Chapter 60

2007 EDITION

Private Corporations

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GENERAL PROVISIONS

(Definitions)

60.001 Definitions. As used in this chapter:

(1) "Anniversary" means that day each year exactly one or more years after:

(a) The date of filing by the Secretary of State of the articles of incorporation in the case of a domestic corporation.

(b) The date of filing by the Secretary of State of an application for authority to transact business in the case of a foreign corporation.

(2) "Articles of incorporation" include amended and restated articles of incorporation, articles of conversion and articles of merger.

(3) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(4) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface or contrasting color, typing in capitals or underlined is conspicuous.

(5) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(6) "Delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

(7) "Distribution" means a direct or indirect transfer of money or other property, except of a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or otherwise.

(8) "Domestic limited liability company" means an entity that is an unincorporated association having one or more members and that is organized under ORS chapter 63.

(9) "Domestic nonprofit corporation" means a corporation not for profit incorporated under ORS chapter 65.

(10) "Domestic professional corporation" means a corporation organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.

(11) "Electronic signature" has the meaning given that term in ORS 84.004.

(12) "Electronic transmission" means any process of communication that does not directly involve the physical transfer of paper and that is suitable for the retention, retrieval and reproduction of information by the recipient.

(13) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(14) "Entity" includes a corporation, foreign corporation, nonprofit corporation, profit and nonprofit unincorporated association, business trust, estate, partnership, trust, two or more persons having a joint or common economic interest, any state, the United States and any foreign government.

(15) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(16) "Foreign limited liability company" means an entity that is an unincorporated association organized under the laws of a state other than this state, under the laws of a federally recognized Indian tribe or under the laws of a foreign country and that is organized under a statute under which an association may be formed that affords to each of its members limited liability with respect to liabilities of the entity.

(17) "Foreign nonprofit corporation" means a corporation not for profit organized under the laws of a state other than this state.

(18) "Foreign professional corporation" means a professional corporation organized under the laws of a state other than this state.

(19) "Governmental subdivision" includes an authority, county, district and municipality.

(20) "Includes" denotes a partial definition.

(21) "Individual" means a natural person. "Individual" includes the estate of an incompetent individual or a deceased individual.

(22) "Means" denotes an exhaustive definition.

(23) "Office," when used to refer to the administrative unit directed by the Secretary of State, means the office of the Secretary of State.

(24) "Person" includes individual and entity.

(25) "Principal office" means the office, in or out of this state, where the principal executive offices of a domestic or foreign corporation are located and designated in the annual report or application for authority to transact business in this state.

(26) "Proceeding" includes civil, criminal, administrative and investigatory action.

(27) "Record date" means the date established under this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(28) "Shares" means the units into which the proprietary interest in a corporation are divided.

(29) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(30) "Signature" includes any manual, facsimile, conformed or electronic signature.

(31) "State," when referring to a part of the United States, includes a state, commonwealth, territory and insular possession of the United States and its agencies and governmental subdivisions.

(32) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(33) "United States" includes a district, authority, bureau, commission, department and any other agency of the United States.

(34) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group. [1987 c.414 §64; 1989 c.1040 §2; 1999 c.362 §3; 1999 c.371 §2; 2001 c.104 §16; 2001 c.315 §32; 2003 c.80 §1; 2005 c.107 §1]

(Filing Documents)

60.004 Filing requirements. (1) A document must satisfy the requirements of this section except as any other section modifies these requirements, to be entitled to filing by the Secretary of State.

(2) This chapter must require or permit filing the document with the office.

(3) The document shall contain the information required by this chapter. It may contain other information as well.

(4) The document must be legible.

(5) The document must be in the English language. The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be executed:

(a) By the chair of the board of directors of a domestic or foreign corporation, its president or another of its officers;

(b) If directors have not been selected or before the organizational meeting, by an incorporator; or

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

(7) The person executing the document shall state beneath or opposite the signature the name of the person and the capacity in which the person signs. The document may, but is not required to contain:

(a) The corporate seal;

(b) An attestation by the secretary or an assistant secretary; or

(c) An acknowledgment, verification or proof.

(8) If the Secretary of State has prescribed a mandatory form for the document under ORS 60.016, the document must be in or on the prescribed form.

(9) The document must be delivered to the Office of the Secretary of State and must be accompanied by the required fees.

(10) Delivery of a document to the office is accomplished only when the document is actually received by the office. [1987 c.52 §4; 1989 c.1040 §3; 1999 c.486 §5]

60.007 Filing, service, copying and certification fees. The Secretary of State shall collect the fees described in ORS 56.140 for each document delivered for filing under this chapter and for process served on the secretary under this chapter. The secretary may collect the fees described in ORS 56.140 for copying any public record under this chapter, certifying the copy or certifying to other facts of record under this chapter. [1987 c.52 §6; 1989 c.383 §3; 1989 c.1040 §36; 1991 c.132 §3; 1999 c.362 §§4,4a]

60.010 [Repealed by 1953 c.549 §138]

60.011 Effective time and date of document. (1) Except as provided in subsection (2) of this section and ORS 60.014 (3), a document accepted for filing is effective on the date it is filed by the Secretary of State and at the time, if any, specified in the document as its effective time or at 12:01 a.m. on that date if no effective time is specified.

(2) If a document specifies a delayed effective time and date, the document becomes effective at the time and date specified. If a document specifies a delayed effective date but no time, the document becomes effective at 12:01 a.m. on that date. A delayed effective date for a document may not be later than

the 90th day after the date it is filed. [1987 c.52 §7; 1989 c.1040 §4]

60.014 Correcting filed document. (1) A domestic or foreign corporation may correct a document filed by the Secretary of State, other than an annual report, if the document contains an incorrect statement or was defectively executed, attested, sealed, verified or acknowledged.

(2) A domestic or foreign corporation shall correct a document by delivering articles of correction to the office. The articles shall include the following:

(a) A description of the document, including its filing date, or a copy of the document.

(b) The incorrect statement and the reason it is incorrect, or a description of the manner in which the execution, attestation, seal, verification or acknowledgment is defective.

(c) A correction of the incorrect statement or defective execution, attestation, seal, verification or acknowledgment.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. [1987 c.52 §8]

60.016 Forms; rules. Upon request, the Secretary of State may furnish forms for documents required or permitted to be filed by this chapter. The Secretary of State may by rule require the use of the forms. [1987 c.52 §5; 1995 c.215 §6]

60.017 Filing duty of Secretary of State. (1) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of ORS 60.004, the Secretary of State shall file it.

(2) The Secretary of State files a document by indicating thereon that it has been filed by the Secretary of State and the date of filing. After filing a document, except as provided in ORS 60.114, 60.117, 60.671, 60.674, 60.724, 60.727 and 60.787, the Secretary of State shall return an acknowledgment of filing to the domestic or foreign corporation or its representative.

(3) If the Secretary of State refuses to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within 10 business days after the document was delivered together with a brief written explanation of the reason for the refusal.

(4) The Secretary of State's duty to file documents under this section is ministerial. The Secretary of State is not required to verify or inquire into the legality or truth of any matter included in any document delivered to the office for filing. The Secretary of State's filing or refusing to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part; or

(b) Relate to the correctness or incorrectness of information contained in the document.

(5) The Secretary of State's refusal to file a document does not create a presumption that the document is invalid or that information contained in the document is incorrect. [1987 c.52 §9; 1989 c.1040 §5; 1999 c.486 §6]

60.020 [Repealed by 1953 c.549 §138]

60.021 Appeal from Secretary of State's refusal to file document. If the Secretary of State refuses to file a document delivered to the office for filing, the domestic or foreign corporation, in addition to any other legal remedy which may be available, shall have the right to appeal from such order pursuant to the provisions of ORS chapter 183. [1987 c.52 §10]

60.024 Evidentiary effect of copy of filed document. (1) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature, which may be in facsimile, is conclusive evidence that the original document or a facsimile thereof, is on file with the office.

(2) The provisions of ORS 56.110 shall apply to all documents filed pursuant to this chapter. [1987 c.52 §11]

60.027 Certificate of existence or authorization. (1) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization when issued means that:

(a) The domestic corporation's corporate name or the foreign corporation's corporate name is registered in this state;

(b) The domestic corporation is duly incorporated under the law of this state or the foreign corporation is authorized to transact business in this state;

(c) All fees payable to the Secretary of State under this chapter have been paid, if nonpayment affects the existence or authorization of the domestic or foreign corporation;

(d) An annual report required by ORS 60.787 has been filed by the Secretary of State within the preceding 14 months; and

(e) Articles of dissolution or an application for withdrawal have not been filed by the Secretary of State.

(3) A person may apply to the Secretary of State to issue a certificate covering any fact of record.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state. [1987 c.52 §12]

60.030 [Repealed by 1953 c.549 §138]

(Secretary of State)

60.031 Powers. The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State by this chapter. [1987 c.52 §13]

(Notice)

60.034 Notice. (1) Except as provided in subsection (3) of this section, notice under this chapter shall be in writing unless oral notice is specifically permitted under the circumstances by the articles of incorporation or bylaws. Notice by electronic transmission, other than voice mail, is written notice.

(2)(a) Notice may be communicated in person, by mail or other method of delivery, by telephone or by voice mail or other electronic transmission.

(b) If a form of notice described in paragraph (a) of this subsection is impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(3) All notices required by this chapter by a corporation to its shareholders shall be in writing. Written notice by a domestic or foreign corporation to a shareholder or director, if in a comprehensible form, is effective:

(a) Upon deposit in the United States mail if it is mailed postpaid and is correctly addressed to the shareholder's address shown in the corporation's current record of shareholders or the director's address shown in the corporation's records;

(b) When electronically transmitted to the shareholder in a manner authorized in writing by the shareholder; or

(c) When electronically transmitted to the director in a manner authorized by the director.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the domestic or foreign corporation or its president or secretary at its principal office or mailing address as shown in the records of the office.

(5) Except as provided in subsection (3) of this section, or unless the articles of incorporation or bylaws provide otherwise for notices to directors, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern. [1987 c.52 §14; 1989 c.1040 §6; 2003 c.80 §2]

60.040 [Repealed by 1953 c.549 §138]

INCORPORATION

60.044 Incorporators. One or more individuals 18 years of age or older, a domestic or foreign corporation, a partnership or an association may act as incorporators of a corporation by delivering articles of incorporation to the office for filing. [1987 c.52 §15]

60.047 Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) A corporate name for the corporation that satisfies the requirements of ORS 60.094;

(b) The number of shares the corporation is authorized to issue;

(c) The address, including street and number, and mailing address, if different, of the corporation's initial registered office and the name of its initial registered agent at that office;

(d) The name and address of each incorporator; and

(e) A mailing address to which notices, as required by this chapter, may be mailed until an address has been designated by the corporation in its annual report.

(2) The articles of incorporation may set forth:

(a) The names of the initial directors;

(b) The addresses of the initial directors;

(c) Provisions regarding:

(A) The purpose or purposes for which the corporation is organized;

(B) Managing the business and regulating the affairs of the corporation;

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

(D) A par value for authorized shares or classes of shares;

(d) A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director, provided that no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective and such provision shall not eliminate or limit the liability of a director for:

(A) Any breach of the director's duty of loyalty to the corporation or its shareholders;

(B) Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(C) Any unlawful distribution under ORS 60.367; or

(D) Any transaction from which the director derived an improper personal benefit;

(e) A provision authorizing or directing the corporation to conduct the business of the corporation in a manner that is environmentally and socially responsible; and

(f) Any provision that under this chapter is required or permitted to be set forth in the bylaws.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter. [1987 c.52 §16; 1989 c.1040 §7; 1991 c.883 §1; 2007 c.254 §1]

60.050 [Repealed by 1953 c.549 §138]

60.051 Incorporation. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed by the Secretary of State.

(2) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation. [1987 c.52 §17]

60.054 Liability for preincorporation transactions. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation, are jointly and severally liable for all liabilities created while so acting. [1987 c.52 §18]

60.057 Organization of corporation. (1) After incorporation, if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting.

(2) After incorporation, if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to elect directors and complete the organization of the corporation or to elect a board of directors who shall complete the organization of the corporation.

(3) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(4) An organizational meeting may be held in or out of this state. [1987 c.52 §19]

60.060 [Repealed by 1953 c.549 §138]

60.061 Bylaws. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation. [1987 c.52 §20]

60.064 Emergency bylaws. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may contain all provisions necessary for managing the corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws binds the corporation and may not be used to impose liability on a corporate director, officer, employee or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. [1987 c.52 §21]

60.070 [Repealed by 1953 c.549 §138]

PURPOSES AND POWERS

60.074 Purposes. (1) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A business that is subject to regulation under another statute of this state may not be incorporated under this chapter if such business is required to be organized under such other statute. [1987 c.52 §22; 1989 c.1040 §8]

60.077 General powers. (1) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name.

(2) Unless its articles of incorporation provide otherwise, every corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power to:

(a) Sue and be sued and complain and defend in its corporate name;

(b) Have a corporate seal, which may be altered at will, and use it or a facsimile thereof, by impressing, affixing or reproducing it in any other manner;

(c) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state for managing the business and regulating the affairs of the corporation;

(d) Purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with real or personal property, or any interest in property, wherever located;

(e) Sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property;

(f) Purchase, receive, subscribe for, acquire, own, hold, vote, use, sell, mortgage, lend, pledge or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other entity;

(g) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds and other obligations that may be convertible into other securities of the corporation or include the option to purchase other securities of the corporation and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

(h) Lend money, invest and reinvest corporate funds and receive and hold real and personal property as security for repayment;

(i) Be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(j) Conduct its business, locate offices and exercise the powers granted by this chapter within or without this state;

(k) Elect directors and appoint officers, employees and agents of the corporation;

(L) Define directors', officers', employees' and agents' duties, fix their compensation and lend them money and credit;

(m) Pay pensions and establish pension plans, share option plans and benefit or incentive plans for any or all of its current or former directors, officers, employees and agents;

(n) Make donations for the public welfare or for charitable, scientific or educational purposes;

(o) Transact any lawful business that will aid governmental policy; and

(p) Make payment or donations or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation. [1987 c.52 §23]

60.080 [Repealed by 1953 c.549 §138]

60.081 Emergency powers. (1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent; and

(b) Relocate the principal office, designate alternative principal offices or regional offices or authorize the officers to do so.

(2) During an emergency defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio.

(b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of the officer's rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. [1987 c.52 §24]

60.084 Validity of corporate acts. (1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

(b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee or other legal representative against an incumbent or former director, officer, employee or agent of the corporation; or

(c) In a proceeding by the Attorney General under ORS 60.661.

(3) In a shareholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss other than anticipated profits suffered by the corporation or another party because of enjoining the unauthorized act. [1987 c.52 §25]

60.090 [Repealed by 1953 c.549 §138]

NAME

60.094 Corporate name. (1) A corporate name shall contain one or more of the words "corporation," "incorporated," "company" or "limited" or an abbreviation of one or more of those words.

(2) A corporate name shall not contain the word "cooperative."

(3) A corporate name shall be written in the alphabet used to write the English language and may include Arabic and Roman numerals and incidental punctuation.

(4) A corporate name shall be distinguishable upon the records of the office from any other corporate name, professional corporate name, nonprofit corporate name, cooperative name, limited partnership name, business trust name, reserved name, registered corporate name or assumed business name of active record with the office.

(5) The corporate name need not satisfy the requirement of subsection (4) of this section if the applicant delivers to the office a certified copy of a final judgment of a court of competent jurisdiction that finds that the applicant has a prior or concurrent right to use the corporate name in this state.

(6) The provisions of this section do not prohibit a corporation from transacting business under an assumed business name.

(7) The provisions of this section do not:

(a) Abrogate or limit the law governing unfair competition or unfair trade practices; or

(b) Derogate from the common law, the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect trade names. [1987 c.52 §26]

60.097 Reserved name. (1) A person may apply to the office to reserve a corporate name. The application must set forth the name and address of the applicant and the name proposed to be reserved.

(2) If the Secretary of State finds that the corporate name applied for conforms to ORS 60.094, the Secretary of State shall reserve the name for the applicant for a 120-day period.

(3) A person may transfer the reservation of a corporate name to another person by delivering to the office a notice of the transfer executed by the person for whom the name was reserved and specifying the name and address of the transferee. [1987 c.52 §27]

60.100 [Amended by 1953 c.549 §138; renumbered 57.815]

60.101 Registered name. (1) A foreign corporation may apply to the office to register its corporate name.

(2) The application must set forth the corporate name, the state or country of its incorporation, the date of its incorporation and a brief description of the nature of the business in which it is engaged and a statement that it is not carrying on or doing business in the State of Oregon. The application must be accompanied by a certificate of existence or a document of similar import current within 60 days of delivery, duly authenticated by the official having custody of corporate records in the state or country under whose law it is incorporated.

