

CHAPTER 174

AN ACT

SB 360

Relating to nonprofit corporations; creating new provisions; amending ORS 65.001, 65.004, 65.014, 65.017, 65.021, 65.024, 65.027, 65.031, 65.034, 65.038, 65.040, 65.047, 65.057, 65.061, 65.064, 65.074, 65.094, 65.097, 65.101, 65.114, 65.117, 65.131, 65.134, 65.137, 65.144, 65.147, 65.154, 65.167, 65.171, 65.174, 65.177, 65.204, 65.207, 65.211, 65.214, 65.217, 65.222, 65.224, 65.227, 65.231, 65.241, 65.244, 65.247, 65.251, 65.301, 65.311, 65.314, 65.317, 65.324, 65.327, 65.331, 65.334, 65.335, 65.337, 65.341, 65.344, 65.347, 65.351, 65.354, 65.357, 65.361, 65.364, 65.371, 65.377, 65.381, 65.431, 65.434, 65.437, 65.441, 65.447, 65.451, 65.454, 65.461, 65.464, 65.467, 65.484, 65.487, 65.491, 65.494, 65.534, 65.554, 65.621, 65.624, 65.627, 65.631, 65.634, 65.637, 65.644, 65.661, 65.664, 65.667, 65.671, 65.707, 65.711, 65.717, 65.724, 65.727, 65.734, 65.751, 65.757, 65.771, 65.774, 65.782, 65.787, 65.990 and 271.330; repealing ORS 65.501; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** Section 2 of this 2019 Act is added to and made a part of ORS chapter 65.

**SECTION 2.** (1) An officer, director, employee or agent of a shell entity is liable for damages to a person that suffers an ascertainable loss of money or property as a result of the officer, director, employee or agent:

(a) Making, issuing, delivering or publishing, or participating in making, issuing, delivering or publishing, a prospectus, report, circular, certificate, financial statement, balance sheet, public notice or document concerning the shell entity or the shell entity's shares, assets, liabilities, capital, earnings, accounts or business operations that the officer, director, employee or agent knows is false in any material respect;

(b) Making an entry or causing another person to make an entry in the shell entity's books, records, minutes or accounts that the officer, director, employee or agent knows is false in any material respect; or

(c) Removing, erasing, altering or canceling, or causing another person to remove, erase, alter or cancel, an entry in the shell entity's books, records, minutes or accounts if by means of the removal, erasure, alteration or cancellation the officer, director, employee or agent intends to deceive another person.

(2) An officer, director, employee or agent of a shell entity that engages in any of the actions described in subsection (1) of this section in a submission to, or an interaction with, a public agency, as defined in ORS 180.750,

makes a false claim and is subject to a civil action as provided in ORS 180.750 to 180.785.

**SECTION 3.** Section 4 of this 2019 Act is added to and made a part of ORS 65.201 to 65.254.

**SECTION 4.** (1) Unless a corporation's articles of incorporation or bylaws provide otherwise:

(a) The corporation's board of directors may, without a meeting, use electronic mail or other electronic means to take action that this chapter otherwise requires or permits the board of directors to take at a board of directors' meeting if the corporation complies with this section.

(b) The board of directors may, without complying with all of the requirements of this section, use electronic mail to discuss, but not take action on, an issue that comes before the board.

(2)(a) Before taking an action under subsection (1) of this section, a corporation shall send to the electronic mail address that each director provided to the corporation for receiving communications from the corporation an electronic mail announcement that states that the board of directors will take the action.

(b) The electronic mail announcement the corporation sends under paragraph (a) of this subsection must include a description of the matter on which the board of directors will take action. The electronic mail announcement must specify a deadline of not less than 48 hours after the time the corporation sends the announcement in which a director may record the director's vote.

(c) The corporation shall include the electronic mail announcement described in this subsection and a record of the directors' votes in the minutes for the directors' meeting or shall file the announcement and record of the directors' votes in documents that reflect the action that the board took.

(3) Notwithstanding subsection (1) of this section, a corporation's board of directors may not use electronic mail or other electronic means to take action if the corporation does not have a record of an electronic mail address for a director.

(4) A director may change the director's vote at any time before the deadline set forth in the electronic mail announcement described in subsection (2) of this section.

(5) An affirmative vote of the majority of the directors who hold office at the time the board of directors takes an action by means of electronic mail or by other electronic means is an act of the board, unless a corporation's articles of incorporation or bylaws require an affirmative vote of a greater number of directors. The board's action under this subsection has the effect of a meeting vote and the corporation may

describe the action as a meeting vote in any document.

(6) The board of directors' action under subsection (5) of this section is effective on the deadline specified in the electronic mail announcement described in subsection (2) of this section, unless the announcement specifies a different effective date or time.

**SECTION 5.** Section 6 of this 2019 Act is added to and made a part of ORS 65.431 to 65.467.

**SECTION 6.** If a public benefit corporation has not conducted a meeting of the members and if members have not actively participated in the public benefit corporation's affairs for three years or more, the public benefit corporation's board of directors may act in accordance with ORS 65.434 to amend the articles of incorporation to state that the public benefit corporation does not have members if:

(1) The board first notifies any known members and posts a notice on the public benefit corporation's website or otherwise gives comparable notice to the public of the proposed amendment to the articles of incorporation; and

(2) The board does not receive an objection from any member within 30 days after the date of the notice.

**SECTION 7.** ORS 65.001 is amended to read:

65.001. As used in this chapter:

(1)(a) "Anniversary" means, **except as provided in paragraph (b) of this subsection**, the day each year that is exactly one or more years after the date on which *[the Office of]* the Secretary of State files:

(A) The articles of incorporation for a domestic corporation; or *[the date on which the office files]*

(B) An application for authority to transact business for a foreign corporation, *[except that an event that would otherwise cause an anniversary to fall on February 29 will cause the anniversary to fall on February 28].*

(b) "Anniversary" means **February 28 if an event occurs that would otherwise cause an anniversary to fall on February 29.**

(2) "Appointed director" means a director who is appointed by a person other than the board of directors.

*[(2)]* (3) "Approved by the members" or "approval by the members" means approved or ratified by *[the]* members entitled to vote on *[the]* an issue through either:

(a) The affirmative vote of a majority of the votes of the members represented and voting at a duly held meeting at which a quorum is present or the affirmative vote of a greater proportion including the votes of any required proportion of the members of any class as the articles of incorporation, bylaws or this chapter may provide for specified types of member action; or

(b) A written ballot or written consent in conformity with this chapter.

*[(3)]* (4) "Articles of incorporation" *[or "articles"]* means the articles of incorporation described in ORS 65.047, **and corrected**, amended and restated articles of incorporation *[or articles of merger, and corrections to the articles].*

(5) "Articles of merger" means the articles of merger described in ORS 65.491 **and corrected, amended and restated articles of merger.**

*[(4)]* (6) *["Board" or]* "Board of directors" means the individual or individuals who are vested with overall management of the affairs of *[the]* a domestic corporation or foreign corporation, irrespective of the name *[by which]* **that designates** the individual or individuals. *[are designated, except that an individual or a group of individuals is not the board of directors because of powers delegated to the individual or group under ORS 65.301.]*

*[(5)]* (7) "Bylaws" means *[the code or codes of rules, other than the articles adopted under this chapter or the laws governing a foreign corporation, for regulating or managing the affairs of the domestic or foreign corporation, irrespective of the name or names by which the rules are designated]* **a set of provisions for managing and regulating a corporation's affairs that the corporation must adopt under ORS 65.061.**

*[(6)]* (8) "Class" means a group of memberships that have the same rights, **including rights that are determined by a formula that is applied uniformly**, with respect to voting, dissolution, redemption and transfer. *[For the purpose of this section, rights are the same if the rights are determined by a formula applied uniformly.]*

*[(7)(a)]* "Contact address" means a mailing address, including the principal office of a corporation or foreign corporation, or a business or residential address at which a person affiliated with the corporation or foreign corporation will or has consented to receive and transmit notices intended for the corporation or foreign corporation either when sending the notices to the registered agent is not practical or when a duplicate notice is desirable.]

*[(b)]* "Contact address" does not include the address of a registered agent.]

(9) "Contact information" means a street address, a mailing address or an electronic address at which a member or director elects to receive notices and other messages from the corporation.

(10) "Corporation" means a domestic corporation or a foreign corporation.

*[(8)]* "Corporation" or "domestic corporation" means a nonprofit corporation that is not a foreign corporation, and that is incorporated under or subject to the provisions of this chapter.]

*[(9)]* (11) "Delegate" means a person who is elected or appointed to vote in a representative assembly for electing a director or directors or on other matters.

*[(10)]* (12) "Deliver" means **to transfer by any method of delivery used in conventional commercial**

practice, including delivery by hand, mail, commercial delivery and electronic transmission.

(13) **“Designated director”** means a director that the articles of incorporation or the bylaws designate as a director in a manner that identifies a specific individual or a group of individuals.

(14) **“Director”** means an individual who acts as a member of the board of directors, who has a right to vote on questions concerning the management and regulation of a corporation’s affairs and who is:

- (a) An appointed director;
- (b) A designated director; or
- (c) A director elected by the incorporators, directors or members.

[(11)] *“Director” means an individual whom the articles or bylaws designate or whom the incorporators elect to act as a member of the board, and a successor to the individual.*

[(12)] (15) **“Distribution”** means [paying a dividend or any part of the income or profit of a corporation to the corporation’s members, directors or officers, other than paying value for property received or services performed or paying benefits to further the corporation’s purposes] a payment to a person from the income or assets of a corporation, other than a payment of reasonable value to a person for property received or services performed or a payment that furthers the corporation’s purposes.

(16) **“Document”** means:

(a) A medium that embodies information in tangible form, including any writing or written instrument; or

(b) An electronic medium that embodies information that a person may retain, retrieve and reproduce, in tangible form or otherwise.

[(13)] (17) **“Domestic business corporation”** means a for profit corporation that is incorporated under ORS chapter 60.

(18) **“Domestic corporation”** means a nonprofit corporation that is not a foreign corporation and that is incorporated under or subject to the provisions of this chapter.

[(14)] (19) **“Domestic limited liability company”** means an unincorporated association that has one or more members and that is organized under ORS chapter 63.

[(15)] (20) **“Domestic professional corporation”** means a corporation that is organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.

