the functions and duties of the Office of Small Business Assistance.

(2) The Office of Small Business Assistance shall:

(a) Assist state agencies with regulatory authority over small businesses to ensure that small businesses that are subject to audit, on-site inspection, compliance monitoring or compliance assistance efforts by state agencies, or that receive enforcement-related communications from or have contacts with state agencies with regulatory authority over small businesses, are provided with the means to comment on these interactions with state agencies.

(b) Work with state agencies for the purpose of facilitating interactions between small businesses and state agencies, including but not limited to obtaining timely responses to small business inquiries and requests, and resolving issues that arise in the administrative, regulatory and enforcement functions of state agencies with respect to small businesses.

(c) Work with small businesses and state agencies to identify and recommend efficient, responsive and nonretaliatory processes for:

(A) Receiving concerns or complaints from small businesses regarding interactions with state agencies;

(B) Participation of small businesses in general studies, conferences, inquiries or meetings that would improve the functioning of state agencies with regulatory authority over small businesses;

(C) Identifying causes of unnecessary delays, inconsistencies in the administrative, regulatory and enforcement functions of state agencies and inefficient uses of state resources; and

(D) Making recommendations for resolving issues and disputes that arise in the context of interactions between state agencies and small businesses.

(3) All state agencies shall cooperate with and assist the Office of Small Business Assistance in the performance of its duties and functions.

(4) Writings and information provided to, and communications with, the Office of Small Business Assistance under subsection (2) of this section are confidential and exempt from disclosure under ORS 192.410 to 192.505, except as necessary to prepare the report required under ORS 56.206.

(5) The Secretary of State may adopt rules necessary to implement the provisions of ORS 56.200 to 56.209. [2013 c.699 §3]

56.206 Reviews and investigations of complaints; conditions for review; notice; recommendations; report. (1) In addition to the duties and responsibilities described in ORS 56.203, the Office of Small Business As-

sistance may, except as provided in subsection (2) of this section, conduct reviews and investigations of complaints received from small businesses with respect to interactions with state agencies.

(2) The office may not review and investigate a complaint under this section if the office determines that:

(a) The complainant could reasonably be expected to use, or is using, an alternative remedy or recourse for the complaint;

(b) The complaint relates to a matter outside the jurisdiction of the office;

(c) The complaint was delayed too long to justify review and investigation;

(d) The complainant does not have sufficient personal interest in, or is not personally aggrieved or affected by the subject matter of, the complaint;

(e) The complaint is trivial, frivolous, vexatious or not made in good faith;

(f) The resources of the office are insufficient for adequate review and investigation of the complaint;

(g) The review and investigation of other complaints take precedence over the review and investigation of the complaint; or

(h) The complaint is the subject of pending litigation, a pending contested case proceeding under ORS chapter 183 or an agency action that could result in a contested case proceeding under ORS chapter 183.

(3) The office shall notify a complainant as to whether the office will review and investigate the complaint within 30 days of receiving the complaint.

(4) If the office has undertaken a review and investigation of the complaint:

(a) Upon the complainant's request, the office shall inform the complainant of the status of the review and investigation; and

(b) Upon conclusion of the review and investigation, the office shall:

(A) Inform the complainant of the office's conclusions and recommendations; and

(B) Provide the complainant with a copy of the report prepared under subsection (6) of this section.

(5) The office may make recommendations to a state agency for resolution of a complaint made under this section and work with the agency to resolve the complaint. The office may also contact and discuss a complaint with the administrative head of any state agency, any state agency manager, the Governor or any member of the public for the purpose of obtaining the cooperation and assistance of a state agency with the complaint resolution process.

(6)(a) Upon completing the review and investigation of a complaint under this section, the office shall prepare a report containing the office's conclusions and recommendations.

(b) Before finalizing, and providing copies of, the report prepared under this subsection, the office shall provide the state agency that is the subject of the report with a preliminary report.

(c) Upon receipt of the preliminary report, the state agency shall have not more than 15 days to comment on the report.

(d) If the state agency chooses to comment on the preliminary report, the final re-

port shall include a section that contains the agency's comments.

(e) The office shall provide copies of the final report prepared under this subsection to the Secretary of State. [2013 c.699 §4]

56.209 Protections for persons making complaints. A person who makes a complaint or who participates in a review and investigation of a complaint under ORS 56.206 may not be subject to a penalty, sanction or restriction in connection with the person's employment or be denied any right, privilege or benefit because of the complaint or because of any review and investigation of the complaint. [2013 c.699 §5]