(3) If the Secretary of State finds that the name conforms to ORS 60.094 the Secretary of State shall register the name effective for one year. [1987 c.52 §28]

60.110 [Repealed by 1953 c.549 §138]

OFFICE AND AGENT

60.111 Registered office and registered agent. (1) Each corporation shall continuously maintain in this state a registered agent and registered office that may be, but need not be, the same as any of its places of business.

(2) A registered agent shall be:

(a) An individual who resides in this state and whose business office is identical to the registered office;

(b) A domestic corporation, domestic limited liability company, domestic professional corporation or domestic nonprofit corporation whose business office is identical to the registered office; or

(c) A foreign corporation, foreign limited liability company, foreign professional corporation or foreign nonprofit corporation authorized to transact business in this state whose business office is identical to the registered office. [1987 c.52 §29; 2001 c.315 §24]

60.114 Change of registered office or registered agent. (1) A corporation may change its registered office or registered agent by delivering to the office of the Secretary of State for filing a statement of change that sets forth:

(a) The name of the corporation;

(b) If the registered office is to be changed, the address including street and number of the new registered office;

(c) If the registered agent is to be changed, the name of the new registered agent and that the new agent has consented to the appointment; and

(d) That after the change or changes are made the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the agent's business office, the registered agent shall change the street address of the registered office of the corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the office of the Secretary of State a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

(3) The filing of the statement by the Secretary of State shall terminate the existing registered office or agent, or both, on the effective date of the filing and establish the newly appointed registered office or agent, or both, as that of the corporation. [1987 c.52 §30]

60.117 Resignation of registered agent. (1) A registered agent may resign as agent upon delivering a signed statement to the office and giving notice in the form of a copy of the statement to the corporation. The statement may include a statement that the registered office is also discontinued.

(2) Upon delivery of the signed statement, the Secretary of State shall file the resignation statement. The copy of the statement given to the corporation under subsection (1) of this section shall be addressed to the corporation at the corporation's mailing address or the corporation's principal office as shown by the records of the office of the Secretary of State.

(3) The agency appointment is terminated and the registered office discontinued, if so provided, on the 31st day after the date on which the statement was filed by the Secretary of State, unless the corporation shall sooner appoint a successor registered agent as provided in ORS 60.114, thereby terminating the capacity of such agent. [1987 c.52 §31; 1993 c.190 §1]

60.120 [Repealed by 1953 c.549 §138]

60.121 Service on corporation. (1) The registered agent appointed by a corporation shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(2) The Secretary of State shall be an agent of a corporation including a dissolved corporation upon whom any such process, notice or demand may be served whenever the corporation fails to appoint or maintain a registered agent in this state or whenever the corporation's registered agent cannot with reasonable diligence be found at the registered office.

(3) Service shall be made on the Secretary of State by:

(a) Serving the Secretary of State or a clerk on duty at the office a copy of the process, notice or demand, with any papers required by law to be delivered in connection with the service, and the required fee for each party being served or by mailing to the office a copy of the process, notice or demand and the required fee for each party being served by certified or registered mail;

(b) Transmittal by the person instituting the proceedings of notice of the service on the Secretary of State and copy of the process, notice or demand and accompanying papers to the corporation being served by certified or registered mail:

(A) At the last registered office of the corporation as shown by the records on file in the office of the Secretary of State; and

(B) At such address the use of which the person initiating the proceedings knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice; and

(c) Filing with the appropriate court or other body, as part of the return of service, the return receipt of mailing and an affidavit of the person initiating the proceedings stating that this section has been complied with.

(4) The Secretary of State shall keep a record of all processes, notices and demands served upon the Secretary of State under this section.

(5) After completion of initial service upon the Secretary of State, no additional documents need be served upon the Secretary of State to maintain jurisdiction in the same proceeding or to give notice of any motion or provisional process.

(6) Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law, or enlarge the purposes for which service on the Secretary of State is permitted where such purposes are limited by other provisions of law. [1987 c.52 §32; 2007 c.71 §16]

60.130 [Repealed by 1953 c.549 §138]

SHARES AND DISTRIBUTIONS

(Shares)

60.131 Authorized shares. (1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class, the preferences, limitations and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations and relative rights identical to those of other shares of the same class except to the extent otherwise permitted by ORS 60.134 and 60.157.

(2) If the articles of incorporation authorize only one class of shares, that class has unlimited voting rights and rights to receive the net assets of the corporation upon dissolution. If the articles of incorporation authorize more than one class of shares, then one or more classes of shares must together have unlimited voting rights, and one or more classes of shares which may be the same class or classes as those with voting rights, must together be entitled to receive the net assets of the corporation upon dissolution.

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

(a) Have special, conditional or limited voting rights, or no voting rights, except to the extent prohibited by this chapter;

(b) Are redeemable or convertible as specified in the articles of incorporation:

(A) At the option of the corporation, the shareholder or another person or upon the occurrence of a designated event;

(B) For cash, indebtedness, securities or other property; or

(C) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

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

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

(4) The description of the designations, preferences, limitations and relative rights of share classes in subsection (3) of this section is not exhaustive. [1987 c.52 §33; 1989 c.4 §9; 1989 c.1040 §9]

60.134 Terms of class or series determined by board of directors. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations and relative rights, subject to the requirements of ORS 60.131, of any class of shares before the issuance of any shares of that class or one or more series within a class before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, of those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation must deliver to the office for filing, articles of amendment which are effective without shareholder action, that set forth:

(a) The name of the corporation;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date it was adopted; and

(d) A statement that the amendment was duly adopted by the board of directors. [1987 c.52 §34; 1989 c.1040 §10]

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

(2) The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of subsection (3) of this section and ORS 60.177 and 60.181.

(3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding. [1987 c.52 §35]

60.140 [Repealed by 1953 c.549 §138]

60.141 Fractional shares. (1) A corporation may:

(a) Issue fractions of a share or pay in money the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders; and

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by ORS 60.161 (2).

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, receive dividends and participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; and

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders. [1987 c.52 §36]

(Issuance of Shares)

60.144 Subscription for shares before incorporation. (1) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment term of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to ORS 60.147. [1987 c.52 §37]

60.147 Issuance of shares. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable. A record of action by the board of directors authorizing the issuance of shares for a specified consideration may be relied upon in concluding that shares are validly issued, fully paid and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note or make other arrangements to restrict the

transfer of shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid or the benefits received. If the services are not performed, the note is not paid or the benefits are not received, the shares placed in escrow or restricted and the distributions credited may be canceled in whole or in part. [1987 c.52 §38; 1989 c.1040 §11]

60.150 [Repealed by 1953 c.549 §138]

60.151 Liability of shareholders. (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(2) A shareholder of a corporation is not personally liable for the acts or debts of the corporation merely by reason of being a shareholder. [1987 c.52 §39]

60.154 Share dividends. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect to shares of another class or series unless the articles of incorporation so authorize, a majority of the votes entitled to be cast by the class or series to be issued approve the issue or there are no outstanding shares of the class or series to be issued.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

(4) For purposes of this section, a share dividend shall include a share split, other than a reverse share split. [1987 c.52 §40; 1989 c.1040 §12]

60.157 Share rights, options and warrants. (1) A corporation may issue rights, options or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options or warrants are issued. The board shall also determine their form and content and the consideration for which the shares are to be issued.

(2) Rights, options or warrants issued to the holders of all shares of any class shall not be considered to conflict with the provisions of ORS 60.131 (1) if the terms and conditions of the rights, options or warrants include restrictions or conditions that:

(a) Preclude or limit the exercise, transfer or receipt of rights, options or warrants by any person owning or offering to acquire a specified number or percentage of the outstanding stock or other securities of the corporation or any transferee of any such person; or

(b) Invalidate or void the rights, options or warrants held by any such person or any transferee. [1987 c.52 §41; 1989 c.4 §10]

60.160 [Repealed by 1953 c.549 §138]

60.161 Form and content of certificates. (1) Shares may be but are not required to be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(2) At a minimum, each share certificate shall state on its face:

(a) The name of the issuing corporation and that it is organized under the law of this state;

(b) The name of the person to whom the share is issued; and

(c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations applicable to each class, the variations in rights, preferences and limitations determined for each series and the authority of the board of directors to determine variations for future series shall be summarized on the front or back of each certificate or, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder with this information on request in writing and without charge.

(4) Each share certificate must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors. Each certificate may bear the corporate seal or its facsimile.

(5) If the person who signed a share certificate, either manually or in facsimile, no longer holds office when the certificate is issued, the certificate is nevertheless valid. [1987 c.52 §42]

60.164 Shares without certificates. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already

represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by ORS 60.161 (2) and (3), and if applicable, ORS 60.167. [1987 c.52 §43]

60.167 Restriction on transfer of shares and other securities. (1) The articles of incorporation, bylaws, agreements among shareholders or agreements between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by ORS 60.164 (2). Unless so noted, a restriction is not enforceable against a person who has no knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) To preserve exemptions under federal or state securities law; or

(c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively or simultaneously an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively or simultaneously to acquire the restricted shares;

(c) Require the corporation, the holders of any class of its shares or another person to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or

(d) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares. [1987 c.52 §44]

60.170 [Repealed by 1953 c.549 §138]

60.171 Expense of issue. A corporation may pay the expenses of selling or underwriting its shares and organizing or reorganizing the corporation from the consideration received for shares. [1987 c.52 §45]

(Subsequent Acquisition of Shares by Shareholders and Corporation)

60.174 Preemptive rights of shareholders. (1) Except to the extent limited or denied by this section or by the articles of incorporation, the shareholders of a corporation incorporated prior to June 15, 1987, shall have preemptive rights as defined in this section. By articles of amendment or restated articles filed after such date, a corporation may eliminate preemptive rights under this subsection by including in the articles of amendment or restated articles that "the corporation elects to waive preemptive rights," or words of similar import, in which event this subsection shall no longer apply to the corporation.

(2) Except as provided in subsection (1) of this section, the shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(3) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(b) A shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

(A) Shares issued as compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(B) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(C) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation; or

(D) Shares sold other than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(4) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares. [1987 c.52 §46; 1987 c.579 §3; 1991 c.883 §2]

60.177 Corporation's acquisition of its own shares. (1) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) If pursuant to this section, the number of authorized shares is reduced, articles of amendment shall be adopted by the board of directors which may be without shareholder action and shall be delivered to the office for filing. The articles shall set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

(4) For purposes of this section, if shares of one class or series of a corporation are converted into shares of another class or series of the corporation, the shares so converted shall be considered to have been acquired by the corporation. [1987 c.52 §47; 1993 c.403 §1]

(Distributions)

60.181 Distributions to shareholders. (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3) of this section.

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than a date involving a purchase, redemption or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(3) A distribution may be made only if, after giving it effect, in the judgment of the board of directors:

(a) The corporation would be able to pay its debts as they become due in the usual course of business; and

(b) The corporation's total assets would at least equal the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) The effect of a distribution under subsection (3) of this section is measured:

(a) In the case of distribution by purchase, redemption or other acquisition of the corporation's shares, as of the earlier of the date the money or other property is transferred or debt incurred by the corporation or the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) In all other cases, as of the date a distribution is authorized if the payment occurs within 120 days after the date of authorization or the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distrib-

ution made in accordance with this section is at parity with the corporation's indebtedness to its general unsecured creditors, unless the shareholder agrees to subordination or the corporation grants the shareholder a security interest or other lien against corporate assets to secure the indebtedness. [1987 c.52 §48; 1989 c.1040 §13]

SHAREHOLDERS

(Meetings)

60.201 Annual meeting. (1) Except as provided in subsection (4) of this section, a corporation shall hold an annual meeting of the shareholders at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(4) If the articles of incorporation or bylaws of a corporation registered under the Investment Company Act of 1940, as amended, so provide, the corporation shall not be required to hold an annual meeting in any year in which an election of directors is not required under the Investment Company Act of 1940, as amended. [1987 c.52 §49; 1991 c.883 §3; 1997 c.249 §24]

60.204 Special meeting. (1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) Except as provided in this paragraph, if the holders of at least 10 percent of all votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held. The articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25 percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect signed by a shareholder who signed the original demand, and received by the corporation prior to the receipt by the corporation of a demand sufficient to require the holding of a special meeting.

(2) If not otherwise fixed under ORS 60.207 or 60.221, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by ORS 60.214 (3) may be conducted at a special shareholders' meeting. [1987 c.52 §50; 2003 c.80 §3]

60.207 Court-ordered meeting. (1) The circuit court of the county where a corporation's principal office is located, or, if the principal office is not in this state, where the registered office of the corporation is or was last located, may summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) On application of a shareholder who signed a demand for a special meeting valid under ORS 60.204 and notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary or the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) The shareholders' request shall be set for hearing at the earliest possible time and shall take precedence over all matters, except matters of the same character and hearings on preliminary injunctions under ORCP 79 B(3). No order shall be issued by the court under this section without notice to the corporation at least five days in advance of the time specified for the hearing unless a different period is fixed by order of the court. [1987 c.52 §51]

60.209 Meeting chairperson; closing of polls. (1) At each meeting of shareholders, a chairperson shall preside. The chairperson shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.

(2) Unless the articles of incorporation or bylaws provide otherwise, the chairperson shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(3) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(4) The chairperson of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be considered to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, or any revocations or changes thereto, may be accepted. [2003 c.80 §5]

60.210 [Repealed by 1953 c.549 §138]

60.211 Action without meeting. (1)(a) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action.

(b) Notwithstanding paragraph (a) of this subsection, the articles of incorporation may provide that action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by shareholders having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all shareholders entitled to vote on the action were present and voted.

(c) The action taken under this subsection must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, or by those shareholders taking action under paragraph (b) of this subsection, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(d) Action taken under paragraph (a) of this subsection is effective when the last shareholder signs the consent, unless the consent specifies an earlier or later effective date.

(e) Action taken under paragraph (b) of this subsection is effective when the consent or consents bearing sufficient signatures are delivered to the corporation, unless the consent or consents specify an earlier or later effective date. An effective date specified under this paragraph may not be earlier than the effective date of the provision permitting action under paragraph (b) of this subsection.

(2) If not otherwise determined under ORS 60.207 or 60.221, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs a consent under subsection (1) of this section.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(4)(a) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken.

(b) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is taken as provided in subsection (1)(b) of this section, the corporation must give its nonvoting shareholders written notice of the action promptly after the action is taken.

(c) The notice given under this subsection must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(5) If action is taken as provided in subsection (1)(b) of this section, the corporation must give written notice of the action promptly after the action is taken to shareholders who did not consent in writing under subsection (1)(b) of this section. The notice given under this subsection must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to those shareholders in a notice of meeting at which the proposed action would have been submitted to those shareholders for action.

(6) The fact that an action is taken by written consent without a meeting does not impair any rights a shareholder who does not consent to the action may have to dissent and obtain payment for the shareholder's shares under ORS 60.551 to 60.594. A shareholder who consents to the action in writing is not entitled to receive payment for the shareholder's shares under ORS 60.551 to 60.594. [1987 c.52 §52; 2001 c.315 §22]

60.214 Notice of meeting. (1) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders' meeting not earlier than 60 days nor less than 10 days before the meeting date. Unless this chapter or the articles of

incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless required by this chapter or the articles of incorporation, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under ORS 60.207 or 60.221, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is mailed or otherwise transmitted for delivery to shareholders in accordance with ORS 60.034.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under ORS 60.221, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date. [1987 c.52 §53; 1989 c.1040 §16; 1991 c.883 §4; 2003 c.80 §6]

60.217 Waiver of notice. (1) A shareholder may at any time waive any notice required by this chapter, the articles of incorporation or bylaws. The waiver must be in writing, be signed by the shareholder entitled to the notice and be delivered to the corporation for inclusion in the minutes for filing with the corporate records.

(2) A shareholder's attendance at a meeting waives objection to:

(a) Lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(b) Consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented. [1987 c.52 §54]

60.219 Adjournment of meeting. Unless otherwise provided in the articles of incorporation or bylaws, a majority of votes represented at a meeting of shareholders, whether or not a quorum, may adjourn the meeting from time to time to a different time and place without further notice to any shareholder of any adjournment, except as such notice may be required by ORS 60.214. At the adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting originally held. [1989 c.1040 §18]

60.220 [Repealed by 1953 c.549 §138]

60.221 Record date. (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote or to take any other action. The record date shall be the same for all voting groups. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date, or a later time on the date the board of directors fixes the record date, as the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date. [1987 c.52 §55; 1993 c.403 §2]

60.222 Participation at meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, the bylaws or the board of directors, by resolution adopted in advance either specifically with respect to a particular meeting or generally with respect to future meetings, may permit any or all shareholders to participate in an annual or special meeting by, or may permit the conduct of a meeting through, use of any means of communication by which all shareholders participating may simultaneously hear each other. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

(2) The notice of each annual or special meeting of shareholders at which participation in the manner referred to in subsection (1) of this section is permitted shall state that fact and shall describe how any shareholder desiring to participate may notify the corporation of the shareholder's desire to be included in the meeting. [1989 c.1040 §15]

60.223 Meeting inspectors; duties. (1) A corporation having any shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath to faithfully execute the duties of the inspector with strict impartiality and according to the best of the inspector's ability.