[(16)] *“Effective date of notice” has the meaning given that term in ORS 65.034.*

[(17)] (21) **“Employee”** [includes] means an individual that a corporation employs, including an officer or director whom the corporation employs with compensation for services beyond [those encompassed by] the services of board membership.

[(18)] (22) **“Entity”** means a domestic corporation, foreign corporation, business corporation and

foreign business corporation, profit and nonprofit unincorporated association, corporation sole, business trust, partnership, two or more persons that have a joint or common economic interest, any state, the United States, a federally recognized Native American or American Indian tribal government and any foreign government.

[(19)] *“File,” “filed” or “filing” means reviewed, accepted and entered in the Office of the Secretary of State.*

[(20)] (23) **“Foreign business corporation”** means a for profit corporation that is incorporated under laws other than the laws of the state.

[(21)] (24) **“Foreign corporation”** means a corporation that is organized under laws other than the laws of the state and that would be a nonprofit corporation if [formed] **organized** under the laws of the state.

[(22)] (25) **“Foreign limited liability company”** means an unincorporated association that is organized under laws other than the laws of the state and [that is organized] under a statute [under which] **that permits** an [association may be formed] **entity to organize and** that affords to each of the entity’s members limited liability with respect to liabilities of the entity.

[(23)] (26) **“Foreign professional corporation”** means a professional corporation that is organized under laws other than the laws of the state.

(27) **“Gift instrument”** means a record, including a record of a solicitation, under which a corporation holds property or under which property is granted or transferred to the corporation.

[(24)] (28) **“Governmental subdivision”** [includes] means a unit of government, including an authority, county, district and municipality.

[(25)] (29) **“Individual”** means a natural person, including the guardian of an incompetent individual.

[(26)(a)] (30)(a) **“Member”** means a person that is entitled, under a domestic corporation’s or foreign corporation’s articles of incorporation or bylaws, to exercise any of the rights described in ORS 65.144 without regard to [what the person is called in the articles or bylaws,] **whether the articles of incorporation or bylaws identify the person as a member or which other title or identity the domestic corporation or foreign corporation gives to the person** [to vote on more than one occasion to elect a director or directors].

(b) **“Member”** does not include:

(A) A person **that does not have the rights described in ORS 65.144** or that has only one or more of the following rights:

(i) [As] **Rights granted to** a delegate;

(ii) A **right** to designate or appoint a director or directors;

(iii) [As] **Rights that** a director has; [or]

(iv) A **right to vote on only one occasion to elect a director or directors; or**

[(iv)] (v) [As a holder of an] **Rights that a person has as a consequence of holding** evidence of

indebtedness the corporation has issued or will issue.

(B) A person *[whose]* **for which** membership rights have been eliminated as provided in ORS 65.164 or 65.167.

[(27)] (31) “Membership” means the rights and obligations a member has under this chapter.

[(28)] (32) “Mutual benefit corporation” means a domestic corporation that is *[formed as a mutual benefit corporation under ORS 65.044 to 65.067 and is designated a mutual benefit corporation by a statute or does not come within the definition of]* **organized to serve and operates primarily to serve the mutual interests of a group of persons, but is not a public benefit corporation or religious corporation.**

[(29)] (33) “Nonprofit corporation” means a mutual benefit corporation, a public benefit corporation or a religious corporation.

[(30)] (34) “Notice” *[has the meaning given that term]* **means a notice described in ORS 65.034.**

[(31)] “Office,” *when used to refer to the administrative unit directed by the Secretary of State, means the Office of the Secretary of State.*

[(32)] (35) “Person” means **an** individual or **an** entity.

[(33)(a)] (36)(a) “Principal office” means the physical street address of the place, in or out of this state, where the principal executive offices of a domestic **corporation** or foreign corporation are located and that is designated as the principal office in the most recent annual report filed *[pursuant to]* **in accordance with** ORS 65.787 or, if no annual report is on file, in the articles of incorporation or the application for authority to transact business in this state.

(b) “Principal office” does not include a commercial mail receiving agency, a mail forwarding business or a virtual office.

[(34)] (37) “Proceeding” means a civil, criminal, administrative or investigatory action.

[(35)] (38) “Public benefit corporation” means a domestic corporation that:

(a) Is formed as a public benefit corporation under ORS 65.044 to 65.067, is designated as a public benefit corporation by a statute, is recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code *[of 1986]* or is otherwise organized for a public or charitable purpose;

(b) Is restricted so that on dissolution the corporation must distribute the corporation’s assets to an organization **that is** organized for a public or charitable purpose, a religious corporation, the United States, a state or a person that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986; and

*[(c) Does not come within the definition of “religious corporation.”]*

**(c) Is not a religious corporation.**

[(36)] (39) “Record date” means the date established under ORS 65.131 to 65.177 or 65.201 to 65.254 on which a corporation determines the identity of

the corporation’s members and the members’ membership rights for the purposes of this chapter.

[(37)] (40) “Religious corporation” means a domestic corporation that is formed as a religious corporation under ORS 65.044 to 65.067, is designated a religious corporation by a statute or is organized primarily or exclusively for religious purposes.

[(38)] (41) “Remote communication” means any method by which a person that is not physically present at the location at which a meeting occurs may nevertheless hear or otherwise communicate at substantially the same time with other persons at the meeting and have access to materials necessary to participate or vote in the meeting to the extent of the person’s authorization to participate or vote.

[(39)] (42) “Secretary,” when used in the context of a corporate official, means the corporate officer to whom the board of directors has delegated responsibility under ORS 65.371 for preparing the minutes of the **board of directors’ meetings** and *[members’]* **membership** meetings and for authenticating the records of the corporation.

(43) “Shell entity” **means an entity that has the characteristics described in ORS 65.661.**

(44) “Sign” **means to indicate a present intent to authenticate or adopt a document by:**

(a) **Affixing a symbol to the document;**

(b) **Inscribing or affixing a manual, facsimile or conformed signature on the document; or**

(c) **Attaching to, or logically associating with, an electronic transmission any electronic sound, symbol or process, including an electronic signature.**

[(40)] (45) “State,” when referring to a part of the United States, means a state, commonwealth, territory or insular possession of the United States and the agencies and governmental subdivisions of the state, commonwealth, territory or insular possession.

[(41)] (46) “Uncompensated officer” means an individual who serves in an office without compensation *[for personal service. For purposes of this subsection,]* **other than** payment solely for actual expenses **the individual incurs** in performing duties of the *[officer or a stipend that is paid only to compensate]* **individual’s office or payment for** the average expenses the individual incurs over the course of a year *[is not compensation].*

[(42)] (47) “United States” means the federal government or a district, authority, bureau, commission, department or any other agency of the United States.

[(43)] (48) “Vote” means **an** authorization by written ballot *[and]* **or** written consent, where permitted, **or by another method that a corporation specifies as an authorization.**

[(44)] (49) “Voting power” means the total number of votes entitled to be cast on an issue at the time the determination of voting power is made, excluding a vote that is contingent upon a condition or event occurring that has not occurred at the time.

**(50) “Written” means embodied as a document.**

**SECTION 8.** ORS 65.004 is amended to read:

65.004. (1) For the Secretary of State to file a document under this chapter, the document must satisfy the requirements set forth in this section and any other requirements in this chapter that supplement or modify the requirements set forth in this section.

*[(2) The document must be one required or permitted to be filed in the Office of the Secretary of State.]*

**(2) The document must be a type of document that this chapter or another law requires or permits a person to file with the Secretary of State.**

(3) The document must contain the information required by this chapter and may contain other information.

(4) The document must be legible.

(5) The document must be written in the alphabet used to write the English language, but may include Arabic or Roman numerals and incidental punctuation. 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 a fiduciary, receiver or trustee, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary;

(b) By an incorporator, if directors have not been selected or the execution of the document occurs before the organizational meeting;

(c) By the person specified in any section of this chapter that required the document be filed;

(d) By the chairperson of the board of directors of a *[domestic or foreign]* corporation, by the president or otherwise by another of the officers of the corporation; or

(e) By an agent of a person identified in this subsection, if the person authorizes the agent to execute the document.

**(7) The person that signs the document shall:**

**(a) Declare, above the person’s signature and under penalty of perjury, that the document does not fraudulently conceal, fraudulently obscure, fraudulently alter or otherwise misrepresent the identity of the person or any of the directors, officers, employees or agents of the corporation on behalf of which the person signs; and**

*[(7)] (b) [The document must] State beneath or opposite the signature the person’s name and the capacity in which the person signs.*

(8) 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)] (9) If the Secretary of State has prescribed a mandatory form for a document under ORS 65.016, the document must be in or on the prescribed form.*

*[(9)] (10) The document must be delivered to [the Office of] the Secretary of State for filing and must be accompanied by the correct filing fee.*

*[(10)] (11) [A document is deemed filed or] A filing is effective only as provided in ORS 56.080, 65.001, 65.011, 65.014 and 65.017.*

**SECTION 9.** ORS 65.014 is amended to read:

65.014. (1) A domestic **corporation** or foreign corporation may correct a document filed by the Secretary of State other than an annual report, if the document:

(a) Contains an incorrect statement; or

(b) Was defectively executed, attested, sealed, verified or acknowledged.

(2) Errors in annual reports may be corrected as provided in ORS 65.787.

(3) A domestic **corporation** or foreign corporation seeking to correct a document shall deliver the articles of correction to *[the Office of]* the Secretary of State for filing. The articles of **correction** *[shall]* **must** include the following:

(a) A description of the incorrect document, including *[its]* **the** filing date or a copy of the document;

(b) A description of the incorrect statement and the reason *[it]* **the statement** is incorrect or a description of the manner in which the execution, attestation, seal, verification or acknowledgment is defective; and

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

(4) Articles of correction are effective on the effective date of the document *[they]* **the articles** 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 by the Secretary of State.

(5) An incorrect document with a delayed effective date may also be corrected by withdrawal and new filing pursuant to the provisions of ORS 56.080.

**SECTION 10.** ORS 65.017 is amended to read:

65.017. (1) If a document delivered to *[the Office of]* the Secretary of State for filing satisfies the requirements of ORS 65.004, the Secretary of State shall file *[it]* **the document**.