(2) The inspectors shall:

(a) Ascertain the number of shares outstanding and the voting power of each share;

(b) Determine the shares represented at a meeting;

(c) Determine the validity of proxies and ballots;

(d) Count all votes; and

(e) Determine the result.

(3) An inspector may be an officer or employee of the corporation. [2003 c.80 §9]

(Voting)

60.224 Shareholders' list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares and show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of ORS 60.774 (3), to copy the list during regular business hours and at the shareholder's expense during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, the shareholder's agent or attorney to inspect the shareholders' list before or at the meeting or copy the list as permitted by subsection (2) of this section, on application of the shareholder, the circuit court of the county where a corporation's principal office is located, or if the principal office is not in this state, where its registered office is or was last located, may enter a temporary restraining order or preliminary injunction pursuant to ORCP 79 ordering the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete. The party initiating such a proceeding shall not be required to post an undertaking pursuant to ORCP 82 A.

(5) Refusal or failure to prepare or make available the shareholder's list does not affect the validity of action taken at the meeting. [1987 c.52 §56]

60.227 Voting entitlement of shares. (1) Except as provided in subsections (2) and (3) of this section and ORS 60.807, or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) The shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second domestic or foreign corporation, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares. [1987 c.52 §57; 1989 c.4 §7]

60.230 [Repealed by 1953 c.549 §138]

60.231 Proxies. (1) A shareholder may vote shares in person or by proxy.

(2) A shareholder may authorize a person or persons to act for the shareholder as proxy in any one of the following manners:

(a) A shareholder or the shareholder's designated officer, director, employee or agent may execute a writing by:

(A) Signing it; or

(B) Causing the shareholder's signature or the signature of the designated officer, director, employee or agent of the shareholder to be affixed to the writing by any reasonable means, including facsimile signature.

(b) A shareholder may authorize an electronic transmission that:

(A) May be transmitted to:

(i) The person who will be the holder of the proxy;

(ii) The proxy solicitation firm; or

(iii) A proxy support service organization or similar agency authorized by the person who will be the holder of the proxy to receive the electronic transmission; and

(B) Must contain or be accompanied by information from which it can be determined that the shareholder or the shareholder's designated officer, director, employee or agent authorized the transmission.

(c) Any other method allowed by law.

(3) A copy, facsimile telecommunication or other reliable reproduction of the writing or electronic transmission created under subsection (2)(a) or (b) of this section may be used instead of the original writing or electronic transmission for all purposes for which the original writing or electronic transmission may be used if the copy, facsimile telecommunication or other reproduction is a complete copy of the entire original writing or electronic transmission.

(4) An authorization of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An authorization is valid for 11 months unless a longer period is expressly provided in the authorization form.

(5) An authorization of a proxy is revocable by the shareholder unless the authorization conspicuously states that it is irrevocable and the authorization is coupled with an interest. Authorizations coupled with an interest include the authorization of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the authorization;

(d) An employee of the corporation whose employment contract requires the authorization; or

(e) A party to a voting agreement created under ORS 60.257.

(6) The death or incapacity of the shareholder authorizing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the authorization.

(7) An authorization made irrevocable under subsection (5) of this section is revoked when the interest with which it is coupled is extinguished.

(8) A transferee for value of shares subject to an irrevocable authorization may revoke the authorization if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable authorization was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(9) Subject to ORS 60.237 and to any express limitation on the proxy's authority appearing on the face of the authorization form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the authorization. [1987 c.52 §58; 1999 c.371 §1; 2001 c.104 §17; 2003 c.80 §7]

60.234 Shares held by nominees. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure referred to in subsection (1) of this section may set forth:

(a) The types of nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a beneficial owner;

(c) The manner in which the procedure is selected by the nominee;

(d) The information that must be provided when the procedure is selected;

(e) The period for which selection of the procedure is effective; and

(f) Other aspects of the rights and duties created. [1987 c.52 §59]

60.237 Corporations' acceptance of votes. (1) If the name signed on a vote, consent, waiver or proxy authorization corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver or proxy authorization and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver or proxy authorization does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver or proxy authorization and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy authorization;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy authorization;

(d) The name signed purports to be that of a pledgee, beneficial owner or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver or proxy authorization; or

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coowners and the person signing appears to be acting on behalf of all coowners.

(3) The corporation is entitled to reject a vote, consent, waiver or proxy authorization if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy authorization in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy authorization under this section is valid unless a court of competent jurisdiction determines otherwise. [1987 c.52 §60; 1999 c.371 §3]

60.241 Quorum and voting requirements for voting groups. (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide for a lesser or greater number in accordance with ORS 60.247, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing or deleting a quorum or voting requirement for a voting group greater than specified in subsection (2) or (3) of this section is governed by ORS 60.247.

(5) The election of directors is governed by ORS 60.251. [1987 c.52 §61]

60.244 Action by single and multiple voting groups. (1) If the articles of incorporation or this chapter provide for voting by a single group on a matter, action on that matter is taken when voted upon by that voting group as provided in ORS 60.241.

(2) If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in ORS 60.241. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter. [1987 c.52 §62; 1991 c.883 §5]

60.247 Modification of quorum or voting requirements. (1) The articles of incorporation may provide for a lesser or greater quorum requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter, but in no event shall a quorum for shareholders, or any voting group of shareholders, consist of less than one-third of the votes entitled to be cast on any matter by the shareholders, or voting group of shareholders. The articles of incorporation may provide for a greater voting requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter.

(2) An amendment to the articles of incorporation that adds a greater quorum or voting requirement must meet the quorum requirement and be adopted by the vote and voting groups required to take action under the quorum and voting requirements then in effect. An amendment to the articles of incorporation that changes or deletes a greater quorum or voting requirement must meet the quorum requirement and be adopted by the

vote and voting groups required to take action immediately prior to the change or deletion. [1987 c.52 §63; 1989 c.1040 §19]

60.251 Voting for directors. (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(3) A statement included in the articles of incorporation that "all shareholders are entitled to cumulate their votes for directors," "a designated voting group of shareholders are entitled to cumulate their votes for director" or words of similar import means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates. [1987 c.52 §64; 1993 c.403 §3]

(Voting Trusts and Agreements)

60.254 Voting trusts. (1) One or more shareholders may create a voting trust and conferring on a trustee the right to vote or otherwise act for them by signing an agreement setting out the provisions of the trust which may include anything consistent with its purpose and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it. [1987 c.52 §65]

60.257 Voting agreements. (1) Two or more persons may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not a voting trust subject to the provisions of ORS 60.254.

(2) A voting agreement created under this section is specifically enforceable. [1987 c.52 §66]

(Derivative Proceedings)

60.261 Derivative proceedings. (1) A person may not commence a proceeding in the right of a domestic or foreign corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(2) A complaint in a proceeding brought in the right of a corporation must allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why a demand was not made. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(3) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.

(4) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on behalf of the beneficial owner. [1987 c.52 §67]

(Shareholder Agreements)

60.265 Validity of shareholder agreements inconsistent with chapter; purposes; notice of agreement; effect on liability. (1) An agreement among the shareholders of a corporation entered into after December 31, 1993, that is inconsistent with one or more other provisions of this chapter is effective among the shareholders and the corporation, and binding on the board of directors, if the agreement complies with this section and it:

(a) Restricts the discretion or powers of the board of directors;

(b) Establishes who shall be directors or officers of the corporation or establishes their terms of office or manner of selection or removal;

(c) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(d) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them; or

(e) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency.

(2) An agreement authorized by this section shall be:

(a) Set forth:

(A) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(B) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) Valid for 10 years, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by ORS 60.164 (2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of:

(a) Ninety days after notice from the corporation or the seller to the purchaser of the existence of the agreement describing the rights of a purchaser without knowledge of the existence of the agreement, and stating that failure to timely exercise rescission rights will result in their termination;

(b) One year after discovery of the existence of the agreement; or

(c) Three years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or quoted on the National Association of Securities Dealers, Inc. Automated Quotation System. If the agreement ceases to be effective for any reason and is contained or referred to in the corporation's articles of incorporation or bylaws, the board of directors may adopt, without shareholder action, an amendment to the articles of incorporation or bylaws to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made. [1993 c.403 §12]

DIRECTORS AND OFFICERS

(Board of Directors)

60.301 Requirement for and duties of board of directors. (1) Each corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the

business and affairs of the corporation managed under the direction of, the board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized by ORS 60.265. [1987 c.52 §68; 1993 c.403 §4]

60.304 Qualifications of directors. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless required by the articles of incorporation or bylaws. [1987 c.52 §69]

60.307 Number and election of directors. (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws. Notwithstanding ORS 60.001 (21), the estate of an incompetent individual or a deceased individual may not be a director.

(2) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

(3) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under ORS 60.317. [1987 c.52 §70; 2003 c.80 §10]

60.311 Election of directors by certain classes of shareholders. If the articles of incorporation authorize dividing the shares into classes or series, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. Each class or classes or series of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors. [1987 c.52 §71]

60.314 Terms of directors generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under ORS 60.317.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected by the board of directors to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(5) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or until there is a decrease in the number of directors. [1987 c.52 §72; 1989 c.1040 §20]

60.317 Staggered terms for directors. (1) The articles of incorporation or the bylaws may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group to be as nearly equal in number as possible.

(2) If the terms of the directors are staggered, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

(3) If the corporation has cumulative voting, terms of directors may be staggered only if authorized by the articles of incorporation and each group of directors contains at least three members. [1987 c.52 §73; 1989 c.1040 §21; 2003 c.80 §11; 2005 c.92 §1]

60.321 Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, its chairperson or the corporation.

(2) A resignation is effective when the notice is effective under ORS 60.034 (5) unless the notice specifies a later effective date.

(3) Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the board of directors. [1987 c.52 §74]

60.324 Removal of directors by shareholders. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

(3) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceed the number of votes cast not to remove the director.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director. [1987 c.52 §75]

60.327 Removal of directors by judicial proceeding. (1) The circuit court of the county where a corporation's principal office is located or if the principal office is not in this state where its registered office is or was last located, may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least 10 percent of the outstanding shares of any class if the court finds that:

(a) The director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation; and

(b) Removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant. [1987 c.52 §76]

60.331 Vacancy on board. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office is filled by the shareholders and was held by a director elected by a voting group of shareholders, then only the holders of shares of that voting group are entitled to vote to fill the vacancy.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at later date under ORS 60.321 (2) or otherwise may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs. [1987 c.52 §77]

60.334 Compensation of directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors. [1987 c.52 §78]

(Meetings and Action of Board)

60.337 Meetings. (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through, use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. [1987 c.52 §79]

60.341 Action without meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies an earlier or later effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. [1987 c.52 §80]

60.344 Notice of meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws. [1987 c.52 §81]

60.347 Waiver of notice. (1) A director may at any time waive any notice required by this chapter, the articles of incorporation or bylaws. Except as provided by subsection (2) of this section, the waiver must be in writing, must be signed by the director entitled to the notice, must specify the meeting for which notice is waived and must be filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. [1987 c.52 §82]

60.351 Quorum and voting. (1) Unless the articles of incorporation or bylaws requires a greater number or a lesser number as authorized under subsection (2) of this section, a quorum of a board of directors consists of:

(a) If the corporation has a fixed board size, a majority of the fixed number of directors; or

(b) If the corporation has a variable-range size board, a majority of the number of directors prescribed, or if no number is prescribed, a majority of the number in office immediately before the meeting begins.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection (1) of this section.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting business at the meeting;

(b) The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) The director delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken. [1987 c.52 §83]

60.354 Committees; powers; limitations. (1) Unless this chapter, the articles of incorporation or the bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on each committee.

(2) Unless this chapter provides otherwise, the creation of a committee and appointment of members to it must be approved by the greater of:

(a) A majority of all the directors in office when the action is taken; or

(b) The number of directors required by the articles of incorporation or bylaws to take action under ORS 60.351.

(3) ORS 60.337 to 60.351 apply both to committees of the board and to members of the committees.

(4) Except as provided in subsection (5) of this section, to the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under ORS 60.301.

(5) A committee may not:

(a) Authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors;

(b) Approve or propose to shareholders action that this chapter requires be approved by shareholders;

(c) Fill vacancies on the board of directors or, subject to subsection (7) of this section, on any of its committees; or

(d) Adopt, amend or repeal bylaws.

(6) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in ORS 60.357.

(7) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation, the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint a director to act in place of the absent or disqualified member. [1987 c.52 §84; 1989 c.1040 §22; 1991 c.883 §6; 1993 c.403 §5; 2003 c.80 §12]

(Standards of Conduct)

60.357 General standards for directors. (1) A director shall discharge the duties of a director, including the duties as a member of a committee, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports or statements including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reason-

ably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

(5) When evaluating any offer of another party to make a tender or exchange offer for any equity security of the corporation, or any proposal to merge or consolidate the corporation with another corporation or to purchase or otherwise acquire all or substantially all the properties and assets of the corporation, the directors of the corporation may, in determining what they believe to be in the best interests of the corporation, give due consideration to the social, legal and economic effects on employees, customers and suppliers of the corporation and on the communities and geographical areas in which the corporation and its subsidiaries operate, the economy of the state and nation, the long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation, and other relevant factors. [1987 c.52 §85; 1989 c.4 §8]

60.361 Conflict of interest. (1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

(a) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction;

(b) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved or ratified the transaction; or

(c) The transaction was fair to the corporation.

(2) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(a) Another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction; or

(b) Another entity of which the director is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(3) For purposes of subsection (1)(a) of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no direct or indirect interest in the transaction. A transaction may not be authorized, approved or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (1)(a) of this section if the transaction is otherwise authorized, approved or ratified as provided in subsection (1) of this section.

(4) For purposes of subsection (1)(b) of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection, voting as a single voting group. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (2)(a) of this section may be counted in a vote of shareholders to determine whether to authorize, approve or ratify a conflict of interest transaction under subsection (1)(b) of this section. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section. [1987 c.52 §86]

60.364 Loans to directors. (1) Except as provided by subsection (3) of this section, a corporation may not lend money to or guarantee the obligation of a director of the corporation unless:

(a) The particular loan or guarantee is approved by a majority of the votes repre-

sented by the outstanding voting shares of all classes, voting as a single voting group, excluding the votes of shares owned by or voted under the control of the benefited director; or

(b) The corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing the loans and guarantees.

(2) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

(3) This section does not apply to loans and guarantees authorized by statute regulating any special class of corporations. [1987 c.52 §87]

60.367 Liability for unlawful distributions. (1) Unless the director complies with the applicable standards of conduct described in ORS 60.357, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter or the articles of incorporation.

(2) A director held liable for an unlawful distribution under subsection (1) of this section is entitled to contribution:

(a) From every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in ORS 60.357; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of this chapter or the articles of incorporation. [1987 c.52 §88]

(Officers)

60.371 Required officers. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws which shall include a president and a secretary.

(2) A duly appointed officer may appoint one or more officers or assistant officers if such appointment is authorized by the bylaws or the board of directors.

(3) The secretary shall have the responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation. [1987 c.52 §89]

60.374 Duties of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers. [1987 c.52 §90]

60.377 Standard of conduct for officers. (1) An officer with discretionary authority shall discharge the duties of an officer under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties of an officer, an officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the office in compliance with this section. [1987 c.52 §91]

60.381 Resignation and removal of officers. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective under ORS 60.034 (5) unless the notice specifies a later effective time. If a resignation is made effective at a later time and the corporation accepts the future effective time, its board of directors or the appointing officer may fill the pending vacancy before the effective time if the board of directors or the appointing officer provides that the successor does not take office until the effective time.

(2) An officer may be removed at any time with or without cause by:

(a) The board of directors;

(b) The appointing officer, unless otherwise provided by the bylaws or the board of directors; or

(c) Any other officer if authorized by the bylaws or the board of directors.

(3) Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the board of directors.

(4) As used in this section, "appointing officer" means the officer or any successor to that officer who appointed the officer resigning or being removed. [1987 c.52 §92; 1993 c.403 §6; 2003 c.80 §13]

60.384 Contract right of officers. (1) The appointment of an officer does not itself create contract rights.

(2) Removal or resignation of an officer does not affect the contract rights, if any, of the corporation or the officer. [1987 c.52 §93]

(Indemnification)

60.387 Definitions for ORS 60.387 to 60.414. As used in ORS 60.387 to 60.414:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on or otherwise involve services by the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan or reasonable expenses incurred with respect to a proceeding.

(5) "Officer" means an individual who is or was an officer of a corporation or an individual who, while an officer of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. An officer is considered to be serving an employee benefit plan at the corporation's request if the officer's duties to the corporation also impose duties on or include services by the officer to the employee benefit plan or to participants in or beneficiaries of the plan. "Officer" includes, unless the context requires otherwise, the estate or personal representative of an officer.

(6) "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal. [1987 c.52 §94]

60.391 Authority to indemnify directors. (1) Except as provided in subsection (4) of this section, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(a) The conduct of the individual was in good faith;

(b) The individual reasonably believed that the individual's conduct was in the best interests of the corporation, or at least not opposed to its best interests; and

(c) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b) of this section.

(3) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) In connection with any other proceeding charging improper personal benefit to the director in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding. [1987 c.52 §95]

60.394 Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. [1987 c.52 §96]

60.397 Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in ORS 60.391; and

(b) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct.

(2) The undertaking required by subsection (1)(b) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Any authorization of payments under this section may be made by provision in the articles of incorporation, or bylaws, by a resolution of the shareholders or board of directors or by contract. [1987 c.52 §97]

60.401 Court-ordered indemnification. Unless the corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines:

(1) The director is entitled to mandatory indemnification under ORS 60.394, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in ORS 60.391 or was adjudged liable as described in ORS 60.391 (4), whether the liability is based on a judgment, settlement or proposed settlement or otherwise. [1987 c.52 §98]

60.404 Determination and authorization of indemnification. (1) A corporation may not indemnify a director under ORS 60.391 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in ORS 60.391.

(2) A determination that indemnification of a director is permissible shall be made:

(a) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under paragraph (a) of this subsection, by a majority vote of a committee duly designated by the board of directors consisting solely of two or more directors not at the time parties to the proceeding. However, directors who are parties to the proceeding may participate in designation of the committee;

(c) By special legal counsel selected by the board of directors or its committee in the manner prescribed in paragraph (a) or (b) of this subsection or, if a quorum of the board of directors cannot be obtained under paragraph (a) of this subsection and a committee cannot be designated under paragraph (b) of this subsection, the special legal counsel shall be selected by majority vote of the full board of directors, including directors who are parties to the proceeding; or

(d) By the shareholders.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (2)(c) of this section to select counsel. [1987 c.52 §99]

60.407 Indemnification of officers, employees and agents. Unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation is entitled to mandatory indemnification under ORS 60.394, and is entitled to apply for court-ordered indemnification under ORS 60.401, in each case to the same extent as a director under ORS 60.394 and 60.401.

(2) The corporation may indemnify and advance expenses under ORS 60.387 to 60.411 to an officer, employee or agent of the corporation to the same extent as to a director. [1987 c.52 §100]

60.411 Insurance. A corporation may purchase and maintain insurance on behalf of an individual against liability asserted against or incurred by the individual who is or was a director, officer, employee or agent of the corporation or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The corporation may purchase and maintain the insurance even if the corporation has no power to indemnify the individual against the same liability under ORS 60.391 or 60.394. [1987 c.52 §101]

60.414 Application of ORS 60.387 to 60.411. (1) The indemnification and provisions for advancement of expenses provided by ORS 60.387 to 60.411 shall not be deemed exclusive of any other rights to which directors, officers, employees or agents may be entitled under the corporation's articles of incorporation or bylaws, any agreement, general or specific action of its board of directors, vote of shareholders or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. Specifically and not by way of limitation, a corporation shall have the power to make or agree to make any further indemnification, including advancement of expenses, of:

(a) Any director as authorized by the articles of incorporation, any bylaws approved, adopted or ratified by the shareholders or any resolution or agreement approved, adopted or ratified, before or after such indemnification or agreement is made, by the shareholders, provided that no such indemnification shall indemnify any director from or on account of acts or omissions for which liability could not be eliminated under ORS 60.047 (2)(d); and

(b) Any officer, employee or agent who is not a director as authorized by its articles of incorporation or bylaws, general or specific action of its board of directors or agreement. Unless the articles of incorporation, or any such bylaws, agreement or resolution provide otherwise, any determination as to any further indemnity under this paragraph shall be made in accordance with ORS 60.404.

(2) If articles of incorporation limit indemnification or advance of expenses, any indemnification and advance of expenses are valid only to the extent consistent with the articles of incorporation.

(3) ORS 60.387 to 60.411 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to a proceeding. [1987 c.52 §102; 1991 c.883 §7]

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

(Amendment of Articles of Incorporation)

60.431 Authority. (1) A corporation may amend its articles of incorporation at any time to add, change or delete any provision if the articles of incorporation as amended would be permitted under this chapter as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, purpose or duration of the corporation. [1987 c.52 §103]

60.434 Amendment by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action to:

(1) Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) Delete the names and addresses of the initial directors;

(3) Delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the office of the Secretary of State;

(4) Delete the mailing address if an annual report has been filed with the office of the Secretary of State;

(5) Change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co." or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;

(6) In the case of a corporation registered as an open-end investment company under the Investment Company Act of 1940, as amended, increase or decrease the number of shares the corporation is authorized to issue; or

(7) Make any other change expressly permitted by this chapter to be made without shareholder action. [1987 c.52 §104; 1989 c.1040 §23; 1991 c.883 §8; 1997 c.249 §25]

60.437 Amendment by board of directors and shareholders. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting, and the shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with ORS 60.214. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) Unless this chapter, the articles of incorporation or the board of directors acting pursuant to subsection (3) of this section require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(a) A majority of the votes entitled to be cast on the amendment by any voting group with which the amendment would create dissenters' rights; and

(b) The votes required by ORS 60.241 and 60.244 by every other voting group entitled to vote on the amendment. [1987 c.52 §105; 1989 c.1040 §24]

60.441 Voting on amendments by voting groups. (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group if shareholder voting is otherwise required by this chapter on a proposed amendment if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class;

(b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(d) Change the designation, rights, preferences or limitations of all or part of the shares of the class;

(e) Change the shares of all or part of the class into a different number of shares of the same class;

(f) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior or substantially equal to the shares of the class;

(g) Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(h) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1) of this section, the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

(4) A class or series is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares. [1987 c.52 §106]

60.444 Amendment before issuance of shares. If a corporation has not yet issued shares, its incorporators or the board of directors may adopt one or more amendments to the corporation's articles of incorporation. If any such amendment relates to the duration, purposes, authorized capital, rights or preferences of shares or internal affairs, the incorporators or board of directors shall immediately notify in writing each person who is a party to any agreement for the subscription of stock of the corporation. Such notice shall set forth the text of the amendment and state that the subscriber may, within 30 days after delivery or mailing of the notice of amendment, rescind the subscription by notice in writing delivered or mailed to the incorporators or board of directors at an address specified. If a notice of rescission is not delivered or mailed within 30 days, the subscriber may not thereafter

assert the fact of the amendment as the basis for avoiding the subscription agreement or asserting any claim against any person. [1987 c.52 §107]

60.447 Articles of amendment. (1) A corporation amending its articles of incorporation shall deliver articles of amendment to the office for filing.

(2) Articles of amendment shall contain:

(a) The name of the corporation;

(b) The text of each amendment adopted;

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

(d) The date of each amendment's adoption;

(e) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and a statement that shareholder action was not required; and

(f) If an amendment was approved by the shareholders:

(A) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment; and

(B) The total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment. [1987 c.52 §108]

60.451 Restated articles of incorporation. (1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action. If a corporation has not yet issued shares, its incorporators or the board of directors may adopt restated articles of incorporation, subject to the requirements of ORS 60.444.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in ORS 60.437.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with ORS 60.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(4) A corporation restating its articles of incorporation shall deliver to the office for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(b) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by ORS 60.447.

(5) Restated articles of incorporation shall contain all statements required to be included in original articles of incorporation except that no statement is required to be made with respect to:

(a) The names and addresses of the incorporators or the initial or present registered office or agent; or

(b) The mailing address of the corporation if an annual report has been filed with the office of the Secretary of State.

(6) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(7) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section. [1987 c.52 §109; 1989 c.1040 §25]

60.454 Amendment pursuant to reorganization. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by ORS 60.047.

(2) The individual or individuals designated by the court shall deliver to the office for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters'

rights except as and to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan. [1987 c.52 §110]

60.457 Effect of amendment. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name. [1987 c.52 §111]

(Amendment of Bylaws)

60.461 Amendment or repeal by board of directors or shareholders. (1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) The articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or in part; or

(b) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors. [1987 c.52 §112]

60.464 Bylaw increasing quorum or voting requirement for shareholders. (1) If expressly authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is required by this chapter. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or the quorum and voting requirement proposed to be adopted, whichever is greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) of this section may not be adopted, amended or repealed by the board of directors. [1987 c.52 §113]

60.467 Bylaw increasing quorum or voting requirement for directors. (1) A bylaw provision that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If the provision was originally adopted by the shareholders, only by the shareholders; or

(b) If the provision was originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw provision adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors. [1987 c.52 §114; 1989 c.1040 §26]

CONVERSION, MERGER AND SHARE EXCHANGE

60.470 Definitions for ORS 60.470 to 60.501. As used in ORS 60.470 to 60.501:

(1) "Business entity" means:

(a) Any of the following for-profit entities:

(A) A professional corporation organized under ORS chapter 58, predecessor law or comparable law of another jurisdiction;

(B) A corporation organized under this chapter, predecessor law or comparable law of another jurisdiction;

(C) A limited liability company organized under ORS chapter 63 or comparable law of another jurisdiction;

(D) A partnership organized in Oregon after January 1, 1998, or that is registered as a limited liability partnership, or that has elected to be governed by ORS chapter 67, and a partnership governed by law of another jurisdiction that expressly provides for conversions and mergers; and

(E) A limited partnership organized under ORS chapter 70, predecessor law or comparable law of another jurisdiction; and

(b) A cooperative organized under ORS chapter 62, predecessor law or comparable law of another jurisdiction.

(2) "Organizational document" means the following for an Oregon business entity or, for a foreign business entity, a document equivalent to the following:

(a) In the case of a corporation, professional corporation or cooperative, articles of incorporation;

(b) In the case of a limited liability company, articles of organization;

(c) In the case of a partnership, a partnership agreement and, for a limited liability partnership, its registration; and

(d) In the case of a limited partnership, a certificate of limited partnership.

(3) "Owner" means a:

(a) Shareholder of a corporation or of a professional corporation;

(b) Member or shareholder of a cooperative;

(c) Member of a limited liability company;

(d) Partner of a partnership; and

(e) General partner or limited partner of a limited partnership. [1999 c.362 §6; 2003 c.80 §14]

60.472 Conversion. (1) A business entity other than a corporation may be converted to a corporation organized under this chapter, and a corporation organized under this chapter may be converted to another business entity organized under the laws of this state, if conversion is permitted by the statutes governing the other business entity, by approving a plan of conversion and filing articles of conversion. A corporation organized under this chapter may be converted to a business entity organized under the laws of another jurisdiction if:

(a) The conversion is permitted by the laws of that jurisdiction;

(b) A plan of conversion is approved by the converting corporation;

(c) Articles of conversion are filed in this state;

(d) The converted business entity submits an application to transact business as a foreign business entity of that type to the Secretary of State for filing and meets all other requirements prescribed under the laws of this state for authorization to transact business as a foreign business entity of that type; and

(e) The corporation complies with all requirements imposed under the laws of the other jurisdiction with respect to the conversion.

(2) The plan of conversion shall set forth:

(a) The name and type of the business entity prior to conversion;

(b) The name and type of the business entity after conversion;

(c) A summary of the material terms and conditions of the conversion;

(d) The manner and basis of converting the ownership interests of each owner into ownership interests or obligations of the converted business entity or any other business entity, or into cash or other property in whole or in part; and

(e) Any additional information required in the organizational document of the converted business entity by the statutes governing that type of business entity.

(3) The plan of conversion may set forth other provisions relating to the conversion. [1999 c.362 §7; 2001 c.315 §12; 2003 c.80 §15]

60.474 Action on plan of conversion. (1) A plan of conversion shall be approved as follows:

(a) In the case of a corporation, in the manner provided in ORS 60.487 for mergers; and

(b) In the case of a business entity other than a corporation, as provided by the statutes governing that business entity.

(2) After a conversion is approved, and at any time before articles of conversion are filed, the planned conversion may be abandoned, subject to any contractual rights:

(a) By a corporation, in the manner provided in ORS 60.487 (9); and

(b) By a business entity that planned to convert to a corporation, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, in the manner permitted by the statutes governing that business entity. [1999 c.362 §8]

60.476 Articles of conversion. (1) After conversion is approved by the owners, the converting business entity shall file articles of conversion, which shall state the name and type of business entity prior to conversion and the name and type of business entity after conversion, and shall include the plan of conversion.

(2) The conversion takes effect at the later of the date and time determined pursuant to ORS 60.011 or the date and time determined pursuant to the statutes governing the business entity that is not a corporation. [1999 c.362 §9; 2001 c.315 §7]

60.478 Effect of conversion; assumed business name. (1) When a conversion to or from a corporation pursuant to ORS 60.472 takes effect:

(a) The business entity continues its existence despite the conversion;

(b) Title to all real estate and other property owned by the converting business entity is vested in the converted business entity without reversion or impairment;

(c) All obligations of the converting business entity, including, without limitation, contractual, tort, statutory and administrative obligations, are obligations of the converted business entity;

(d) An action or proceeding pending against the converting business entity or its owners may be continued as if the conver-

sion had not occurred, or the converted business entity may be substituted as a party to the action or proceeding;

(e) The ownership interests of each owner that are to be converted into ownership interests or obligations of the converted business entity or any other business entity, or into cash or other property, are converted as provided in the plan of conversion;

(f) Liability of an owner for obligations of the business entity, including, without limitation, contractual, tort, statutory and administrative obligations, shall be determined:

(A) As to liabilities incurred prior to conversion, according to the laws applicable prior to conversion; and

(B) As to liabilities incurred after conversion, according to the laws applicable after conversion, except as provided in paragraph (g) of this subsection;

(g) If prior to conversion an owner of a business entity was a partner of a partnership or general partner of a limited partnership and was personally liable for the business entity's liabilities, and after conversion is an owner normally protected from personal liability, then such owner shall continue to be personally liable for the business entity's liabilities incurred during the 12 months following conversion, if the other party or parties to the transaction reasonably believed that the owner would be personally liable and had not received notice of the conversion; and

(h) Unless the converted business entity is a partnership, the registration of an assumed business name of a business entity pursuant to ORS chapter 648 shall continue as the assumed business name of the converted business entity. If the converted business entity is a partnership, the converting business entity shall amend or cancel the registration of the assumed business name under ORS chapter 648, and the partners of the partnership shall register the name as an assumed business name under ORS chapter 648.

(2) Owners of the business entity that converted are entitled to the rights provided in the plan of conversion and:

(a) In the case of shareholders of a corporation, the right to dissent and obtain payment of the fair value of the shareholder's shares as provided in ORS 60.551 to 60.594; and

(b) In the case of owners of business entities other than corporations, the rights provided in the statutes, common law and private agreements applicable to the business entity prior to conversion, including, without limitation, any rights to dissent, to dissociate, to withdraw, to recover for breach of any duty or obligation owed by the other owners, and to obtain an appraisal or payment for the value of an owner's interest. [1999 c.362 §10; 2001 c.315 §2]

60.481 Merger. (1)(a) One or more business entities may merge into a corporation organized under this chapter if the merger is permitted by the statutes governing each other business entity that is a party to the merger, a plan of merger is approved by each business entity that is a party to the merger and articles of merger are filed. A corporation organized under this chapter may be merged into a business entity organized under the laws of this state or under the laws of another jurisdiction, other than a foreign corporation, if:

(A) The merger is permitted by the laws of this state or by the laws of the other jurisdiction that govern the other business entity;

(B) A plan of merger is approved by each business entity that is a party to the merger;

(C) Articles of merger are filed in this state; and

(D) The corporation complies with all requirements imposed under the laws of this state and, if applicable, the laws of the other jurisdiction with respect to the merger.

(b) A merger of one or more domestic corporations with one or more foreign corporations is governed by ORS 60.501.