(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]* **accepting, reviewing and entering the document into the Secretary of State’s files, indicating on the document the date of filing and that the Secretary of State has filed the document.** The time of filing *[shall be deemed to be]* **is** 12:01 a.m. on *[that date]* **the date of filing.** After filing a document, except *[those referred to]* **a document described** in ORS 65.114, 65.671, 65.674, 65.724 and 65.787, the Secretary of State shall return an acknowledgment of fil-

ing to the [*domestic or foreign*] corporation **that filed the document** or [*its*] **to a representative of the corporation.**

(3) If the Secretary of State refuses to file a document, the Secretary of State shall return [*it*] **the document** to the [*domestic or foreign*] corporation **that sought to file the document** or [*its*] **to a representative of the corporation** within 10 business days after [*the document was received by the Office of*] the Secretary of State **received the document**, together with a brief written explanation of the reason or reasons 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 of*] the Secretary of State for filing. [*Except as provided elsewhere in this chapter,*] 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 in part except as provided in ORS 65.051; 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.

**SECTION 11.** ORS 65.021 is amended to read:

65.021. If the Secretary of State refuses to file a document delivered to the [*Office of*] Secretary of State for filing, [*the*] **a domestic corporation** or foreign corporation, in addition to any other legal remedy which may be available, [*shall have*] **has** the right to appeal from such final order pursuant to the provisions of ORS 183.484.

**SECTION 12.** ORS 65.024 is amended to read:

65.024. (1) A certificate bearing the Secretary of State's signature, which may be in facsimile, and attached to a copy of a document is conclusive evidence that the original document or a facsimile thereof is on file with [*the Office of*] the Secretary of State.

(2) The following [*shall*] **documents and certificates must** be received in all courts, public offices and official bodies of this state as prima facie evidence of the facts stated [*therein*] **in the documents or certificates**, unless a greater evidentiary effect is provided in ORS 65.027 and 65.051 or elsewhere in this chapter or [*it is shown that*] the document was thereafter corrected or withdrawn from the files of [*the Office of*] the Secretary of State:

(a) All facts stated in certificates [*issued by the Office of*] the Secretary of State **issues** with respect to [*its*] **the Secretary of State's** business registry functions including a certificate of compliance or noncompliance of a document with filing requirements or other provisions of law administered by [*the Office of*] the Secretary of State, or a certificate

as to the existence or nonexistence of facts [*which*] **that** would appear from presence or absence of documents in the files of [*the Office of*] the Secretary of State; and

(b) All facts stated in documents certified as filed by [*the Office of*] the Secretary of State, but only to the extent the specific items were required to be included in the document by this chapter or ORS chapter 61 (1987 Replacement Part).

**SECTION 13.** ORS 65.027 is amended to read:

65.027. (1) Anyone may apply to [*the Office of*] 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 of active record 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 **corporation** or foreign corporation;

(d) An annual report if required by ORS 65.787 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 **corporation** or foreign corporation is in existence or is authorized to transact business in this state.

**SECTION 14.** ORS 65.031 is amended to read:

65.031. The Secretary of State has the power reasonably necessary to perform the duties required of [*the Office of*] the Secretary of State by this chapter.

**SECTION 15.** ORS 65.034 is amended to read:

65.034. (1) Notice may be oral or written unless otherwise specified for a particular kind of notice.

(2) Notice may be communicated in person, by telephone, [*telegraph, teletype or other form of wire or wireless communication,*] **electronically** or by mail or private carrier, including publication in a newsletter or similar document mailed to a member's or director's address. If [*these forms of*] personal notice [*are impracticable*] **is not possible**, notice may be communicated by a newspaper of general circulation in the area where the meeting is to be held, or by radio, television or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is effective when mailed if it is mailed postpaid and is correctly addressed to the member's address shown in the corporation's current records of members.]

**(3) A notice is effective only if the notice is communicated in a comprehensible form.**

(4) Oral notice is effective when communicated [if communicated in a comprehensible manner].

(5) Except as provided in subsection (3) of this section, personal written notice, if in a comprehensible form, is effective at the earliest of the following:]

(a) When received;]

**(5)(a) Electronic notice in writing is effective at the earlier of:**

**(A) When the notice is received; or**

**(B) Two days after the notice is sent, if the notice is correctly addressed.**

**(b) Notice by mail or private carrier is effective at the earlier of:**

(b) **(A)** Five days after [its postmark] **the notice is deposited in the United States mail, if [mailed by United States mail] the notice is** correctly addressed and [with] **has** first class postage affixed;

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

(d) **Thirty days after its deposit in the United States mail if mailed correctly addressed and with other than first class, registered or certified postage affixed; or]**

(e) **(C)** On the date [specified by] **that** the articles of incorporation or bylaws **specify** with respect to notice to **members or** directors.

(6)(a) Written notice is correctly addressed to a member **or** director of a [domestic or foreign] corporation if **the notice is** addressed to the [member's address shown in the corporation's current list of members] **most recent address the member or director provided for receiving notice from the corporation.**

(b) A written notice or report delivered as part of a newsletter, magazine or other publication sent to [members shall constitute] **a member constitutes** a written notice or report if **the newsletter, magazine or other publication is** addressed or delivered to the member's address [shown] **as the address appears** in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if **the newsletter, magazine or other publication is** addressed or delivered to one of [such] **the** members[,] at the address appearing on the current list of members.

(c) Written notice is correctly addressed to a domestic **corporation** or a foreign corporation **that is** authorized to transact business in this state, other than in [its] **the corporation's** capacity as a member, if **the notice is** addressed to [its] **the**

**corporation's** registered agent or, if [none is of record] **the corporation does not have a registered agent on record,** to [its] **the** principal office shown in [its] **the corporation's** most recent annual report or, if [none] **the corporation has not filed an annual report,** in the articles of incorporation or [its] **in the corporation's** application for a certificate of authority to do business.

(7) If ORS 65.214 or any other provision of this chapter prescribes different notice requirements for particular circumstances, those requirements govern. If articles of **incorporation** or bylaws prescribe different notice requirements[, not less] **that are more** stringent than the provisions of this section or other provisions of this chapter, [those] **the** requirements **in the articles of incorporation or bylaws** govern.

**SECTION 16.** ORS 65.038 is amended to read:

65.038. (1) *If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent in the manner prescribed by its articles, bylaws or this chapter, then upon petition of a director, officer, delegate, member or the Attorney General, the circuit court for the State of Oregon for the county in which the principal office designated on the last filed annual report, articles or application for authority to transact business is located, or if none, within Oregon, Marion County, may order that such a meeting be called. The court may also order that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.]*

**(1)(a) If a corporation asserts that calling or conducting a meeting of the corporation's members, delegates or directors or otherwise obtaining consent from the members, delegates or directors in accordance with the corporation's articles of incorporation or bylaws or in accordance with this chapter is impractical or impossible, or if the corporation cannot identify the corporation's members or directors, a director, an officer, a delegate, a member or the Attorney General may petition for an order to call or conduct a meeting or an order to identify the corporation's members or directors. The director, officer, delegate, member or the Attorney General shall submit the petition to the circuit court for the county in this state that the corporation's last filed annual report, the articles of incorporation or an application for authority to transact business in this state identifies as the location of the corporation's principal office. If the annual report, the articles of incorporation or the application does not identify the county in which the principal office is located, the director, officer, delegate, member or the Attorney General may petition for an order from the circuit court of Marion County or Multnomah County.**

**(b) In an order under paragraph (a) of this subsection, the court may:**

(A) **Direct the corporation to call a meeting and provide a written ballot or other form of obtaining the vote of members, delegates or directors in any manner that the court finds is fair and equitable under the circumstances; or**

(B) **Determine who the members or directors of the corporation are or amend the articles of incorporation to state that the corporation does not have members.**

(2) The court shall, in an order issued [pursuant to] **under** this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles **of incorporation**, bylaws and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. [In a proceeding under this section, the court may determine who are the members or directors.]

(3) [The order issued pursuant to] **An order that a court issues in accordance with** this section may for good cause shown dispense with any requirement [relating to the holding of or voting at meetings or obtaining votes] **to hold a meeting or to obtain votes**, including any requirement that [would otherwise be imposed by] the articles **of incorporation**, bylaws or this chapter **might otherwise impose** as to quorum or as to the number or percentage of votes needed [for approval of] **to approve** an act.

(4) Whenever practical, **a court in** any order issued [pursuant to] **under** this section shall limit the subject matter of meetings or other forms of consent judicially authorized to those items, including amendments to the articles **of incorporation** or bylaws, the resolution of which will or may enable the corporation to continue managing [its] **the corporation's** affairs without further resort to this section. An order **issued** under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of [such] **the** order, is for all purposes a valid meeting or vote, as the case may be, and [shall have] **has** the same force and effect as if [it] **the meeting or method of obtaining the vote** complied with every requirement imposed by the articles **of incorporation**, bylaws and this chapter.

**SECTION 17.** ORS 65.040 is amended to read:

65.040. (1) The Attorney General [shall] **must** be given notice of the commencement of any proceeding [which] **that** ORS 65.038, 65.084, **65.174**, 65.207, 65.327, 65.661 or 65.751 or any other provision of this chapter [authorize] **authorizes** the Attorney General to bring but [which has been commenced by] **that** another person **has commenced**.

(2) Whenever any provision of this chapter requires that notice be given to the Attorney General before or after commencing a proceeding or permits the Attorney General to commence a proceeding:

(a) If no proceeding has been commenced, the Attorney General may take appropriate action including, but not limited to, seeking injunctive relief; or

(b) If a proceeding has been commenced by a person other than the Attorney General, the Attorney General, as of right, may intervene in [such] **the** proceeding.

**SECTION 18.** ORS 65.047 is amended to read:

65.047. (1) [The] Articles of incorporation formed [pursuant to] **in accordance with** this chapter [subsequent to] **after** October 3, 1989, [shall] **must** set forth:

(a) A corporate name for the corporation that satisfies the requirements of ORS 65.094;

(b) One of the following statements or words of similar import:

(A) This corporation is a public benefit corporation;

(B) This corporation is a mutual benefit corporation; or

(C) This corporation is a religious corporation;

(c) The address, including street and number, of the corporation's initial registered office and the name of [its] **the corporation's** initial registered agent at that location;

(d) The name and address of each incorporator;

(e) An alternate corporate mailing address which [shall] **must** be that of the principal office[, as defined in ORS 65.001,] to which notices, as required by this chapter, may be mailed until the principal office of the corporation has been designated by the corporation in [its] **the corporation's** annual report;

(f) Whether or not the corporation will have members [as that term is defined in this chapter]; and

(g) Provisions regarding the distribution of assets on dissolution.