(2) The plan of merger shall set forth:

(a) The name and type of each business entity planning to merge;

(b) The name and type of the business entity that will survive;

(c) A summary of the material terms and conditions of the merger;

(d) The manner and basis of converting the shares or other ownership interests of each owner into shares, ownership interests or obligations of the surviving business entity or any other business entity, or into cash or other property in whole or in part; and

(e) If any party is a business entity other than a corporation, any additional information required for a merger by the statutes governing that business entity.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of a corporation, if the corporation is the surviving business entity; and

(b) Other provisions relating to the merger.

(4) One or more corporations may merge with a nonprofit corporation under ORS 65.481 to 65.504. [1987 c.52 §115; 1989 c.1010 §176; 1991 c.883 §9; 1999 c.362 §11; 2001 c.315 §13; 2003 c.80 §16]

60.484 Share exchange. (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts a plan of exchange and, if required by ORS 60.487, the shareholders of each corporation approve the exchange.

(2) The plan of exchange must set forth:

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

(b) A summary of the material terms and conditions of the exchange; and

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

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

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise. [1987 c.52 §116; 1989 c.171 §7; 1989 c.1040 §27; 2003 c.80 §17]

60.487 Action on plan of merger or share exchange. (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors shall direct by resolution that the plan of merger or share exchange be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting; and

(b) The shareholders entitled to vote must approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders′ meeting in accordance with ORS 60.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(5) Unless this chapter, the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, requires a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups is required:

(a) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under ORS 60.441, except that separate voting by a voting group is not required if:

(A) Under the plan of merger, the shares that constitute the voting group are to be converted into shares, obligations, other securities, cash or other property with a value at least equal to the value the shares would receive in a liquidation of the corporation. For purposes of determining the value the shares would receive in a liquidation of the corporation, the value of property available for distribution to all shareholders in the liquidation shall be assumed to be equal to the total value of shares, obligations, other securities, cash or other property into which all shares of the corporation are to be converted under the plan of merger; or

(B) The articles of incorporation provide that the voting group is not entitled to vote separately on a plan of merger; and

(b) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in ORS 60.434, from its articles before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations and relative rights, immediately after;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20 percent the total

number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20 percent the total number of participating shares outstanding immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

(10) If a party to a plan of merger is a business entity other than a corporation, approval of the plan, and abandonment of the plan after approval, shall be in accordance with the statutes governing that business entity. [1987 c.52 §117; 1989 c.1040 §28; 1991 c.883 §10; 1993 c.403 §7; 1999 c.362 §12]

60.491 Merger with subsidiary. (1) A parent corporation owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself, or may merge itself into the subsidiary, without approval of the shareholders of the parent or subsidiary.

(2) If the parent will be the surviving corporation:

(a) The board of directors of the parent shall adopt a plan of merger that sets forth:

(A) The names of the parent and subsidiary; and

(B) The manner and basis of converting the shares of the subsidiary into shares, obligations or other securities of the parent or any other corporation or into cash or other property in whole or part, or of canceling any part of the shares;

(b) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing;

(c) The parent may not deliver the articles of merger to the office for filing until at least 30 days after the date the parent mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement; and

(d) Articles of merger under this subsection may not contain amendments to the articles of incorporation of the parent corporation, except for amendments listed in ORS 60.434.

(3) If the parent will not be the surviving corporation:

(a) The board of directors of the parent shall adopt a plan of merger that sets forth:

(A) The names of the parent and subsidiary;

(B) The manner and basis of converting the shares of the parent into shares of the surviving corporation, which shall ensure that each shareholder of the parent immediately before the merger takes effect will immediately thereafter:

(i) Hold the same percentage of the total of each class of shares of the surviving corporation owned by former shareholders of the parent as the shareholder held in each class of shares of the parent; and

(ii) Hold shares of the surviving corporation having the same rights, preferences, privileges and restrictions as the shares of the parent held by such shareholder immediately before the merger takes effect;

(C) Amendments to the articles of incorporation of the surviving corporation so that the articles are identical to the articles of incorporation of the parent in effect immediately before the merger takes effect, except for amendments to the articles of incorporation of the parent listed in ORS 60.434; and

(D) Provisions relating to the outstanding shares of the subsidiary including cancellation of the shares held by the parent. If under the plan of merger the shareholders of the subsidiary other than the parent will not be shareholders of the surviving corporation, the plan shall also set forth the manner and basis of converting the shares of the subsidiary held by such shareholders into obligations or other securities of the surviving corporation or shares, obligations or other securities of any other corporation or into cash or other property in whole or in part;

(b) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing;

(c) The parent may not deliver the articles of merger to the office for filing until at least 30 days after the date the parent mailed a copy or summary of the plan of merger to

each shareholder of the subsidiary who did not waive the mailing requirement; and

(d) The surviving corporation shall be a domestic corporation. [1987 c.52 §118; 1993 c.403 §8; 1997 c.392 §1]

60.494 Articles of merger or share exchange. (1) After a plan of merger or share exchange is approved by the owners of each business entity, or adopted by a board of directors if shareholder approval is not required, the surviving or acquiring business entity shall deliver to the office of the Secretary of State, for filing, articles of merger or articles of share exchange setting forth:

(a) The plan of merger or share exchange;

(b) For each corporation that is a party to the merger or share exchange:

(A) If shareholder approval was not required, a statement to that effect; or

(B) If shareholder approval was required:

(i) The designation, number of outstanding shares and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) The total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan; and

(c) For each business entity other than a corporation that is a party to the merger, a statement that the plan of merger was duly authorized and approved in accordance with the statutes governing that business entity.

(2) The merger or share exchange takes effect on the later of the date and time determined pursuant to ORS 60.011 or the date and time determined pursuant to the statutes governing any business entity other than a corporation that is a party to the merger. [1987 c.52 §119; 1999 c.362 §13; 2001 c.104 §18; 2001 c.315 §1]

60.497 Effect of merger or share exchange. (1) When a merger involving a corporation takes effect:

(a) Every other business entity that is a party to the merger merges into the surviving business entity, and the separate existence of every other party ceases;

(b) Title to all real estate and other property owned by each of the business entities that were parties to the merger is vested in the surviving business entity without reversion or impairment;

(c) All obligations of each of the business entities that were parties to the merger, including, without limitation, contractual, tort, statutory and administrative obligations, are obligations of the surviving business entity;

(d) An action or proceeding pending against each of the business entities or its owners that were parties to the merger may be continued as if the merger had not occurred, or the surviving business entity may be substituted as a party to the action or proceeding;

(e) If a corporation is the surviving business entity, its articles of incorporation are amended to the extent provided in the plan of merger;

(f) The shares or other ownership interests of each owner that are to be converted into ownership interests or obligations of the surviving business entity or any other business entity, or into cash or other property, are converted as provided in the plan of merger;

(g) Liability of an owner for obligations of the business entity, including, without limitation, contractual, tort, statutory and administrative obligations, shall be determined:

(A) As to obligations incurred prior to merger, according to the laws applicable prior to merger; and

(B) As to obligations incurred after merger, according to the laws applicable after merger, except as provided in paragraph (h) of this subsection;

(h) If prior to merger an owner of a business entity was a partner of a partnership or general partner of a limited partnership and was personally liable for the business entity's obligations, and after merger is an owner normally protected from personal liability, then such owner shall continue to be personally liable for the business entity's obligations incurred during the 12 months following merger, if the other party or parties to the transaction reasonably believed that the owner would be personally liable and had not received notice of the merger; and

(i) The registration of an assumed business name of a business entity pursuant to ORS chapter 648 shall continue as the assumed business name of the surviving business entity.

(2) Owners of the business entities that merged are entitled to the rights provided in the plan of merger and:

(a) In the case of shareholders, the rights provided in this chapter; and

(b) In the case of owners of business entities other than corporations, the rights provided in the statutes applicable to that business entity, including, without limitation, any rights to dissent, to dissociate, to withdraw, to recover for breach of any duty or obligation owed by the other owners, and to

obtain an appraisal or payment for the value of an owner's interest.

(3) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under this chapter. [1987 c.52 §120; 1999 c.362 §14; 2001 c.104 §19]

60.501 Merger or share exchange with foreign corporation. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complied with that law in effecting the merger;

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) The foreign corporation complies with ORS 60.494 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of ORS 60.481 to 60.491 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with ORS 60.481 to 60.494.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(a) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under this chapter.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise. [1987 c.52 §121]

SALE OF ASSETS

60.531 Sale of assets in regular course of business; mortgage of assets. (1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange or otherwise dispose of all or substantially all of its property in the usual and regular course of business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(2) Unless required by the articles of incorporation, approval by the shareholders of a transaction described in subsection (1) of this section is not required. [1987 c.52 §122]

60.534 Sale of assets other than in regular course of business. (1) A corporation may sell, lease, exchange or otherwise dispose of all or substantially all of its property, with or without the goodwill, other than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors shall adopt a resolution directing that such sale, lease, exchange or other disposition be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting; and

(b) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with ORS 60.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all or substantially all the property of the corporation and contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the transaction to be authorized must be ap-

proved by a majority of all the votes entitled to be cast on the transaction.

(6) After a sale, lease, exchange or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

(7) A transaction that constitutes a distribution is governed by ORS 60.181 and not by this section. [1987 c.52 §123; 1989 c.1040 §29]

DISSENTERS' RIGHTS

(Right to Dissent and Obtain Payment for Shares)

60.551 Definitions for ORS 60.551 to 60.594. As used in ORS 60.551 to 60.594:

(1) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(2) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(3) "Dissenter" means a shareholder who is entitled to dissent from corporate action under ORS 60.554 and who exercises that right when and in the manner required by ORS 60.561 to 60.587.

(4) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(6) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(7) "Shareholder" means the record shareholder or the beneficial shareholder. [1987 c.52 §124; 1989 c.1040 §30]

60.554 Right to dissent. (1) Subject to subsection (2) of this section, a shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate acts:

(a) Consummation of a plan of merger to which the corporation is a party if shareholder approval is required for the merger by ORS 60.487 or the articles of incorporation and the shareholder is entitled to vote on the merger or if the corporation is a subsidiary that is merged with its parent under ORS 60.491;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all or substantially all of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(A) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities; or

(B) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under ORS 60.141;

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or

(f) Conversion to a noncorporate business entity pursuant to ORS 60.472.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under ORS 60.551 to 60.594 may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(3) Dissenters' rights shall not apply to the holders of shares of any class or series if the shares of the class or series were registered on a national securities exchange or quoted on the National Association of Securities Dealers, Inc. Automated Quotation System as a National Market System issue on the record date for the meeting of shareholders at which the corporate action described in subsection (1) of this section is to be approved or on the date a copy or sum-

mary of the plan of merger is mailed to shareholders under ORS 60.491, unless the articles of incorporation otherwise provide. [1987 c.52 §125; 1989 c.1040 §31; 1993 c.403 §9; 1999 c.362 §15]

60.557 Dissent by nominees and beneficial owners. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in the shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares regarding which the shareholder dissents and the shareholder's other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on the beneficial shareholder's behalf only if:

(a) The beneficial shareholder submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) The beneficial shareholder does so with respect to all shares of which such shareholder is the beneficial shareholder or over which such shareholder has power to direct the vote. [1987 c.52 §126]

(Procedure for Exercise of Rights)

60.561 Notice of dissenters' rights. (1) If proposed corporate action creating dissenters' rights under ORS 60.554 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under ORS 60.551 to 60.594 and be accompanied by a copy of ORS 60.551 to 60.594.

(2) If corporate action creating dissenters' rights under ORS 60.554 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send the shareholders entitled to assert dissenters' rights the dissenters' notice described in ORS 60.567. [1987 c.52 §127]

60.564 Notice of intent to demand payment. (1) If proposed corporate action creating dissenters' rights under ORS 60.554 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights shall deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effectuated and shall not vote such shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) of this section is not entitled to payment for the shareholder's shares under this chapter. [1987 c.52 §128]

60.567 Dissenters' notice. (1) If proposed corporate action creating dissenters' rights under ORS 60.554 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of ORS 60.564.

(2) The dissenters' notice shall be sent no later than 10 days after the corporate action was taken, and shall:

(a) State where the payment demand shall be sent and where and when certificates for certificated shares shall be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement of the terms of the proposed corporate action to news media or to shareholders and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand. This date may not be fewer than 30 nor more than 60 days after the date the subsection (1) of this section notice is delivered; and

(e) Be accompanied by a copy of ORS 60.551 to 60.594. [1987 c.52 §129]

60.571 Duty to demand payment. (1) A shareholder sent a dissenters' notice described in ORS 60.567 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to ORS 60.567 (2)(c), and deposit the shareholder's certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits the shareholder's shares under subsection (1) of this section retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled

to payment for the shareholder's shares under this chapter. [1987 c.52 §130]

60.574 Share restrictions. (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under ORS 60.581.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action. [1987 c.52 §131]

60.577 Payment. (1) Except as provided in ORS 60.584, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with ORS 60.571, the amount the corporation estimates to be the fair value of the shareholder's shares, plus accrued interest.

(2) The payment must be accompanied by:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year and the latest available interim financial statements, if any;

(b) A statement of the corporation's estimate of the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's right to demand payment under ORS 60.587; and

(e) A copy of ORS 60.551 to 60.594. [1987 c.52 §132; 1987 c.579 §4]

60.581 Failure to take action. (1) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under ORS 60.567 and repeat the payment demand procedure. [1987 c.52 §133]

60.584 After-acquired shares. (1) A corporation may elect to withhold payment required by ORS 60.577 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section, after taking the proposed corporate action, it shall estimate the fair value of the shares plus accrued interest and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of such demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares an explanation of how the interest was calculated and a statement of the dissenter's right to demand payment under ORS 60.587. [1987 c.52 §134]

60.587 Procedure if shareholder dissatisfied with payment or offer. (1) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate, less any payment under ORS 60.577 or reject the corporation's offer under ORS 60.584 and demand payment of the dissenter's estimate of the fair value of the dissenter's shares and interest due, if:

(a) The dissenter believes that the amount paid under ORS 60.577 or offered under ORS 60.584 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under ORS 60.577 within 60 days after the date set for demanding payment; or

(c) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand in writing under subsection (1) of this section within 30 days after the corporation made or offered payment for the dissenter's shares. [1987 c.52 §135]

(Judicial Appraisal of Shares)

60.591 Court action. (1) If a demand for payment under ORS 60.587 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand under ORS 60.587 and petition the court under subsection (2) of this section to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the circuit court of the county where a corporation's principal office is located, or if the principal office is not in this state, where the corporation's registered of-

fice is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares. All parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the circuit court in which the proceeding is commenced under subsection (2) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the court order appointing them, or in any amendment to the order. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding is entitled to judgment for:

(a) The amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation; or

(b) The fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under ORS 60.584. [1987 c.52 §136]

60.594 Court costs and counsel fees. (1) The court in an appraisal proceeding commenced under ORS 60.591 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under ORS 60.587.

(2) The court may also assess the fees and expenses of counsel and experts of the respective parties in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of ORS 60.561 to 60.587; or

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this chapter.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to counsel reasonable fees to be paid out of the amount awarded the dissenters who were benefited. [1987 c.52 §137]

DISSOLUTION

(Voluntary Dissolution)

60.621 Dissolution by incorporators or initial directors. (1) A majority of the incorporators or initial directors of a corporation that has not issued shares and has not commenced business may dissolve the corporation by delivering articles of dissolution to the office for filing.

(2) Articles of dissolution shall set forth:

(a) The name of the corporation;

(b) The date of its incorporation;

(c) That none of the corporation's shares has been issued and that the corporation has not commenced business;

(d) That no debt of the corporation remains unpaid; and

(e) That a majority of the incorporators or initial directors authorized the dissolution. [1987 c.52 §138; 1987 c.579 §5]

60.624 Voluntary dissolution by consent of shareholders. A corporation may be voluntarily dissolved by the written consent of all of its shareholders. [1987 c.52 §139]

60.627 Dissolution by board of directors and shareholders. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with ORS 60.214. The notice must

also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on the proposal. [1987 c.52 §140]

60.631 Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the office for filing articles of dissolution setting forth:

(a) The name of the corporation;

(b) The date dissolution was authorized;

(c) If dissolution was approved by the shareholders:

(A) The number of votes entitled to be cast on the proposal to dissolve; and

(B) The total number of votes cast for and against dissolution and a statement that the number cast for dissolution was sufficient for approval; and

(d) If voting by voting groups is required, the information required by paragraph (c) of this subsection separately provided for each voting group entitled to vote separately on the plan to dissolve.