(2) The articles of incorporation may set forth:

(a) The names and addresses of the initial directors;

(b) Provisions regarding:

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

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

(C) Defining, limiting and regulating the powers of the corporation, [its] **the corporation's** board of directors, and members or any class of members; and

(D) The characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members;

(c) A provision eliminating or limiting the personal liability of a director or uncompensated officer to the corporation or [its] **the corporation's** members for monetary damages for conduct as a director or officer, provided that [no such] **the** provision [shall] **may not** eliminate or limit the liability of a director or officer for any act or omission occurring

[*prior to*] **before** the date [*when such*] **on which the** provision becomes effective, and [*such*] **the** provision [*shall*] **may** not eliminate or limit the liability of a director or officer for:

(A) Any breach of the director's or officer's duty of loyalty to the corporation or [*its*] **the corporation's** members;

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

(C) Any unlawful distribution;

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

(E) Any act or omission in violation of ORS 65.361 to 65.367; and

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

(3) The incorporator or incorporators [*must*] **shall** sign the articles of incorporation and before including the name of any individual as a director shall state that [*they*] **the incorporator or incorporators** have obtained the consent of each director named to serve.

(4) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter but may restrict [*them*] **the powers** in order to meet federal tax code requirements or **for** other purposes.

**SECTION 19.** ORS 65.057 is amended to read:

65.057. (1) After incorporation:

(a) 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, with notice as provided in ORS 65.344, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting.

(b) If initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators with equivalent notice to that specified in ORS 65.344:

(A) To complete the organization of the corporation and to elect directors; or

(B) To elect a board of directors [*which shall complete*] **whose election completes** the organization of the corporation.

(2) Action required or permitted by this chapter to be taken by incorporators or directors 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 or director, in accordance with the procedures of ORS 65.341.

(3) An organizational meeting may be held in or out of this state.

**SECTION 20.** ORS 65.061 is amended to read:

65.061. (1) The incorporators or board of directors of a corporation, whichever completes the organization of the corporation at [*its*] **the**

**corporation's** organizational meeting, shall adopt initial bylaws for the corporation.

(2) The bylaws may contain any provision for managing and regulating the affairs of the corporation that is [*not inconsistent*] **consistent** with law [*or*] **and** the articles of incorporation.

(3) **Except with respect to a corporation's articles of incorporation, provisions in the bylaws control provisions in any other document for managing or regulating the affairs of the corporation. If a provision in the bylaws is inconsistent with a provision in the articles of incorporation, the provision in the articles of incorporation controls.**

**SECTION 21.** ORS 65.064 is amended to read:

65.064. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt, amend or repeal bylaws to be effective only in an emergency as [*defined*] **described** in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures 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. A corporate director, officer, employee or agent [*shall not be*] **is not** liable for deviation from normal procedures if the conduct was authorized by emergency bylaws adopted as provided in this section.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some present or imminent catastrophic event.

**SECTION 22.** ORS 65.074 is amended to read:

65.074. (1) Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation. **A person may not incorporate a corporation under this chapter for any illegal purpose or with an intent to fraudulently conceal any business activity from another person or a governmental agency.**

(2) A corporation that is subject to regulation under another statute of [*this*] **the** state may not be incorporated under this chapter if [*such organization is required to*] **the corporation must** be organized under [*such*] **the** other statute.

**SECTION 23.** ORS 65.094 is amended to read:

65.094. (1) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by ORS 65.074 and the articles of incorporation.

(2) A corporate name *[shall]* **may** not contain the word “cooperative” or the phrase “limited partnership.”

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

(4) Except as authorized by subsection (5) of this section, a corporate name *[shall]* **must** be distinguishable upon the records of *[the Office of]* the Secretary of State from any other corporate name, professional corporate name, business 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 of]* the Secretary of State.

(5) The corporate name need not satisfy the requirement of subsection (4) of this section if the applicant delivers to *[the Office of]* the Secretary of State 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.

**SECTION 24.** ORS 65.097 is amended to read:

65.097. (1) A person may apply to *[the Office of]* the Secretary of State 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 65.094, the Secretary of State shall reserve the name for the applicant for a 120-day period, following which the applicant may reapply for *[it]* **the name** on the same basis as other applicants.

(3) A person may transfer the reservation of a corporate name to another person by delivering to *[the Office of]* the Secretary of State a notice of the transfer executed by the person for whom the name was reserved and specifying the name and address of the transferee.

**SECTION 25.** ORS 65.101 is amended to read:

65.101. (1) A foreign corporation may apply to *[the Office of]* the Secretary of State to register *[its]* **the foreign corporation’s** corporate name.

(2) The application must set forth the corporate name, the state or country of *[its]* incorporation, the

date of *[its]* incorporation, a brief description of the nature of the activities in which *[it]* **the foreign corporation** is engaged and a statement that *[it]* **the foreign corporation** is not carrying on or doing business in *[the State of Oregon]* **this state**. 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]* **the foreign corporation** is incorporated.

(3) If the Secretary of State finds that the name conforms to ORS 65.094, the Secretary of State shall register the name effective for one year.

(4) A foreign corporation whose registration is effective may renew *[it]* **the name** for successive years by delivering to the Secretary of State for filing a renewal application *[which]* **that** complies with the requirements of this section *[prior to]* **before** the lapse of the previous registration. Filing of the renewal application renews the registration for an additional year from *[its prior expiration]* **the date on which the registration previously expired**.

(5) A foreign corporation whose registration is effective may thereafter qualify to do business in this state as a foreign corporation under that name or transfer the registered name to another applicant for the name by the procedures provided in ORS 65.097 (3) with respect to reserved names. Filing of such a consent terminates the prior registration and operates as a reservation in the name of the transferee, if *[it]* **the transferee** does not simultaneously file under that name.

**SECTION 26.** ORS 65.114 is amended to read:

65.114. (1) A corporation may change *[its]* **the corporation’s** 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 current registered office is to be changed, the address, including the street and number, of the new registered office;

(c) If the current 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) A statement that after the change or changes are made, the street addresses of *[its]* **the corporation’s** registered office and the office or residence address of *[its]* **the corporation’s** registered agent will be identical.

(2) If the registered agent changes the street address of the agent’s designated office or residence, the registered agent shall change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to *[the Office of]* the Secretary of State for filing 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 by the Secretary of State of a statement submitted under this section [*shall terminate*] **terminates** the existing registered office or agent, or both, on the effective date of the filing and [*establish*] **establishes** the newly appointed registered office or agent, or both, as that of the corporation.

**SECTION 27.** ORS 65.117 is amended to read:

65.117. (1) A registered agent may resign as registered agent upon delivering a signed statement to [*the Office of*] the Secretary of State and giving notice in the form of a copy of the statement to the corporation for filing. 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*] **must** be addressed to the corporation at [*its*] **the corporation's** principal office as shown in the most recent annual report filed pursuant to ORS 65.787 or, if [*none*] **the annual report does not show the address**, the address specified in the articles of incorporation.

(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 65.114 thereby terminating the capacity of the prior agent.

**SECTION 28.** ORS 65.131 is amended to read:

65.131. (1) [*The*] **Articles of incorporation** or bylaws may establish criteria or procedures for admission of members.

(2) [*No*] **A person** [*shall*] **may not** be admitted as a member without consent of the person, express or implied.

(3) **A corporation may not issue a document that entitles an unidentified individual or entity that possesses the document to membership in the corporation.**

**SECTION 29.** ORS 65.134 is amended to read:

65.134. Except as provided in [*its*] **the corporation's** articles of incorporation or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board of directors.

**SECTION 30.** ORS 65.137 is amended to read:

65.137. [*A corporation is not required to have members. A corporation shall have no members if its articles of incorporation or bylaws include a statement that "the corporation shall have no members" or words of similar import.*] **A corporation does not need to have members and does not have members unless the corporation's articles of incorporation state that the corporation has members.**

**SECTION 31.** ORS 65.144 is amended to read:

65.144. [*All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.*]

(1) **Unless a corporation's articles of incorporation or bylaws provide otherwise, members of the corporation have the same rights and obligations. The articles of incorporation or bylaws may establish classes of membership with different rights or obligations. Rights that members have, unless the corporation's articles of incorporation or bylaws provide otherwise, include rights to:**

(a) **Elect directors, as provided in ORS 65.311;**

(b) **Remove directors, as provided in ORS 65.324;**

(c) **Vote on any change to the number of directors, including a change to a fixed number of directors, a change to a variable range in the number of possible directors or a change from a fixed number of directors to a variable range in the number of possible directors, as provided in ORS 65.307;**

(d) **Vote to sell, transfer, lease, exchange, option, convey or otherwise dispose of the corporation's assets or to merge the corporation's assets with the assets of another entity, as provided in ORS 65.803;**

(e) **Vote to dissolve the corporation, as provided in ORS 65.624; and**

(f) **Approve a conflict of interest transaction, as provided in ORS 65.361, if the member is a voting member of a mutual benefit corporation.**

(2) **Notwithstanding a provision in a corporation's articles of incorporation or bylaws, a member has a right to:**

(a) **Vote on an action or an amendment to the articles of incorporation if the action or amendment would reduce or eliminate the member's right to vote; and**

(b) **Inspect and copy the corporation's records, as provided in ORS 65.774.**

**SECTION 32.** ORS 65.147 is amended to read:

65.147. (1) Except as provided in ORS 65.231 pertaining to proxies or as set forth in or authorized by the articles of incorporation or bylaws, [*no*] **a member may not transfer a membership or any right arising** [*therefrom*] **from a membership.**

(2) [*No*] **A member of a public benefit corporation or religious corporation may not transfer for value a membership or any right arising** [*therefrom*] **from a membership, unless the transferring member is a public benefit corporation or religious corporation.**

(3) [*Where*] **If transfer rights have been provided, [*no*] a restriction on** [*them shall be*] **the transfer**

**rights is not** binding with respect to a member holding a membership issued [*prior to*] **before** the adoption of the restriction unless the restriction is approved by the members and the affected member.

**SECTION 33.** ORS 65.154 is amended to read:

65.154. A member may become liable to [*the*] **a** corporation for dues, assessments or fees. [*An article or bylaw*] **A provision of the articles of incorporation or bylaws** or a resolution [*adopted by the board authorizing or imposing*] **the board of directors adopts to authorize or impose** dues, assessments or fees does not, of itself, create liability to pay the obligation, but nonpayment may constitute grounds for expelling or suspending the member or suspending or terminating the membership **without a hearing**.

**SECTION 34.** ORS 65.167 is amended to read:

65.167. (1) [*No*] **A** member of a public benefit **corporation** or mutual benefit corporation may **not** be expelled or suspended, and [*no*] **a** membership or memberships in such corporations may **not** be terminated or suspended, except [*pursuant to*] **in accordance with** a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable [*when either*] **if the procedure takes account of all relevant facts and circumstances or if the articles of incorporation or bylaws set forth a procedure that:**

[(a) *The articles or bylaws set forth a procedure that provides:*]

[(A)] **(a) Gives the member notice in accordance with ORS 65.034** not less than 15 [*days' prior written notice of*] **days before** the expulsion, suspension or termination and **states in the notice** the reasons [*therefor*] **for the expulsion, suspension or termination;** and

[(B)] **(b) Provides** an opportunity **not less than five days before the effective date of the expulsion, suspension or termination** for the member to be heard, orally or in writing[, *not less than five days before the effective date of the expulsion, suspension or termination*] by a person or persons authorized to [*decide that*] **withdraw** the proposed expulsion, termination or suspension. [*not take place; or*]

[(b) *It is fair and reasonable taking into consideration all of the relevant facts and circumstances.*]

[(3) *Any written notice given by mail must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.*]

[(4)] **(3)** Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

[(5)] **(4)** A member who has been expelled or suspended, or whose membership has been suspended or terminated, may be liable to the corporation for dues, assessments or fees as a result of obligations

incurred by the member [*prior to*] **before** expulsion, suspension or termination.

**SECTION 35.** ORS 65.171 is amended to read:

65.171. (1) A public benefit **corporation** or religious corporation may not acquire for value any of [*its*] **the corporation's** memberships or any right arising [*therefrom*] **from a membership**, unless the member is a public benefit **corporation** or religious corporation.

(2) A mutual benefit corporation may acquire the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by [*its*] **the mutual benefit corporation's** articles of **incorporation** or bylaws.

(3) [*No*] **An** acquisition of memberships [*shall*] **may not** be made in violation of ORS 65.551 or 65.554.

**SECTION 36.** ORS 65.174 is amended to read:

65.174. (1) A proceeding may be brought in the right of a domestic **corporation** or foreign corporation to procure a judgment in [*its*] **the corporation's** favor by:

(a) Any member or members having two percent or more of the voting power or by 20 members, whichever is less; [*or*]

(b) Any director[.]; **or**

(c) **The Attorney General, if the domestic corporation or foreign corporation is a public benefit corporation or a religious corporation.**

(2) In [*any such*] a proceeding **brought under this section**, each member complainant [*shall*] **must** have been a member when the transaction complained of occurred.

(3) 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.

(4) The complainants shall notify the Attorney General within 10 days after commencing any proceeding under this section if the proceeding involves a public benefit corporation **or religious corporation** or assets held in charitable trust by a mutual benefit corporation.

(5) 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 members or a class of members, the court shall direct that notice be given the members affected.

**SECTION 37.** ORS 65.177 is amended to read:

65.177. (1) A corporation may provide in [*its*] **the corporation's** articles of **incorporation** or bylaws

for delegates having some or all of the authority of members.

(2) The articles of **incorporation** or bylaws may set forth provisions relating to:

(a) The characteristics, qualifications, rights, limitations and obligations of delegates, including *[their]* **the selection and removal of delegates**;

(b) Providing notice to and calling, holding and conducting meetings of delegates; and

(c) Carrying on corporate activities during and between meetings of delegates.

**SECTION 38.** ORS 65.204 is amended to read:

65.204. (1) A corporation with members shall hold a special meeting of members:

(a) *[On]* **At the** call of the corporation's board of directors or of the person or persons that the articles of incorporation or bylaws authorize to call the meeting; or

(b) Except as provided in the articles of **incorporation** or bylaws, if the holders of at least five percent of the voting power of any corporation sign, date and deliver to the corporation's secretary one or more written demands for the meeting that describe the purpose or purposes for which the meeting is to be held.

(2) If not otherwise fixed under ORS 65.207 or 65.221, the record date for members entitled to demand a special meeting is the date the first member signs the demand.

(3) If a notice for a special meeting demanded under subsection (1)(b) of this section is not given *[pursuant to]* **under** ORS 65.214 within 30 days after the date the written demand or demands are delivered to the corporation's secretary, **or if the date of the meeting is not set within 30 days after the date the notice is given,** *[then,]* regardless of the requirements of subsection (4) of this section[,] a person that signs the demand or demands may set the time and place of the meeting and give notice *[pursuant to]* **in accordance with** ORS 65.214.

(4) A special meeting of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws or at a place the board of directors specifies, provided that the board's specification is *[not inconsistent]* **consistent** with the bylaws. If the board of directors does not determine that the special meeting will occur solely by means of remote communication and a place for the special meeting is not stated in or otherwise fixed in accordance with the bylaws, the special meeting must be held at the corporation's principal office.

(5) Only matters within the purpose or purposes described in the meeting notice required by ORS 65.214 may be conducted at a special meeting of members.

**SECTION 39.** ORS 65.207 is amended to read:

65.207. (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 member or other person entitled to participate in an annual or regular meeting or, *[in the case of]* **if the corporation is** a public benefit corporation, the Attorney General, **if the corporation did not hold** 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]* **the corporation's** last annual meeting;

(b) On application of any member or other person entitled to participate in a regular meeting or, *[in the case of]* **if the corporation is** a public benefit corporation, the Attorney General, if a regular meeting is not held within 40 days after the date *[it]* **the regular meeting** was required to be held; or

(c) On application of a member who signed a demand for a special meeting valid under ORS 65.204, a person or persons entitled to call a special meeting or, *[in the case of]* **if the corporation is** a public benefit corporation, the Attorney General, if 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 members entitled to participate in the meeting, specify a record date for determining members 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)(a) Except as provided in paragraph (b) of this subsection, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(b) The court may not award attorney fees to the state or a political subdivision of the state if the state or political subdivision prevails in an action under this section.

(4) The request *[shall]* **must** be set for hearing at the earliest possible time and *[shall]* **must** take precedence over all matters, except matters of the same character and hearings on preliminary injunctions under ORCP 79 B(3). *[No]* **A court may not issue an 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.

**SECTION 40.** ORS 65.211 is amended to read:

65.211. (1) Unless *[the]* **a corporation's** articles of incorporation or bylaws *[provide otherwise]* **specify that a members' meeting is necessary to take an action,** action required or permitted by this chapter to be taken at a members' meeting may be taken without a meeting if the action is taken by all the members entitled to vote on the action. The action must be evidenced by one or more written

consents describing the action taken, signed by all the members entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. Action taken under this section is effective when the last member signs the consent, unless the consent specifies an earlier or later effective date. **If in taking an action without a meeting the corporation complies with the requirements of section 4 of this 2019 Act, the requirements in this subsection that all members entitled to vote on the action must take the action and must sign a written consent describing the action do not apply.**

(2) If not otherwise determined under ORS 65.207 or 65.221, the record date for determining members entitled to take action without a meeting is the date the first member signs the 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]* **a meeting vote** in any document.

**SECTION 41.** ORS 65.214 is amended to read:

65.214. (1) A corporation shall give notice of **membership meetings in a fair and reasonable manner that is** consistent with *[its] the corporation's* bylaws *[of meetings of members in a fair and reasonable manner]*. The corporation *[is required to]* **must** give notice to members entitled to vote at the meeting and to any other person specified in this chapter, the articles of incorporation or the bylaws.

(2) Any notice *[which]* **that** conforms to the requirements of subsection (3) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered, provided, however, that notice of matters referred to in subsection (3)(b) of this section must be given as provided in subsection (3) of this section.

(3) Notice is fair and reasonable if:

(a) The corporation notifies *[its] the corporation's* members of the place, date and time of each *[annual, regular and special meeting of members]* **meeting in accordance with ORS 65.034** no fewer than seven days, *or if notice is mailed by other than first class or registered mail, no fewer than 30 nor more than 60 days* before the meeting;

(b) Notice of an annual or regular meeting includes a description of any matter or matters *[which must be approved by]* **that** the members **must approve** under ORS 65.361, 65.404, 65.414 (1)(a), 65.437, 65.464, 65.487, 65.534 or 65.624; and

(c) Notice of a special meeting includes a description of the purpose or purposes for which the meeting is called.

(4) Unless the bylaws require otherwise, if *[an annual, regular or special meeting of members]* **a 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 65.221, *[however,]* notice of the adjourned meeting must be given under this section to the persons who are members as of the new record date.

**SECTION 42.** ORS 65.217 is amended to read:

65.217. (1) A member 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 member entitled to the notice and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

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

(a) Lack of notice or defective notice of the meeting, unless the member 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 member objects to considering the matter when *[it]* **the matter** is presented.

**SECTION 43.** ORS 65.222 is amended to read:

65.222. (1) Unless prohibited or limited by the articles of **incorporation** or bylaws, any action *[which]* **that** may be taken at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot *[shall]* **must**:

(a) Set forth each proposed action; and

(b) Provide an opportunity to vote for or against each proposed action.

(3)(a) Approval by written ballot pursuant to this section *[shall be]* **is** valid only when:

(A) The number of votes cast by ballot equals or exceeds any quorum required to be present at a meeting authorizing the action[.]; and

(B) The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(b) **For the purposes of this subsection, the number of votes cast by ballot constitutes a quorum if the number of members who attend a meeting constitutes a quorum.**

(4) All solicitations for votes by written ballot *[shall]* **must**:

(a) Indicate the number of responses needed to meet the quorum requirements;

(b) State the percentage of approvals necessary to approve each matter other than election of directors; and

(c) Specify a reasonable time by which a ballot must be received by the corporation in order to be counted.