(2) A corporation is dissolved upon the effective date of its articles of dissolution. [1987 c.52 §141]

60.634 Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days of its effective date.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization of dissolution permits revocation by action by the board of directors alone. If the authorization of dissolution permits revocation by action of the board of directors alone, the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the office for filing, articles of revocation of dissolution that set forth:

(a) The name of the corporation;

(b) The effective date of the dissolution that was revoked;

(c) The date that the revocation of dissolution was authorized;

(d) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;

(e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) If shareholder action was required to revoke the dissolution, the information required by ORS 60.631 (1)(c) and (d).

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred. [1987 c.52 §142]

60.637 Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind to its shareholders;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in this chapter;

(d) Change quorum or voting requirements for the board of directors or shareholders, change provisions for selection, resignation, or removal of its directors or officers or both or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation. [1987 c.52 §143]

60.641 Known claims against dissolved corporation. (1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. [1987 c.52 §144]

60.644 Unknown claims against dissolved corporation. (1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice must:

(a) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is located, or if the principal office is not in this state, where its registered office is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under ORS 60.641;

(b) A claimant whose claim was sent in a timely manner to the dissolved corporation but not acted on; or

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution. [1987 c.52 §145; 1991 c.883 §11]

60.645 Enforcement of claims against dissolved corporation. A claim against a dissolved corporation that is not barred under ORS 60.641 or 60.644 may be enforced:

(1) Against the dissolved corporation to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against the shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less. A shareholder's total liability for all claims under this section may not exceed the total value of assets distributed to the shareholder, as of the date or dates of distribution, less any liability of the corporation paid on behalf of the corporation by that shareholder after the date of the distribution. [1991 c.883 §16]

(Administrative Dissolution)

60.647 Grounds for administrative dissolution. The Secretary of State may commence a proceeding under ORS 60.651 to administratively dissolve a corporation if:

(1) The corporation does not pay when due any fees imposed by this chapter;

(2) The corporation does not deliver its annual report to the Secretary of State when due;

(3) The corporation is without a registered agent or registered office in this state;

(4) The corporation does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued; or

(5) The corporation's period of duration stated in its articles of incorporation expires. [1987 c.52 §146]

60.651 Procedure; effect of administrative dissolution. (1) If the Secretary of State determines that one or more grounds exist under ORS 60.647, for dissolving a corporation, the Secretary of State shall give the corporation written notice of the determination.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State, within 45 days after notice is given, that each ground determined by the Secretary of State does not exist, the Secretary of State shall dissolve the corporation.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under ORS 60.637, and notify claimants under ORS 60.641 and 60.644.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent. [1987 c.52 §147; 1987 c.579 §6; 1993 c.190 §2]

60.654 Reinstatement following administrative dissolution. (1) A corporation administratively dissolved under ORS 60.651 may apply to the Secretary of State for reinstatement within five years from the date of dissolution. The application shall:

(a) State the name of the corporation and the effective date of its administrative dissolution; and

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section, that the information is correct and that the corporation's name satisfies the requirements of ORS 60.094, the Secretary of State shall reinstate the corporation.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred. [1987 c.52 §148; 1995 c.215 §7]

60.657 Appeal from denial of reinstatement. (1) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, the Secretary of State shall give written notice to the corporation that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement pursuant to the provisions of ORS chapter 183. [1987 c.52 §149]

(Judicial Dissolution)

60.661 Grounds for judicial dissolution. The circuit courts may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law.

(2) In a proceeding by a shareholder in a corporation that has shares that are listed on a national securities exchange or that are regularly traded in a market maintained by one or more members of a national or affiliated securities association, if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

(c) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(d) The corporate assets are being misapplied or wasted.

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision. [1987 c.52 §150; 2001 c.315 §58]

60.664 Procedure for judicial dissolution. (1) Venue for a proceeding by the Attorney General to dissolve a corporation lies in Marion County. Venue for a proceeding brought by any other party named in ORS 60.661 or 60.952 lies in the county where a corporation's principal office is located or, if the principal office is not in this state, where its registered office is or was last located.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions,

appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located and carry on the business of the corporation until a full hearing can be held. [1987 c.52 §151; 2001 c.315 §61]

60.667 Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a corporation, or in a judicial proceeding for shareholder remedies described in ORS 60.952, may appoint one or more receivers to wind up and liquidate the business and affairs of the corporation or one or more custodians to manage the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended periodically. Among other powers:

(a) The receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state.

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders and creditors.

(5) The court periodically during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets. [1987 c.52 §152; 2001 c.315 §62]

60.671 Judgment of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in ORS 60.661 or 60.952 (2)(m) exist, it may enter a judgment dissolving the corporation and specifying the effective date of the dissolution. The clerk of the court shall deliver a certified copy of the judgment to the office for filing. The Secretary of State shall file the certified copy of the judgment.

(2) After entering the judgment of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with ORS 60.637 and the notification of claimants in accordance with ORS 60.641 and 60.644. [1987 c.52 §153; 2001 c.315 §63; 2003 c.576 §323]

(Disposition of Assets)

60.674 Asset distribution; deposit with Department of State Lands; claims. Assets of a dissolved corporation that should be distributed to a creditor, claimant or shareholder of the corporation who cannot be found shall be reduced to cash and, within one year after the final distribution in such liquidation or winding up is payable, deposited with the Department of State Lands. The receiver or other liquidating agent shall prepare in duplicate and under oath a statement containing the names and last-known addresses of the persons entitled to such funds. One of the statements shall be filed with the Department of State Lands with the cash and another shall be delivered to the office for filing. The owner, heirs or personal representatives of the owner, may file a claim with the Department of State Lands in the manner provided by ORS 98.392 and 98.396. [1987 c.52 §154; 1993 c.694 §34]

FOREIGN CORPORATIONS

(Authority to Transact Business)

60.701 Authority to transact business required. (1) A foreign corporation may not transact business in this state until it has been authorized to do so by the Secretary of State.

(2) The following activities among others, do not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining, defending or settling any proceeding.

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.

(c) Maintaining bank accounts.

(d) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining

trustees or depositaries with respect to those securities.

(e) Selling through independent contractors.

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

(g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property.

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(i) Owning without more real or personal property.

(j) Conducting an isolated transaction that is completed within 30 days and is not one in the course of repeated transactions of a like nature.

(k) Transacting business in interstate commerce.

(3) The list of activities in subsection (2) of this section is not exhaustive. [1987 c.52 §155]

60.704 Consequences of transacting business without authority. (1) A foreign corporation transacting business in this state without authorization from the Secretary of State may not maintain a proceeding in any court in this state until it obtains authorization from the Secretary of State to transact business in this state.

(2) The successor to a foreign corporation that transacted business in this state without authority to transact business in this state and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains authorization from the Secretary of State to transact business in this state.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires authorization from the Secretary of State to transact business in this state. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the authorization.

(4) A foreign corporation that transacts business in this state without authority shall be liable to this state for the years or parts thereof during which it transacted business in this state without authority in an amount equal to all fees that would have been imposed by this chapter upon such corporation had it duly applied for and received authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain authority to transact business in this state does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state. [1987 c.52 §156]

60.707 Application for authority to transact business. (1) A foreign corporation may apply for authority to transact business in this state by delivering an application to the office for filing. The application shall set forth:

(a) The name of the foreign corporation or, if its name is unavailable for filing in this state, another corporate name that satisfies the requirements of ORS 60.717;

(b) The name of the state or country under whose law it is incorporated;

(c) Its date of incorporation and period of duration if not perpetual;

(d) The address, including street and number and mailing address, if different, of its principal office;

(e) The address, including street and number, of its registered office in this state and the name of its registered agent at that office; and

(f) The names and respective addresses of the president and secretary of the foreign corporation.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, current within 60 days of delivery and authenticated by the official having custody of corporate records in the state or country under whose law it is incorporated. [1987 c.52 §157]

60.711 Amendment to application for authority. (1) A foreign corporation authorized to transact business in this state shall deliver an amendment to the application for authority to transact business in this state to the office for filing if it changes:

(a) Its corporate name as shown on the records of the office; or

(b) The period of its duration.

(2) The amendment to the application for authority to transact business in this state shall set forth its corporate name shown on the records of the office and the new corporate name or the new period of duration. The corporate name as changed must satisfy the requirements of ORS 60.717. [1987 c.52 §158]

60.714 Effect of authority. (1) A foreign corporation authorized to transact business in this state has the same but no greater

rights and has the same but no greater privileges as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties and liabilities now or later imposed on, a domestic corporation of like character.

(2) The filing by the Secretary of State of an application or amendment to the application for authority to transact business shall constitute authorization to transact business in this state, subject to the right of the Secretary of State to revoke the authorization.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state. [1987 c.52 §159]

60.717 Corporate name of foreign corporation. (1) Except as provided in subsections (2) and (3) of this section, the Secretary of State shall not authorize a foreign corporation to transact business in this state if the corporate name of the corporation does not conform to ORS 60.094.

(2) The name of the corporation must contain a word or abbreviation required by ORS 60.094 (1) unless the corporate name contains some other word, phrase or abbreviation that the laws of the place of incorporation require to denote a person of limited liability.

(3) If a corporate name, professional corporate name, nonprofit corporate name, cooperative name, limited partnership name, business trust name, reserved name, registered corporate name or assumed business name of active record with the office is not distinguishable on the records of the office from the corporate name of the applicant foreign corporation, the Secretary of State shall not authorize the applicant to transact business in this state unless the foreign corporation states the corporate name on the application for authority to transact business in this state under ORS 60.707 as (name under which incorporated), a corporation of (place of incorporation), the entirety of which shall be the real and true name of the corporation under ORS chapter 648.

(4) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of this section, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of this section and ORS 60.711. [1987 c.52 §160]

60.721 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office that may be, but need not be, the same as any of its places of business; and

(2) A registered agent who may be:

(a) An individual who resides in this state and whose business office is identical to the registered office;

(b) A domestic corporation, domestic limited liability company, domestic professional corporation or domestic nonprofit corporation whose business office is identical to the registered office; or

(c) A foreign corporation, foreign limited liability company, foreign professional corporation or foreign nonprofit corporation authorized to transact business in this state whose business office is identical to the registered office. [1987 c.52 §161; 2001 c.315 §25]

60.724 Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the office of the Secretary of State for filing a statement of change that sets forth:

(a) The name of the foreign corporation;

(b) If the registered office is to be changed, the street address, including street and number, of the new registered office;

(c) If the registered agent is to be changed, the name of the new registered agent and a statement that the new agent has consented to the appointment; and

(d) That after the change or changes are made, the street addresses of the registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the agent's business office, the registered agent shall change the street address of the registered office of the foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the office of the Secretary of State a statement of change that complies with the requirements of subsection (1) of this section and states that the corporation has been notified of the change.

(3) The filing of the statement by the Secretary of State shall terminate the existing registered office or agent or both, on the effective date of the filing and establish the newly appointed registered office or agent, or both, as that of the foreign corporation. [1987 c.52 §162]

60.727 Resignation of registered agent of foreign corporation. (1) The registered agent of a foreign corporation may resign as agent upon delivering a signed statement to the office and giving notice in the form of a copy of the statement to the foreign corporation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) Upon the delivery of the signed statement, the Secretary of State shall file the resignation statement. The copy of the statement given to the foreign corporation under subsection (1) of this section shall be addressed to the foreign corporation at the foreign corporation's mailing address or the foreign corporation's principal office as shown on the records of the office of the Secretary of State.

(3) The agency appointment is terminated and the registered office discontinued if so provided in the signed statement under subsection (1) of this section on the 31st day after the date on which the statement was filed by the Secretary of State unless the foreign corporation has previously appointed a successor registered agent, as provided in ORS 60.724 thereby terminating the capacity of such agent. [1987 c.52 §163; 1993 c.190 §3]

60.731 Service on foreign corporation. (1) The registered agent appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(2) The Secretary of State shall be an agent of a foreign corporation upon whom any process, notice or demand may be served, if:

(a) The corporation is authorized to transact business in this state, and it fails to appoint or maintain a registered agent in this state, or its registered agent cannot with reasonable diligence be found at the registered office;

(b) The corporation's authority to transact business in this state has been revoked;

(c) The corporation is transacting business in this state without being authorized as provided in this chapter;

(d) The corporation has been authorized to transact business in this state and has withdrawn; or

(e) The corporation has transacted business in this state without being authorized to do so, has ceased to transact business and has become subject to service on the Secretary of State as prescribed in this chapter.

(3) Service on the Secretary of State of any such process, notice or demand shall be made in the same manner as provided in ORS 60.121 (3), except that when the corporation served is not authorized to transact business in this state and was not authorized to transact business in this state at the time the transaction, event or occurrence upon which the proceeding is based occurred, the copy of the process, notice or demand shall be sent immediately by registered or certified mail by the plaintiff or the attorney of the plaintiff to the principal office or place of business of the corporation, instead of the last registered office of the corporation.

(4) The Secretary of State shall keep a record of all processes, notices and demands served upon the Secretary of State under this section.

(5) After completion of initial service upon the Secretary of State, no additional documents need to be served upon the Secretary of State to maintain jurisdiction in the same proceeding or to give notice of any motion or provisional process.

(6) Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner permitted by law, or enlarge the purposes for which service on the Secretary of State is permitted where such purposes are limited by other provisions of law. [1987 c.52 §164]

(Withdrawal)

60.734 Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from transacting business in this state by applying to the office for withdrawal. The application shall set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) A mailing address to which the person initiating any proceedings may mail to the foreign corporation a copy of any process served on the Secretary of State under paragraph (c) of this subsection; and

(e) A commitment to notify the Secretary of State for a period of five years from the date of withdrawal of any change in its mailing address.

(2) Upon filing by the Secretary of State of the application to withdraw, the authority of the foreign corporation to transact business in this state shall cease. [1987 c.52 §165]

(Revocation of Authority)

60.737 Grounds for revocation. The Secretary of State may commence a proceeding under ORS 60.741 to revoke the authority of a foreign corporation to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the Secretary of State within the time prescribed by this chapter;

(2) The foreign corporation does not pay within the time prescribed by this chapter any fees imposed by this chapter;

(3) The foreign corporation has failed to appoint or maintain a registered agent or registered office in this state as prescribed by this chapter;

(4) The foreign corporation does not inform the Secretary of State under ORS 60.724 or 60.727 that its registered agent or registered office has changed, that its registered agent has resigned or that its registered office has been discontinued;

(5) An incorporator, director, officer or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the office for filing; or

(6) The Secretary of State receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger. [1987 c.52 §166]

60.741 Procedure for and effect of revocation. (1) If the Secretary of State determines that one or more grounds exist under ORS 60.737 for revocation of authority of a foreign corporation to transact business in this state, the Secretary of State shall give the foreign corporation written notice of the determination.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 45 days after notice is given, the Secretary of State shall revoke the foreign corporation's authority.

(3) The authority of a foreign corporation to transact business in this state ceases as of the date of revocation of its authority to transact business in this state.

(4) The Secretary of State's revocation of a foreign corporation's authority to transact business in this state appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state.

(5) Revocation of a foreign corporation's authority to transact business in this state terminates the authority of the registered agent of the corporation. [1987 c.52 §167; 1993 c.190 §4]

60.744 Appeal from revocation. In addition to any other legal remedy which may be available, a foreign corporation shall have the right to appeal the Secretary of State's revocation of its authority to transact business in this state pursuant to the provisions of ORS chapter 183. [1987 c.52 §168]

60.747 Reinstatement of authority. (1) A foreign corporation which has had its authority revoked under ORS 60.737 may apply to the Secretary of State for reinstatement within five years from the date of revocation. The application shall:

(a) State the name of the corporation and the effective date its authority was revoked; and

(b) State that the ground or grounds for revocation of authority either did not exist or have been eliminated.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section, that the information is correct and that the corporation's name satisfies the requirements of ORS 60.717, the Secretary of State shall reinstate the authority.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation of authority and the corporation resumes carrying on its business as if the administrative revocation of authority had never occurred. [1989 c.1040 §33; 1995 c.215 §8]

RECORDS AND REPORTS

(Records)

60.771 Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting and a record of all actions taken by a committee of the board

of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or registered office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

(d) The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting, for the past three years;

(e) All written communications to shareholders generally within the past three years;

(f) A list of the names and business addresses of its current directors and officers; and

(g) Its most recent annual report delivered to the Secretary of State under ORS 60.787. [1987 c.52 §169]

60.774 Inspection of records by shareholders. (1) Subject to ORS 60.777 (3), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in ORS 60.771 (5) if the shareholder gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation, including tax returns; and

(c) The record of shareholders.