(5) Except as otherwise provided in the articles of **incorporation** or bylaws, a written ballot may not be revoked.

**SECTION 44.** ORS 65.224 is amended to read:

65.224. (1) A corporation shall prepare [*an alphabetical*] **and maintain a list of the names, [*addresses*] contact information and membership dates of all [*its*] of the corporation's members.** If there are classes of members, the list must **also** show the [*address*] **contact information for each member and number of votes each member [*is entitled to vote*] may cast at [*the*] a meeting of members.** [*The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but are not part of the main list of members.*]

(2) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, 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 reasonable place identified in the meeting notice in the city or other location where the meeting will be held. A member, the member's agent or the member's attorney is entitled, on written demand setting forth a proper purpose, to inspect and, subject to the requirements of ORS 65.774 and 65.782, to copy the list at a reasonable time and at the member's expense, during the period [*it*] **the list** is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, the member's agent or the member's attorney is entitled to inspect the list for any proper purpose at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, the member's agent or the member's attorney to inspect the list of members before or at the meeting or **to** copy the list as permitted by subsection (2) of this section, on application of the member, the circuit court of the county where the corporation's principal office, or if the principal office is not in this state, where [*its*] **the corporation's** 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*] **a meeting** until the inspection or copying is complete. The court may award reasonable attorney fees to the prevailing party in an action under this subsection. The party initiating such a proceeding [*shall not be required to*] **need not** post an undertaking [*pursuant to*] **under** ORCP 82 A.

(5) Refusal or failure to prepare or make available the membership list does not affect the validity of action taken at the meeting.

(6) The articles **of incorporation** or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

(7) The articles **of incorporation** of a public benefit corporation organized primarily for political or social action, including but not limited to poli-

tical or social advocacy, education, litigation or a combination [*thereof*] **of actions**, may limit or abolish the right of a member or the member's agent or attorney to inspect or copy the membership list if the corporation provides a reasonable means to mail communications to the other members through the corporation at the expense of the member making the request.

**SECTION 45.** ORS 65.227 is amended to read:

65.227. (1) Unless the articles **of incorporation** or bylaws provide otherwise, each member is entitled to one vote on each matter on which the members vote[, *including each matter on which a member may vote under this chapter or the articles or bylaws*]. Except as expressly prohibited in this chapter, the articles **of incorporation** or bylaws may provide for different allocations of votes among member classes or exclude the members or some or all member classes from voting on any issue on which [*they*] **a member or class of members** would otherwise be entitled to vote under this chapter. [*A person that does not retain a right to vote on more than one occasion to elect a director or directors is not a member.*]

(2) Unless the articles **of incorporation** or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, with respect to voting the persons' acts have the following effect:

(a) If only one person votes, the person's act binds all **persons in whose names the membership stands**; and

(b) If more than one person votes, the vote is divided on a pro rata basis **among the persons in whose names the membership stands**.

(3) If a class is entitled to vote as a class for directors, a determination of the voting power of the class must be based on the percentage of the number of directors the class may elect out of the total number of authorized directors.

**SECTION 46.** ORS 65.231 is amended to read:

65.231. (1) Unless [*the*] **a corporation's** articles **of incorporation** or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by the member's attorney-in-fact.

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

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member appointing 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 authority under the appointment.

(5) Appointment of a proxy is revoked by the person *[appointing]* **that appoints** the proxy:

(a) Attending any meeting and voting in person; or

(b) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(6) Subject to ORS 65.237 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member *[making]* **that makes** the appointment.

**SECTION 47.** ORS 65.241 is amended to read:

65.241. (1) Unless the articles **of incorporation** or bylaws provide for a higher quorum, *[those]* votes represented at a meeting of members *[shall]* constitute a quorum.

(2) An amendment to the articles **of incorporation** or bylaws to decrease the quorum for any *[member]* action **of the members** may be approved by the members[,] or, unless prohibited by the articles **of incorporation** or bylaws, by the board **of directors**.

(3) An amendment to the articles **of incorporation** or bylaws to increase the quorum required for any *[member]* action **of the members** must be approved by the members.

**SECTION 48.** ORS 65.244 is amended to read:

65.244. (1) Unless this chapter, the articles **of incorporation** or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of a majority of the votes represented and voting is the act of the members.

(2) An amendment to the articles **of incorporation** or bylaws to add to, change or delete the vote required for any *[member]* action **of the members** must be approved by the members.

**SECTION 49.** ORS 65.247 is amended to read:

65.247. (1) If the articles **of incorporation** or bylaws provide for cumulative voting by members, members may *[so]* vote **cumulatively**[,] by multiplying the number of votes the members are entitled to cast by the number of directors for whom *[they]* **the members** are entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) A member gives notice during the meeting and before the vote is taken of the member's intent to *[cumulate votes]* **vote cumulatively**, and if one member gives this notice all other members participating in the election *[are entitled to cumulate their votes]* **may vote cumulatively** without giving further notice.

*[(3) A director elected by cumulative voting may be removed by the members without cause if the requirements of ORS 65.324 are met unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast or, if such action is taken by written ballot, all memberships entitled to vote were voted and the entire number of directors authorized at the time of the director's most recent election were then being elected.]*

**(3)(a) Except as provided in paragraph (b) of this subsection, members may, without cause, remove a director who was elected by cumulative voting if the members act in accordance with ORS 65.324.**

**(b) A proposal to remove a director who was elected by cumulative voting fails if the number of votes that members cast against the proposal to remove the director, or that fail to consent in writing to the removal, would have been sufficient to elect the director under these circumstances:**

**(A) The members had voted cumulatively at an election that occurred at the time the director was last elected;**

**(B) All directors authorized to serve on the board of directors were subject to election at that time; and**

**(C) If during the election:**

**(i) The members had cast the same total number of votes; or**

**(ii) All memberships entitled to vote were voted, if the election was by written ballot.**

**(4) Members may not *[cumulatively]* vote **cumulatively** if the directors and members are identical.**

**SECTION 50.** ORS 65.251 is amended to read:

65.251. A corporation may provide in *[its]* **the corporation's** articles **of incorporation** or bylaws for election of directors by members or delegates:

(1) On the basis of chapter or other organizational unit;

(2) By region or other geographic unit;

(3) By preferential voting; or

(4) By any other reasonable method.

**SECTION 51.** ORS 65.301 is amended to read:

65.301. (1) Each corporation *[shall]* **must** have a board of directors.

**(2) *[All corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, the board of directors] The board of directors shall exercise, or delegate or otherwise authorize the exercise of, all corporate powers and shall direct the management of the corporation's affairs, subject to any limitation set forth in the articles of incorporation. The board of directors shall retain authority over an exercise of corporate powers that the board delegates or authorizes under***

**this section.** [and except as provided in subsection (3) of this section.]

[(3) The articles of incorporation may authorize a person or persons, or the manner of designating a person or persons, authorized to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.]

**SECTION 52.** ORS 65.311 is amended to read:

65.311. (1) If [the] a corporation has members entitled to vote for directors, all the directors, except the initial directors, [shall] **must** be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles of incorporation or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or are designated.

(2) If [the] a corporation does not have members entitled to vote for directors, all the directors, except the initial directors, [shall] **must** be elected, appointed or designated as provided in the articles of incorporation or bylaws. If [no] the articles of incorporation or bylaws do not set forth a method of election, appointment or designation [is set forth in the articles or bylaws], the directors, other than the initial directors, [shall] **must** be elected by the board.

(3) **If a corporation does not have directors and does not have members who can elect directors, a circuit court of this state may appoint one or more directors at the Attorney General's request.**

**SECTION 53.** ORS 65.314 is amended to read:

65.314. (1) [The] **A corporation's** articles of incorporation or bylaws may specify the terms of directors. Except for designated **directors** or appointed directors, the terms of directors may not exceed five years. In the absence of any term specified in the articles of incorporation or bylaws, the term of each director [shall be] **is** one year. Directors may be elected for successive terms.

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

(3) Except as provided in the articles of incorporation or bylaws:

(a) The term of a director filling a vacancy in the office of an elected director expires at the next election of directors; and

(b) The term of a director filling any other vacancy expires at the end of the unexpired term [which such] **that the** director is filling.

(4) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed and qualifies, or until there is a decrease in the number of directors.

**SECTION 54.** ORS 65.317 is amended to read:

65.317. [The] **A corporation's** articles of incorporation or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

**SECTION 55.** ORS 65.324 is amended to read:

65.324. (1) **Unless a corporation's articles of incorporation or bylaws provide otherwise:**

[(1) (a) The members of the corporation may remove one or more directors the members elected [by them] with or without cause unless the articles of incorporation provide that [directors may be removed only for cause] **removing a director requires cause.**

[(2) (b) If a director is elected by a class, chapter or other organizational unit or by region or other geographic grouping, only the members of that class, chapter, unit or grouping entitled to vote may participate in the vote to remove the director.

[(3) (c) [Except as provided in subsection (9) of this section,] A director may be removed under [subsection (1) or (2) of this section only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors] **paragraph (a) or (b) of this subsection by a majority of the votes cast.**

[(4) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.]

[(5) (2) [An elected director may be removed by the members] **Members of a corporation may remove a director the members elected** only at a **special** 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] **to remove** the director.

[(6) In computing whether a director is protected from removal under subsections (2) to (4) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.]

[(7) (3) An entire board of directors may be removed under [subsections (1) to (5)] **subsection (1)(a) or (b)** of this section.

[(8) (4) **Unless a corporation's articles of incorporation or bylaws provide that removing a director requires cause,** a director elected by the board of directors may be removed with or without cause[ unless the articles of incorporation or bylaws provide that directors may be removed only for cause, by the vote of two-thirds] **by a vote of a majority** of the directors then in office or [such] **by a greater** number as [is] set forth in the articles of incorporation or bylaws. [However,] A director elected by the board to fill the vacancy of a director elected by

the members may be removed by the **voting members**, *[but not the board]* **or the directors**.

[(9)] (5) If at the beginning of a director's term on the board, the articles of **incorporation** or bylaws provide that the director may be removed for **missing more than a specified number of meetings or for reasons set forth in the articles of incorporation or bylaws**, *[the board]* **a majority of the directors** may remove the director for such reasons. *[The director may be removed only if a majority of the directors then in office vote for the removal.]*

[(10)] (6) The articles of **incorporation** or bylaws of a religious corporation may:

(a) Limit the application of this section; and

(b) Set forth the vote and procedures by which the board of **directors** or any person may remove with or without cause a director elected by the members or the board.

**SECTION 56.** ORS 65.327 is amended to read:

65.327. (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]* **the corporation's** registered office was last located, may remove any director of the corporation from office in a proceeding commenced *[either]* by the corporation, **by** at least 10 percent of the members of any class entitled to vote for directors, or **by** the Attorney General in the case of a public benefit corporation 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, or the director has violated a duty set forth in ORS 65.357 to 65.367 **or 65.377**; and

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

(2) The court that removes a director may bar the director from serving on the board of **directors** for a period prescribed by the court.

(3) If members or the Attorney General *[commence]* **commences** a proceeding under subsection (1) of this section, the corporation *[shall]* **must** be made a party defendant.

(4) A public benefit corporation or *[its]* **the members of the public benefit corporation** who commence a proceeding under subsection (1) of this section shall give the Attorney General written notice of the proceeding.

(5) The articles of **incorporation** or bylaws of a religious corporation may limit or prohibit the application of this section.

**SECTION 57.** ORS 65.331 is amended to read:

65.331. (1) A designated director may be removed by an amendment to the articles of **incorporation** or bylaws *[deleting or changing]* **that deletes or changes** the designation.

[(2) If a director is appointed:]

[(a)] (2)(a) Except as otherwise provided in the articles of **incorporation** or bylaws, *[the]* **an appointed** director may be removed with or without

cause by the person *[appointing]* **that appointed** the director **or by the board of directors.**[:]

(b) The person *[removing]* **that removes** the **appointed** director shall *[do so by giving]* **give** written notice of the removal to the **appointed** director and, **if the person that removes the appointed director is the person that appointed the director**, to either the presiding officer of the board or the corporation's president or secretary; *and*].

(c) [A] Removal of an **appointed director** is effective when the notice is effective under ORS 65.034 unless the notice specifies a future effective date.

**SECTION 58.** ORS 65.334 is amended to read:

65.334. (1) Unless *[the]* **a corporation's** articles of **incorporation** or bylaws provide otherwise, and except as provided in subsections (2) and (3) of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The members entitled to vote for directors, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit or grouping are entitled to vote to fill the vacancy if *[it]* **the vacancy** is filled by the members;

(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 of directors, *[they]* **the board of directors** may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless the articles of **incorporation** or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(3) If a vacant office was held by a designated director, the vacancy *[shall]* **must** be filled as provided in the articles of **incorporation** or bylaws. In the absence of an applicable *[article or bylaw]* provision in the articles of **incorporation or bylaws**, **the board of directors may not fill**,*[ ]* the vacancy *[may not be filled by the board]*.

(4) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under ORS 65.321 (2) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

**SECTION 59.** ORS 65.335 is amended to read:

65.335. Unless *[the]* **a corporation's** articles of **incorporation** or bylaws provide otherwise, the board of directors may fix the compensation of directors.

**SECTION 60.** ORS 65.337 is amended to read:

65.337. (1) If the time and place of a *[director's]* **board of directors'** meeting is fixed by the bylaws, or is *[regularly]* scheduled by the board of directors **in a manner that informs all directors of the**

**time and place without additional notice**, the meeting is a regular meeting. All other meetings are special meetings.

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

(3) 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 *[either of the following occurs:]*

*[(a)]* all directors participating may simultaneously *[hear or read each other's communications]* **communicate** during the meeting<sup>;</sup> or<sup>]</sup>.

*[(b)]* All communications during the meeting are immediately transmitted to each participating director, and each participating director is able to immediately send messages to all other participating directors.<sup>]</sup>

(4) If a meeting is conducted *[through the use of any means described in]* **in accordance with** subsection (3) of this section:

(a) All participating directors *[shall]* **must** be informed that a meeting is taking place at which official business may be transacted; and

(b) A director participating in the meeting *[by this means is deemed to be]* **is, for the purposes of transacting any official business**, present in person at the meeting.

**SECTION 61.** ORS 65.341 is amended to read:

65.341. *[(1) As used in this section:]*

*[(a)]* "Electronic" has the meaning given that term in ORS 84.004.<sup>]</sup>

*[(b)]* "Electronic signature" has the meaning given that term in ORS 84.004.<sup>]</sup>

*[(c)]* "Sign" includes an electronic signature.<sup>]</sup>

*[(d)]* "Written" includes a communication that is transmitted or received by electronic means.<sup>]</sup>

*[(2)]* (1) Unless the articles **of incorporation** or bylaws *[provide otherwise]* **specify that a board of directors' meeting is necessary to take an action**, action required or permitted by this chapter to be taken at *[the]* a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board of directors. The action *[shall]* **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.

*[(3)]* (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.

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

**SECTION 62.** ORS 65.344 is amended to read:

65.344. (1) Unless the articles **of incorporation**, bylaws or this chapter *[provide]* **provides** otherwise, regular meetings of the board **of directors** may be

held without **additional** 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, **a corporation shall give notice of the date, time and place of special meetings of the board** *[must be preceded by at least two days' notice to each director of the date, time and place of the meeting]* **of directors to each director in accordance with ORS 65.034 and at least two days before the meeting.** Unless the articles **of incorporation, bylaws** or this chapter provides otherwise, the notice need not describe the purposes of the special meeting *[unless required by the articles of incorporation or bylaws]*.

(3) Unless the articles **of incorporation** or bylaws provide otherwise, the presiding officer of the board **of directors**, the president or 20 percent of the directors then in office may call and give notice of a meeting of the board.

**SECTION 63.** ORS 65.347 is amended to read:

65.347. (1) A director may at any time waive any notice required by this chapter, the articles of incorporation or bylaws. Except as provided in subsection (2) of this section, the waiver must be in writing<sup>]</sup> **and may be a document that is transmitted electronically.** The waiver must also 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 the 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 any action taken at the meeting.

**SECTION 64.** ORS 65.351 is amended to read:

65.351. (1) Unless the articles of incorporation or bylaws require a greater number or a lesser number *[as]* **than the number** authorized under subsection (2) of this section, a quorum of a board of directors consists of<sup>[:]</sup>

*[(a)]* If the corporation has a fixed board size, a majority of the fixed number of directors; or<sup>]</sup>

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

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

tors. A director is considered present regardless of whether the director votes or abstains from voting. **Each director has one vote and may not vote by proxy.**

(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 the 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]* **the meeting's** adjournment or to the corporation immediately after *[adjournment of]* the meeting **adjourns**. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

**SECTION 65.** ORS 65.354 is amended to read:

65.354. (1)(a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees *[of the board of directors which]* **that** exercise the authority of the board. *[of directors and]* **The board may** appoint *[members of the board]* **directors** to serve on *[them]* **a committee** or designate the method of selecting committee members. Each committee *[shall]* **must** consist of two or more directors, who serve at the pleasure of the board *[of directors]*. **Only a director may serve as a voting member of a committee.**

(2) (b) The creation of a committee and appointment of directors to the committee or designation of a method of selecting committee members **under this subsection** must be approved by the greater of:

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

*[(b)]* (B) The number of directors required by the articles of incorporation or bylaws to take action under ORS 65.351.

(2)(a) **The board of directors may create committees to advise the board or otherwise serve the corporation. The board may appoint individuals to serve on a committee or specify a method for selecting committee members. A member of a committee the board creates under this subsection may be, but need not be, a director or a member of the corporation.**

(b) **A committee the board creates under this subsection may not exercise the authority of the board of directors.**

(3) ORS 65.337 to 65.351, governing meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, **also** apply to committees and *[their]* **committee** members *[as well]*.

(4) Except as provided in *[subsection]* **subsections (2)(b) and (5)** of this section, to the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee of the board may exercise the authority of the board of directors.

(5) A committee *[of]* the board **creates under this section** may not:

(a) Authorize distributions;

(b) Approve or recommend to members dissolution, merger or the sale, pledge or transfer of all or substantially all of the corporation's assets;

(c) Elect, appoint or remove directors or fill vacancies on the board or on any of *[its]* **the board's** committees; or

(d) Adopt, amend or repeal the articles of incorporation or 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 65.357.

**SECTION 66.** ORS 65.357 is amended to read:

65.357. (1) A director shall discharge the duties of a director, including the director's duties as a member of a committee:

(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 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 reasonably 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;

(c) A committee of the board of directors of which the director is not a member, as to matters within *[its]* **the committee's** jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) In the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(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 to the corporation, any member or any other person for any action taken or not taken as a director, if the director acted in compliance with this section. The liability

of a director for monetary damages to the corporation and *[its]* **the corporation's** members may be eliminated or limited in the corporation's articles of incorporation to the extent provided in ORS 65.047 (2)(c).

*[(5) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.]*

**SECTION 67.** ORS 65.361 is amended to read:

65.361. (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 or the basis for imposing liability on the director if the transaction is fair to the corporation at the time *[it was entered into or]* **the corporation enters into the transaction. A transaction is presumed to be fair if the transaction** is approved as provided in subsection (2) or (3) of this section.

(2) A transaction in which a director of a public benefit **corporation** or religious corporation has a conflict of interest may be approved:

(a) By the vote of the board of directors or a committee of the board of directors if the material facts of the transaction and the director's interest are disclosed or known to the board of directors or committee of the board of directors; or

(b) By obtaining approval of *[the]*:

(A) **The Attorney General**; or

(B) The circuit court in an action in which the Attorney General is joined as a party.

(3) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved:

(a) In advance by the vote of the board of directors or a committee of the board of directors if 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; or

(b) If the material facts of the *[transactions]* **transaction** and the director's interest were disclosed or known to the members and *[they]* **the members** authorized, approved or ratified the transaction.

(4) For the 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 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*[,]*; **or**

(c) **A person who is related to the director or a business associate of the director is a party to the transaction.**

(5) For purposes of subsections (2) and (3) of this section, a conflict of interest transaction is authorized, approved or ratified if *[it]* **the transaction** 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 votes 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 (2)(a) or (3)(a) of this section if the transaction is otherwise approved as provided in subsection (2) or (3) of this section.

(6) For purposes of subsection (3)(b) of this section, a conflict of interest transaction is authorized, approved or ratified by the members if *[it]* **the transaction** receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (4) of this section may be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under subsection (3)(b) of this section. A majority of the members, 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.