(3) A shareholder may inspect and copy the records identified in subsection (2) of this section only if:

(a) The shareholder's demand is made in good faith and for a proper purpose;

(b) The shareholder described with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) The records are directly connected with the shareholder's purpose.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) The right of a shareholder to inspect records under ORS 60.224 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independent of this chapter, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on behalf of the beneficial owner. [1987 c.52 §170; 1989 c.1040 §34; 1993 c.403 §10]

60.777 Scope of inspection right. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder.

(2) The right to copy records under ORS 60.774 includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under ORS 60.774 (2)(c) by

providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand. [1987 c.52 §171]

60.781 Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with ORS 60.774 (1) to inspect and copy any records required by that subsection to be available for inspection, the circuit court of the county where the corporation's principal office is located, or, if the principal office is not in this state, where its registered office is or was last located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with ORS 60.774 (2) and (3) may apply to the circuit court in the county where the corporation's principal office is located, or, if the principal office is not in this state, where its registered office is or was last located, for an order to permit inspection and copying of the records demanded.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

(5) No order shall be issued under this section without notice to the corporation at least five days in advance of the time specified for the hearing unless a different period is fixed by the court. The shareholder's request shall be set for hearing at the earliest possible time and shall take precedence over all matters, except matters of the same character and hearing on preliminary injunctions under ORCP 79 B(3). [1987 c.52 §172]

(Reports)

60.784 Reports to shareholders of indemnification. If a corporation indemnifies or advances expenses to a director under ORS 60.391, 60.394, 60.397 or 60.401 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting. [1987 c.52 §173]

60.787 Annual report. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall by its anniversary deliver to the office for filing an annual report that sets forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The street address of its registered office and the name of its registered agent at that office in this state;

(c) The address, including street and number and mailing address, if different, of its principal office;

(d) The names and addresses of the president and secretary of the corporation;

(e) The category of the classification code established by rule of the Secretary of State most closely designating the primary business activity of the corporation; and

(f) Additional identifying information that the Secretary of State may require by rule.

(2) The information contained on the annual report shall be current as of 30 days before the anniversary of the corporation.

(3) The Secretary of State shall mail the annual report form to any address shown for the corporation in the current records of the office. The failure of the corporation to receive the annual report form from the Secretary of State shall not relieve the corporation of its duty to deliver an annual report to the office as required by this section.

(4) If an annual report does not contain the information required by this section, the Secretary of State shall notify the reporting domestic or foreign corporation in writing and return the report to it for correction. The domestic or foreign corporation must correct the error within 45 days after the Secretary of State gives such notice.

(5) A domestic or foreign corporation may deliver to the office for filing an amendment to the annual report if a change in the information set forth in the annual report occurs after the report is delivered to the office for filing and before the next anniversary. This subsection applies only to a change that is not required to be made by an amendment to the articles of incorporation. The amendment to the annual report must set forth:

(a) The name of the corporation as shown on the records of the office; and

(b) The information as changed. [1987 c.52 §174; 1987 c.843 §14; 2007 c.186 §3]

REGULATION OF CORPORATE ACQUISITIONS

60.801 Definitions for ORS 60.801 to 60.816. As used in ORS 60.801 to 60.816:

(1) "Acquiring group" means two or more persons who agree to act together or enter into any arrangement or understanding for the purpose of voting or acquiring voting shares of an issuing public corporation, but does not include two or more persons whose sole agreement relates to the granting of an immediately revocable proxy.

(2) "Acquiring person" means a person who acquires or proposes to acquire ownership of, or the power to direct the voting of, voting shares of an issuing public corporation and includes all affiliates of such person.

(3)(a) "Affiliate" means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person. As used in this subsection, "control," including the terms "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract or otherwise. A person who is the owner of 10 percent or more of a corporation's outstanding voting shares shall be presumed to have control of the corporation in the absence of proof by a preponderance of the evidence to the contrary.

(b) Notwithstanding paragraph (a) of this subsection, a presumption of control shall not apply where a person holds voting shares in good faith and not for the purpose of circumventing ORS 60.801 to 60.816 as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of the corporation.

(4)(a) "Control share acquisition" means the acquisition, directly or indirectly, by any acquiring person, including a member of an acquiring group, of ownership of, or the power to direct the voting of, voting shares of an issuing public corporation in a transaction that causes the total voting power of the acquiring person or any acquiring group of which the acquiring person is a member in the election of directors of the issuing public corporation to exceed one-fifth, one-third or one-half of the total voting power of all the voting shares.

(b) For purposes of this subsection, voting shares of an issuing public corporation acquired within 90 days of a control share acquisition by the acquiring person or members of the acquiring group making the control share acquisition shall be considered to have been acquired in the same control share acquisition.

(c) For purposes of this subsection, a person who acquires voting shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing ORS 60.801 to 60.816 has ownership and voting power only of voting shares in respect of which that person would be able to exercise or direct the exercise of votes without further instruction from others.

(d) For purposes of this subsection, if two or more persons enter into a binding agreement that is not immediately revocable with respect to the voting of their voting shares, in addition to those persons thereby becoming an acquiring group:

(A) Any single person who thereby obtains the right to determine how any other parties to the agreement must vote their shares shall be deemed to have acquired the power to direct the voting of the voting shares held by such other parties to the agreement; and

(B) Any group of persons who thereby obtain the right to determine how any parties to the agreement must vote their shares shall collectively be deemed to be a separate acquiring person who has acquired the power to direct the voting of all voting shares held by such parties to the agreement. The group of persons shall include all parties to the agreement if all parties share in the decision or if the agreement specifies how the shares must be voted.

(e) The acquisition of any voting shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

(A) At a time when the corporation was not subject to ORS 60.801 to 60.816.

(B) Pursuant to a contract entered into at a time when the corporation was not subject to ORS 60.801 to 60.816.

(C) Pursuant to the laws of descent and distribution.

(D) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing ORS 60.801 to 60.816.

(E) In a transaction in which voting shares are acquired from the issuing public corporation.

(F) Pursuant to a merger or plan of share exchange effected in compliance with ORS 60.470 to 60.501, if the issuing public corporation is a party to the agreement of merger or plan of share exchange.

(G) Pursuant to a transfer of voting shares between or among affiliates or immediate family members unless the voting shares are control shares that have not had their voting rights restored under ORS 60.807.

(H) In a transaction in which voting power is acquired solely by receipt of an immediately revocable proxy or by any other agreement or understanding that is not binding on the person transferring such voting power.

(5)(a) "Control shares" means voting shares of an issuing public corporation that are acquired in a control share acquisition. "Control shares" does not include voting shares acquired in a control share acquisition that are subsequently transferred, or whose voting power is subsequently transferred, other than a transfer of voting power by termination of a binding voting agreement, to a person that is not an affiliate of the transferor or a member of an acquiring group of which the transferor is a member in a transaction that is not a control share acquisition. "Control shares" also does not include voting shares acquired in a control share acquisition whose voting power is subsequently transferred pursuant to the termination of a binding voting agreement if, assuming the parties to the agreement had never entered into the agreement but had been members of an acquiring group during the term of the agreement, the voting shares would not have been control shares.

(b) If an acquiring person or any member of an acquiring group transfers control shares in a transaction that causes the control shares to cease to be control shares without reducing the total voting power of the acquiring person or acquiring group to less than one-fifth of the total voting power of all the voting shares, and within 90 days before or after such transfer the transferor or any member of an acquiring group of which the transferor is a member acquires ownership of, or the power to direct the voting of, any voting shares, all such voting shares up to the number of voting shares having total voting power equal to the total voting power of the control shares transferred shall be considered control shares.

(6) "Immediate family member" means any grandparent, parent, brother, sister, child, grandchild or spouse of a person, or any other relative of the person or the person's spouse who has the same home as the person.

(7)(a) "Interested shares" means voting shares of an issuing public corporation that any of the following persons have sole or shared power to vote, or direct the voting of, either directly or by proxy or voting agreement, at a meeting at which the voting rights of control shares are to be considered:

(A) The acquiring person or a member of the acquiring group whose voting rights are under consideration.

(B) Any officer of the issuing public corporation.

(C) Any employee of the issuing public corporation who is also a director of the corporation.

(b) For purposes of this subsection, a person shall not be deemed to have the power to vote, or direct the voting of, voting shares if the person's power with respect to the shares arises solely from holding an immediately revocable proxy, unless the proxy is solicited in connection with an offer to purchase or solicitation of offers to sell voting shares which requires the granting of a proxy as a condition to the acceptance of a tender of voting shares from any shareholder.

(8)(a) "Issuing public corporation" means a corporation incorporated or existing pursuant to the provisions of this chapter that has:

(A) One hundred or more record or beneficial shareholders;

(B) Its principal place of business, its principal office or assets with a fair market value of not less than $1 million within this state; and

(C) Either:

(i) More than 10 percent of its record shareholders resident in this state;

(ii) More than 10 percent of its shares owned beneficially or of record by residents of this state; or

(iii) At least 10,000 of its record or beneficial shareholders resident in this state.

(b) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.

(c) Shares held by banks, except as trustee or guardian, brokers or nominees shall be disregarded for purposes of calculating the percentages or numbers described in paragraph (a)(C) of this subsection.

(9) "Person" means any individual, corporation, partnership, unincorporated association or other entity.

(10) "Total voting power" of any person or any shares means the voting power such person or shares would have except for ORS 60.801 to 60.816.

(11) "Voting shares" means shares that have, or would have except for this Act, voting power in any vote for the election of directors and that belong to a class or series that, together with all other classes or series that vote with such class or series as a group

with respect to the election of directors, elects at least a majority of the directors. [1989 c.4 §1; 1989 c.1040 §37; 1991 c.7 §1; 2003 c.80 §17a]

Note: 60.801 to 60.816 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 60 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

60.804 Applicability of ORS 60.801 to 60.816. (1) An issuing public corporation shall be subject to ORS 60.801 to 60.816 unless the corporation's articles of incorporation or bylaws provide that ORS 60.801 to 60.816 do not apply to acquisitions of its voting shares. After a corporation's articles of incorporation or bylaws are amended to provide that ORS 60.801 to 60.816 do not apply to acquisitions of its voting shares, any voting shares that were control shares prior to the amendment shall cease to be considered control shares.

(2) An issuing public corporation whose articles of incorporation or bylaws provide that it is not subject to ORS 60.801 to 60.816 may, at any time, amend its articles of incorporation or bylaws in accordance with ORS 60.431 to 60.467 to remove the provision and become subject to ORS 60.801 to 60.816.

(3) Any amendment to the articles of incorporation or bylaws of an issuing public corporation relating to whether or not the corporation is subject to ORS 60.801 to 60.816 that is adopted or approved by the shareholders must be adopted or approved by holders of voting shares with at least a majority of the votes entitled to be cast by holders of voting shares in addition to any other vote that may be required by statute or the articles of incorporation.

(4) Upon request by any person, a corporation shall inform the person whether or not the corporation's articles of incorporation or bylaws provide that ORS 60.801 to 60.816 do not apply to acquisitions of its voting shares. [1989 c.4 §2; 1991 c.7 §2]

Note: See note under 60.801.

60.807 Voting rights of control shares. (1) Control shares acquired in a control share acquisition have no voting rights other than those provided for in subsection (2)(a) of this section, unless the restoration of the voting rights associated with the shares before the control share acquisition is approved by the shareholders of the issuing public corporation.

(2) To be approved under this section, the restoration of voting rights for control shares must be approved by:

(a) The holders of the voting shares, including all interested shares, by a majority of all the votes entitled to be cast by holders of voting shares; and

(b) The holders of the voting shares, excluding all interested shares, by a majority of all the votes, other than votes of interested shares, entitled to be cast by holders of voting shares. [1989 c.4 §3]

Note: See note under 60.801.

60.810 Acquiring person statement; shareholder meeting. (1) Any acquiring person who proposes to make or has made a control share acquisition may at the person's election deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement shall set forth all of the following:

(a) The identity of the acquiring person and each other member of any acquiring group of which the person is a member.

(b) A statement that the acquiring person statement is given pursuant to ORS 60.801 to 60.816.

(c) The number of voting shares of the issuing public corporation owned, directly or indirectly, by the acquiring person and each member of the acquiring group, and the acquisition dates and acquisition prices of all such shares acquired in a control share acquisition and within 90 days prior to the date of delivery of the acquiring person statement.

(d) The number of additional voting shares of which the acquiring person and each member of the acquiring group has the power to direct the voting other than solely through the holding of an immediately revocable proxy, the identities of the owners of the voting shares and a description of the transaction or transactions in which the voting power was acquired.

(e) If the control share acquisition has not taken place, a description in reasonable detail of the terms of the proposed control share acquisition, including the number of voting shares being sought, the price or range of prices to be paid for the voting shares being sought, the source of financing for the acquisition, whether or not the acquisition will be made by means of a tender offer and, if so, whether the tender offer will be for all outstanding voting shares.

(f) Any plans of the acquiring person for a merger or other fundamental corporate change involving the issuing public corporation.

(2) If the acquiring person requests at the time of delivery of an acquiring person statement and gives an undertaking to pay the corporation's expenses of a special meeting, the directors of the issuing public corporation shall, within 10 days after receipt by the corporation of the acquiring person statement, call a special meeting of shareholders of the issuing public corporation for

the purpose of considering the voting rights to be accorded the voting shares acquired or to be acquired in the control share acquisition. Unless otherwise specified by the board of directors, no other business shall be conducted at a special meeting of shareholders called under this section.

(3) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held no sooner than 30 days and no later than 50 days after receipt by the issuing public corporation of the request.

(4) If no request is made, the voting rights to be accorded the voting shares acquired in the control share acquisition shall be presented to the next special or annual meeting of shareholders that is held more than 60 days after the date of the control share acquisition.

(5) If a special meeting is requested, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for the meeting, whether or not the shareholders are entitled to vote at the meeting. The board of directors shall fix the record date.

(6) Notice of the special or annual shareholder meeting at which the voting rights are to be considered must include or be accompanied by all of the following:

(a) A copy of the acquiring person statement delivered to the issuing public corporation pursuant to ORS 60.801 to 60.816.

(b) A statement authorized by the board of directors of the corporation of the position or recommendation of the board, or that the board is taking no position or making no recommendation, with respect to the proposed control share acquisition.

(c) A description of the dissenters' rights that may result from the vote of shareholders.

(7) To the extent the acquiring person makes any representations in the acquiring person statement or any other communication to the shareholders of the issuing public corporation relating to transactions or other actions to be effected after the shareholder vote on voting rights for control shares acquired by the acquiring person, any approval of voting rights shall be conditioned upon the completion of those transactions or actions as represented and shall be void if the transactions or actions are not effected as represented.

(8) An acquiring person whose voting rights for control shares are denied by the shareholders may request another special meeting of shareholders in accordance with this section to consider those voting rights no sooner than six months after the meeting at which voting rights were denied. [1989 c.4 §4; 1991 c.7 §3]

Note: See note under 60.801.

60.813 Dissenters' rights. Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, in the event control shares acquired in a control share acquisition are accorded voting rights and the acquiring person or acquiring group owns, or has the power to direct the voting of, other than solely through the holding of immediately revocable proxies, voting shares with a majority or more of the total voting power of all voting shares, any holder of voting shares of the issuing public corporation who does not vote in favor of the restoration of voting rights shall be entitled to dissent from such restoration and obtain the fair value of the holder's shares. ORS 60.551 and 60.557 to 60.594 shall apply to dissenters' rights created under this section, except that for purposes of this section, fair value may not be a value less than the highest price paid per share by the acquiring person or acquiring group in the control share acquisition. ORS 60.554 shall not apply to dissenters' rights created under this section. [1989 c.4 §5]

Note: See note under 60.801.

60.816 Short title. ORS 60.801 to 60.813 shall be known and may be cited as the "Oregon Control Share Act." [1989 c.4 §6]

Note: See note under 60.801.

BUSINESS COMBINATIONS WITH INTERESTED SHAREHOLDERS

60.825 Definitions for ORS 60.825 to 60.845. As used in ORS 60.825 to 60.845:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person.

(2) "Associate," when used to indicate a relationship with any person, means:

(a) Any corporation or organization of which the person is a director, officer or partner or is, directly or indirectly, the owner of 20 percent or more of any class of voting stock;

(b) Any trust or other estate in which the person has at least a 20 percent beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity; and

(c) Any relative or spouse of the person, or any relative of a spouse, who has the same residence as the person.

(3) "Business combination," when used in reference to any corporation and any interested shareholder of the corporation, means:

(a) Any merger or plan of exchange of the corporation or any direct or indirect majority-owned subsidiary of the corporation with:

(A) The interested shareholder; or

(B) Any other corporation if the merger or plan of exchange is caused by the interested shareholder and as a result of the merger or plan of exchange, ORS 60.835 is not applicable to the surviving corporation;

(b) Any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of the corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation where the assets have an aggregate market value equal to 10 percent or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation;

(c) Any transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any shares of the corporation or of any such subsidiary to the interested shareholder, except:

(A) Pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into shares of the corporation or any subsidiary where the securities were outstanding prior to the time that the interested shareholder became an interested shareholder or were distributed pro rata to all holders of a class or series of shares of the corporation or any subsidiary subsequent to the time the interested shareholder became an interested shareholder;

(B) Pursuant to a dividend or distribution paid or made pro rata to all holders of a class or series of shares of the corporation or any subsidiary subsequent to the time the interested shareholder became an interested shareholder, provided that there is no increase in the interested shareholder's proportionate share of any class or series of shares of the corporation or of the voting stock of the corporation; or

(C) Pursuant to an exchange offer by the corporation to purchase shares made on the same terms to all holders of the shares, provided that there is no increase in the interested shareholder's proportionate share of any class or series of shares of the corporation or of the voting stock of the corporation;

(d) Any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of any class or series of shares, or securities convertible into the shares of any class or series, of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares not caused, directly or indirectly, by the interested shareholder; or

(e) Any receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of such corporation, of any loans, advances, guarantees, pledges or other financial benefits, other than those expressly permitted in paragraphs (a) to (d) of this subsection, provided by or through the corporation or any direct or indirect majority-owned subsidiary.

(4)(a) "Control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract or otherwise. A person who is the owner of 10 percent or more of a corporation's outstanding voting stock shall be presumed to have control of the corporation, in the absence of proof by a preponderance of the evidence to the contrary.

(b) Notwithstanding paragraph (a) of this subsection, a presumption of control shall not apply when a person holds voting stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of the corporation.

(5)(a) "Interested shareholder" means:

(A) Any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that:

(i) Is the owner of shares representing 15 percent or more of the outstanding voting stock of the corporation; or

(ii) Is an affiliate or associate of the corporation and was the owner of shares representing 15 percent or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether the person is an interested shareholder; and

(B) The affiliates and associates of a person described in subparagraph (A) of this paragraph.

(b) Notwithstanding paragraph (a) of this subsection, the term "interested shareholder" shall not include:

(A) Any person who:

(i) Owned shares in excess of the 15 percent limitation described in paragraph (a) of this subsection as of April 4, 1991, and who continued to own shares in excess of the 15 percent limitation or would have but for action by the corporation;

(ii) Acquired shares in excess of the 15 percent limitation described in paragraph (a) of this subsection pursuant to a tender offer commenced prior to April 4, 1991, and who continued to own shares in excess of the 15 percent limitation or would have but for action by the corporation;

(iii) Acquired shares in excess of the 15 percent limitation described in paragraph (a) of this subsection pursuant to an exchange offer announced prior to April 4, 1991, and commenced within 90 days after April 4, 1991, and who continued to own shares in excess of the 15 percent limitation or would have but for action by the corporation; or

(iv) Acquired shares in excess of the 15 percent limitation described in paragraph (a) of this subsection from a person described in sub-subparagraphs (i) to (iii) of this subparagraph by gift, inheritance or in a transaction in which no consideration was exchanged; or

(B) Any person whose ownership of shares in excess of the 15 percent limitation described in paragraph (a) of this subsection is the result of action taken solely by the corporation provided that the person shall be an interested shareholder if the person later acquires additional voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by the person.

(c) For the purpose of determining whether a person is an interested shareholder, the voting shares of the corporation considered to be outstanding shall include shares considered to be owned by the person through application of ORS 60.830 (1).

(6) "Person" means any individual, corporation, partnership, unincorporated association or other entity.

(7) "Voting stock" means shares of any class or series that, together with all other classes or series that vote with the class or series as a group with respect to the election of directors, elects at least a majority of the directors. [1991 c.40 §2]

60.830 Ownership of shares. (1) For purposes of ORS 60.825 to 60.845, a person shall be considered to be the "owner" of and to "own" any shares:

(a) Which the person or any of the person's affiliates or associates, directly or indirectly, have the power to vote or dispose of, including voting or dispositive power pursuant to any agreement, arrangement or understanding, whether or not in writing;

(b) Over which the person or any of the person's affiliates or associates, directly or indirectly, have the right to acquire voting or dispositive power, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; or

(c) Which are owned, directly or indirectly, by any other person, or any affiliate or associate of the person, with which the person, or any affiliates or associates of the person, have any agreement, arrangement or understanding, whether or not in writing, for the purpose of acquiring, holding, voting or disposing of any securities of the corporation.

(2) For purposes of subsection (1) of this section, a person shall not be considered to be the "owner" of or to "own" any shares:

(a) If an agreement, arrangement or understanding to vote shares arises solely from a revocable proxy or consent given to the person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations of the Securities Exchange Act of 1934;

(b) Tendered pursuant to a tender or exchange offer made by or on behalf of the person or any of the person's affiliates or associates until any tendered shares are accepted for purchase or exchange; or

(c) Acquired by a person engaged in business as an underwriter of securities through the person's participation in good faith in a firm commitment underwriting until the expiration of 40 days after the date of the acquisition of the shares. [1991 c.40 §3]

60.835 Prohibited business combinations. Notwithstanding any other provision of this chapter, a corporation shall not engage in any business combination with any interested shareholder for a period of three years following the date that the shareholder became an interested shareholder, unless:

(1) Prior to that date the board of directors of the corporation approved either the business combination or the transaction

which resulted in the shareholder becoming an interested shareholder;

(2) Upon consummation of the transaction which resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85 percent of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned by:

(a) Persons who are directors and also officers; and

(b) Employee share plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

(3) On or subsequent to the date, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least 66-2/3 percent of the outstanding voting stock which is not owned by the interested shareholder. [1991 c.40 §4; 1991 c.883 §18; 1991 c.927 §5]

60.840 Exceptions to ORS 60.835. (1) ORS 60.835 shall not apply if:

(a) The corporation's original articles of incorporation contain a provision expressly electing not to be governed by ORS 60.825 to 60.845;

(b) The corporation, by action of its board of directors, adopts an amendment to its bylaws within 90 days after April 4, 1991, expressly electing not to be governed by ORS 60.825 to 60.845. The amendment shall not be further amended by the board of directors;

(c) The corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by ORS 60.825 to 60.845, provided that, in addition to any other vote required by law, the amendment to the articles of incorporation or bylaws must be approved by the affirmative vote of a majority of the shares entitled to vote. An amendment adopted pursuant to this paragraph shall not be effective until 12 months after the adoption of the amendment and shall not apply to any business combination between the corporation and any person who became an interested shareholder of the corporation on or prior to the adoption of the amendment. A bylaw amendment adopted pursuant to this paragraph shall not be further amended by the board of directors;

(d) The corporation does not have a class of voting stock that is:

(A) Listed on a national securities exchange;

(B) Authorized for quotation on an interdealer quotation system of a registered national securities association; or

(C) Held of record by more than 2,000 shareholders; or

(e) A shareholder becomes an interested shareholder inadvertently and:

(A) As soon as practicable divests sufficient shares so that the shareholder ceases to be an interested shareholder; and

(B) Would not, at any time within the three-year period immediately prior to a business combination between the corporation and the shareholder, have been an interested shareholder, but for the inadvertent acquisition.

(2) Subsection (1)(d) of this section does not apply if anything described in subsection (1)(d) of this section results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder.

(3) Notwithstanding subsection (1) of this section, a corporation may elect by a provision of its original articles of incorporation or any amendment thereto to be governed by ORS 60.825 to 60.845, except that any amendment to the articles of incorporation shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became an interested shareholder prior to April 4, 1991. [1991 c.40 §5]

60.845 Greater vote of shareholders prohibited. No provision of any articles of incorporation or bylaws shall require a greater vote of shareholders than that specified in ORS 60.825 to 60.845 for any vote of shareholders required by ORS 60.825 to 60.845. [1991 c.40 §6]

MISCELLANEOUS

60.951 Short title. This chapter shall be known and may be cited as the "Oregon Business Corporation Act." [1987 c.52 §1]

60.952 Court proceeding by shareholder in close corporation; conditions; court-ordered remedies; share purchase; expenses. (1) In a proceeding by a shareholder in a corporation that does not have shares that are listed on a national securities exchange or that are regularly traded in a market maintained by one or more members of a national or affiliated securities association, the circuit court may order one or more of the remedies listed in subsection (2) of this section if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

(c) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(d) The corporate assets are being misapplied or wasted.

(2) The remedies that the court may order in a proceeding under subsection (1) of this section include but are not limited to the following:

(a) The performance, prohibition, alteration or setting aside of any action of the corporation or of its shareholders, directors or officers or any other party to the proceeding;

(b) The cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(c) The removal from office of any director or officer;

(d) The appointment of any individual as a director or officer;

(e) An accounting with respect to any matter in dispute;

(f) The appointment of a custodian to manage the business and affairs of the corporation, to serve for the term and under the conditions prescribed by the court;

(g) The appointment of a provisional director to serve for the term and under the conditions prescribed by the court;

(h) The submission of the dispute to mediation or another form of nonbinding alternative dispute resolution;

(i) The issuance of distributions;

(j) The award of damages to any aggrieved party;

(k) The purchase by the corporation or one or more shareholders of all of the shares of one or more other shareholders for their fair value and on the terms determined under subsection (5) of this section;

(L) The retention of jurisdiction of the case by the court for the protection of the shareholder who filed the proceeding; or

(m) The dissolution of the corporation if the court determines that no remedy specified in paragraphs (a) to (L) of this subsection or other alternative remedy is sufficient to resolve the matters in dispute. In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve the corporation solely because it has accumulated earnings or current operating profits.

(3) The remedies set forth in subsection (2) of this section shall not be exclusive of other legal and equitable remedies that the court may impose. Except as provided in this subsection, the shareholders of a corporation may, pursuant to an agreement described in ORS 60.265, agree to limit or eliminate any of the remedies set forth in subsection (2) of this section. The remedies set forth in subsection (2)(e), (j) and (m) of this section may not be eliminated.

(4) In determining the appropriate remedies to order under subsection (2) of this section, the court may take into consideration the reasonable expectations of the corporation's shareholders as they existed at the time the corporation was formed and developed during the course of the shareholders' relationship with the corporation and with each other. The court shall endeavor to minimize the harm to the business of the corporation.

(5)(a) If the court orders a share purchase, the court shall:

(A) Determine the fair value of the shares, with or without the assistance of appraisers, taking into account any impact on the value of the shares resulting from the actions giving rise to a proceeding under subsection (1) of this section;

(B) Consider any financial or legal constraints on the ability of the corporation or the purchasing shareholder to purchase the shares;

(C) Specify the terms of the purchase, including, if appropriate, terms for installment payments, interest at the rate and from the date determined by the court to be equitable, subordination of the purchase obligation to the rights of the corporation's other creditors, security for a deferred purchase price and a covenant not to compete or other restriction on the seller;

(D) Require the seller to deliver all of the seller's shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price; and

(E) Retain jurisdiction to enforce the purchase order by, among other remedies, ordering the corporation to be dissolved if

the purchase is not completed in accordance with the terms of the purchase order.

(b) The share purchase ordered under this subsection shall be consummated within 20 days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to dissolve and articles of dissolution are properly filed with the Secretary of State within 50 days after filing the notice with the court.

(c) After the purchase order is entered and before the purchase price is fully paid, any party may petition the court to modify the terms of the purchase, and the court may do so if the court finds that the modifications are equitable.

(d) Unless the purchase order is modified by the court, the selling shareholder shall have no further rights as a shareholder from the date the seller delivers all of the shareholder's shares to the purchaser or such other date specified by the court.

(e) If the court orders shares to be purchased by one or more other shareholders, in allocating the shares to be purchased by the other shareholders, unless equity requires otherwise, the court shall attempt to preserve the existing distribution of voting rights and other designations, preferences, qualifications, limitations, restrictions and special or relative rights among the holders of the class or classes of shares and may direct that holders of a specific class or classes not participate in the purchase.

(6) At any time within 90 days after the filing of a proceeding under subsection (1) of this section, or at such time determined by the court to be equitable, the corporation or one or more shareholders may elect to purchase all of the shares owned by the shareholder who filed the proceeding for their fair value. An election to purchase under this subsection shall state in writing the amount that the electing party will pay for the shares. The following apply:

(a) The election to purchase shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders. The notice shall state the name of the shareholder who filed the proceeding under subsection (1) of this section and the number of shares owned by that shareholder, the name of each electing shareholder and the number of shares owned by that electing shareholder and the amount that each electing shareholder will pay for the shares. The notice also must advise the recipients of their right to join in the election to purchase shares. Shareholders who wish to participate must file notice of their intention to join in the election to purchase not later than 30 days after the date of the notice to them or at such time as the court in its discretion may allow. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding under subsection (1) of this section and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless the shareholders otherwise agree or the court otherwise directs.

(c) The court in its discretion may allow the corporation and shareholders to file an election to purchase the shares of the shareholder who filed the proceeding under subsection (1) of this section at a price higher than the amount previously offered. If the court does so, it shall allow other shareholders an opportunity to join in the election to purchase at the higher price in accordance with their proportionate ownership interest.

(d) After an election to purchase has been filed by the corporation or one or more shareholders, the proceeding filed under subsection (1) of this section may not be discontinued or settled, nor may the shareholder who filed the proceeding sell or otherwise dispose of the shareholder's shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit the discontinuance, settlement, sale or other disposition. In considering whether equity exists to approve any settlement, the court may take into consideration the reasonable expectations of the shareholders as referred to in subsection (4) of this section, including any existing agreement among the shareholders.

(e) If, within 30 days of the filing of the latest election to purchase allowed by the court, the parties reach agreement as to the fair value and terms of purchase of the shares of the shareholder who filed the proceeding under subsection (1) of this section, the court shall enter an order directing the purchase of shares upon the terms and conditions agreed to by the parties.

(f) If the parties are unable to reach an agreement as described in paragraph (e) of this subsection, the court, upon application of any party, shall stay the proceeding under subsection (1) of this section and shall, under subsection (5) of this section, determine the fair value and terms of purchase of the shares of the shareholder who filed the proceeding as of the day before the date on which the proceeding was filed or as of such

other date as the court deems appropriate under the circumstances.

(7) In any proceeding under subsection (1) of this section, the court shall allow reasonable compensation to the custodian, provisional director, appraiser or other such person appointed by the court for services rendered and reimbursement or direct payment of reasonable costs and expenses. Amounts described in this subsection shall be paid by the corporation. [2001 c.315 §60]

60.954 Reservation of power to amend or repeal. All or part of this chapter may be amended or repealed at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal. [1987 c.52 §2]

60.957 Application to existing domestic corporation. This chapter applies to all domestic corporations in existence on June 15, 1987, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved. [1987 c.52 §176]

60.961 Application to qualified foreign corporations. A foreign corporation authorized to transact business in this state on June 15, 1987, is subject to this chapter but is not required to apply for new authority to transact business under this chapter. [1987 c.52 §177]

60.964 Saving provisions. (1) Except as provided in subsections (2), (3) and (4) of this section, the repeal of a statute by this chapter does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(c) Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding, reorganization or dissolution commenced under the statute before its repeal. The proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) The provisions of ORS 60.387 to 60.411 shall apply to all indemnification made by a corporation after June 15, 1987 and all other actions regarding indemnification taken by or on behalf of a corporation or by a court after June 15, 1987, including all indemnification made and other actions taken after June 15, 1987, with respect to claims that arose or matters that occurred prior to June 15, 1987, or pursuant to any provisions of any articles of incorporation, bylaws, resolutions or agreements in effect prior to June 15, 1987.

(3) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment, if not already imposed, shall be imposed in accordance with this chapter.

(4) This chapter shall apply to any amendment to a corporation's articles of incorporation filed after June 15, 1987, even if shareholder approval of such amendment occurred prior to the effective date. [1987 c.52 §178]

60.967 Corporations incorporated under special acts. The shareholders of any private incorporation incorporated by any special Act of the Legislative Assembly before December 31, 1953, may incorporate themselves under this chapter at any time after June 15, 1987, while the corporation exists for the purpose of carrying on the enterprise, business, pursuit or occupation for which they were specially incorporated. The filing of the articles of incorporation shall be deemed a surrender of the special incorporation, but not of any vested right thereunder, and thereafter the corporation shall have the powers and privileges, and be subject to the liabilities and limitations provided by this chapter and not otherwise. [1987 c.52 §179; 1989 c.1040 §35]

60.971 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [1987 c.52 §180]

PENALTY

60.990 [(Enacted in 1903) repealed by 1953 c.549 §138; 60.990 (enacted by 1987 c.52 §175) renumbered 60.992 in 1993]

60.992 Penalty for signing false document. (1) A person commits the crime of falsely signing a document for filing if the person signs a document knowing it is false in any material respect with intent that the document be delivered to the office for filing.

(2) Falsely signing a document for filing is a Class B misdemeanor. [Formerly 60.990]