(7) The articles **of incorporation**, bylaws or a resolution of the board may impose additional requirements on conflict of interest transactions.

**SECTION 68.** ORS 65.364 is amended to read:

65.364. (1) **A public benefit corporation** *[and]* **or religious** *[corporations]* **corporation** may not make a loan, guarantee an obligation or modify a preexisting loan or guarantee to or for the benefit of a director or officer of the corporation, except as stated in this section. Unless prohibited by *[its]* **the corporation's** articles of incorporation or bylaws, a public benefit **corporation** or religious corporation may make a loan, guarantee an obligation or modify a preexisting loan or guarantee to or for the benefit of a director or officer as part of a recruitment package, for a total period not to exceed three years, provided that:

(a) Approval of the loan, guarantee or modification is obtained in the manner provided in ORS 65.361 (2) and (5) for approval of issues involving director conflicts of interest;

(b) Notice of the loan, guarantee or modification is given to the members of the **public benefit corporation or religious** corporation in the manner provided in ORS 65.784 for notice of certain acts of indemnification; and

(c) Twenty or more days before the loan, guarantee or modification is to become binding on the **public benefit corporation or religious** corporation, written notice has been given to the Attorney General of the proposed recruitment package for the director or officer, including identification of the amount and character of all items of compensation and a separate statement of the amount and terms of any such loan, guarantee or modification.

(2) A mutual benefit corporation may not lend money to or guarantee the obligation of a director of the **mutual benefit** corporation unless:

(a) The particular loan or guarantee is approved by a majority of the votes of members entitled to vote, excluding the votes of members under the control of the benefited director; or

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

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

**SECTION 69.** ORS 65.371 is amended to read:

65.371. (1) A corporation [*shall*] **must** have a president, a secretary, a **treasurer** and such other officers as are elected or appointed by the board of **directors** or by any other person as [*may be authorized in*] the articles of **incorporation** or bylaws **may authorize**, provided that the articles of incorporation or bylaws may designate other titles in lieu of president, [*and*] secretary and **treasurer**.

(2) The bylaws or the board of **directors** shall delegate to one of the officers responsibility for preparing minutes of the [*directors' and members'*] **board of directors' meetings and membership meetings** and for authenticating records of the corporation.

(3)(a) **Except as provided in paragraph (b) of this subsection**, the same individual may simultaneously hold more than one office in a corporation[.] **and an officer may be, but need not be, a member of the board of directors.**

(b) **The same individual may not serve simultaneously as the president, secretary and treasurer of a public benefit corporation.**

**SECTION 70.** ORS 65.377 is amended to read:

65.377. (1) An officer shall discharge the officer's duties:

(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;

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

(c) In the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

(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 to the corporation, any member or other person for any action taken or not taken as an officer if the officer acted in compliance with this section. The liability of the officer for monetary damages to the corporation and [*its*] **the corporation's** members may be eliminated or limited in the corporation's articles of **incorporation** to the extent provided in ORS 65.047 (2)(c).

**SECTION 71.** ORS 65.381 is amended to read:

65.381. (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 65.034 unless the notice specifies a later effective date. If a resignation [*is made effective at*] **specifies** a later **effective** date and the corporation accepts the later effective date, [*its*] **the corporation's** board of directors or any other person [*as*] authorized under the articles of **incorporation** or bylaws may fill the pending vacancy before the effective date if the board or any other person provides that the successor does not take office until the effective date.

(2) A board of directors or any other person authorized under the articles of **incorporation** or bylaws to elect or appoint an officer may remove any officer the board or any other person is entitled to elect or appoint, at any time with or without cause.

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

**SECTION 72.** ORS 65.431 is amended to read:

65.431. (1) A corporation may amend [*its*] **the corporation's** articles of incorporation at any time to add, change or delete any provision if the articles of incorporation as amended would be permitted under ORS 65.431 to 65.467 as of the effective date of the amendment.

(2) A corporation designated on the records of [*the Office of*] the Secretary of State as a public benefit **corporation** or religious corporation may amend or restate [*its*] **the public benefit corporation's or religious corporation's** articles of incorporation so that [*it*] **the public benefit corporation or religious corporation** becomes design-

nated as a mutual benefit corporation only if notice, including a copy of the proposed amendment or restatement, has been delivered to the Attorney General at least 20 days before consummation of the amendment or restatement.

**SECTION 73.** ORS 65.434 is amended to read:

65.434. (1) Unless *[the]* **a corporation's** articles of incorporation provide otherwise, *[a]* **the** corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without member approval:

(a) To extend the duration of the corporation if *[it]* **the corporation** was incorporated at a time when limited duration was required by law;

(b) To delete the names and addresses of the initial directors and incorporators;

(c) To 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;

(d) To delete the mailing address if an annual report has been filed with *[the Office of]* the Secretary of State;

(e) To change the corporate name by adding, changing or deleting 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 to the name;

(f) To include a statement of whether the corporation is a public benefit **corporation**, mutual benefit **corporation** or religious corporation; or

(g) To make any other change expressly permitted by this chapter to be made by director action.

(2) If a corporation *[has no]* **does not have** members entitled to vote on articles of incorporation, *[its]* **the corporation's** incorporators, until directors have been chosen, and thereafter *[its]* **the corporation's** board of directors, may adopt one or more amendments to the corporation's articles of incorporation subject to any approval required pursuant to ORS 65.467. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice *[shall]* **must** be in accordance with ORS 65.344 (2). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles of incorporation and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. *[Unless the articles or bylaws require a greater vote or the board of directors requires a greater vote, the amendment must be approved by a majority of the directors in office at the time the amendment is adopted. Any number of amendments may be submitted and voted upon at any one meeting.]* **Unless the articles of incorporation or bylaws require a greater vote or the board of directors requires a greater vote, the amendment must be approved by a majority of the directors voting on the amendment.**

**SECTION 74.** ORS 65.437 is amended to read:

65.437. (1) Unless this chapter, the articles of incorporation, bylaws, the members~~,~~ acting *[pursuant to]* **in accordance with** subsection (2) of this section~~,~~ or the board of directors acting *[pursuant to]* **in accordance with** subsection (3) of this section~~,~~ require a greater vote or voting by class, **adopting** an amendment to a corporation's articles *[to be adopted must be approved]* **of incorporation requires approval:**

(a) By the board if the corporation is a public benefit **corporation** or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors or the method or way in which directors are elected or selected;

(b) Except as provided in ORS 65.434 (1), by the members entitled to vote on articles of **incorporation of a mutual benefit corporation** by at least two-thirds of the votes cast or a majority of the voting power, whichever is less, **and for articles of incorporation of a public benefit corporation or religious corporation a majority of the votes cast;** and

(c) In writing by any person or persons whose approval is required for an amendment to the articles of **incorporation** as authorized by ORS 65.467.

(2) The members entitled to vote on articles of **incorporation** may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board of **directors** initiates an amendment to the articles of **incorporation** or board approval is required by subsection (1) of this section to adopt an amendment to the articles of **incorporation**, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis. For the amendment to be adopted, the board of directors shall, except in those cases described in subsection (1)(a) of this section, adopt a resolution setting forth the proposed amendment and directing that *[it]* **the amendment** be submitted to a vote at a meeting of members, which may be either an annual or special meeting.

(4) If the board of **directors** or the members entitled to vote on articles of **incorporation** seek to have the amendment approved by such members at a membership meeting, the corporation shall give notice to such members of the proposed membership meeting in writing in accordance with ORS 65.214. The notice must 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) If the board of **directors** or the members entitled to vote on articles of **incorporation** seek to have the amendment approved by such members by written consent or written ballot, the material soliciting the approval *[shall]* **must** contain or be accompanied by a copy or summary of the amendment.

**SECTION 75.** ORS 65.441 is amended to read:

65.441. (1) In a public benefit corporation the members of a class entitled to vote on articles *[are entitled to]* **of incorporation may** vote as a class on a proposed amendment to the articles **of incorporation** if the amendment would affect the rights of *[that]* **the** class as to voting in a manner different *[than]* **from the manner in which** the amendment would affect another class or members of another class.

(2) In a mutual benefit corporation the members of a class entitled to vote on articles *[are entitled to]* **of incorporation may** vote as a class on a proposed amendment to the articles **of incorporation** if the amendment would:

(a) Affect the rights, privileges, preferences, restrictions or conditions of *[that]* **the** class as to voting, dissolution, redemption or transfer of memberships in a manner different *[than such]* **from the manner in which the** amendment would affect another class;

(b) Change the rights, privileges, preferences, restrictions or conditions of *[that]* **the** class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(c) Increase or decrease the number of memberships authorized for *[that]* **the** class;

(d) Increase the number of memberships authorized for another class;

(e) Effect an exchange, reclassification or termination of the memberships of *[that]* **the** class; or

(f) Authorize a new class of memberships.

(3) In a religious corporation the members of a class entitled to vote on articles *[are entitled to]* **of incorporation may** vote as a class on a proposed amendment to the articles **of incorporation** only if a class vote is provided for in the articles **of incorporation** or bylaws.

(4) If a class is to be divided into two or more classes as a result of an amendment to the articles **of incorporation** of a public benefit **corporation** or mutual benefit corporation, the amendment must be approved by the members of each class entitled to vote on articles **of incorporation** that would be created by the amendment.

(5)(a) Except as provided in the articles **of incorporation** or bylaws of a **mutual benefit corporation** *[religious corporation]*, if a class vote is required to approve an amendment to the articles of *[a corporation]* **incorporation**, the amendment must be approved by the members of the class entitled to vote on articles **of incorporation** by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(b) **Except as provided in the articles of incorporation or bylaws of a public benefit corporation or religious corporation, if a class vote is required to approve an amendment to the articles of incorporation, the amendment must be approved by a majority of the members of the class entitled to vote on articles of incorporation.**

(6) A class of members of a public benefit **corporation** or mutual benefit corporation is entitled to the voting rights granted by this section although the articles **of incorporation** and bylaws provide that the class may not vote on the proposed amendment.

**SECTION 76.** ORS 65.447 is amended to read:

65.447. A corporation amending *[its]* **the corporation's** articles **of incorporation** shall deliver for filing to *[the Office of]* the Secretary of State articles of amendment setting forth:

(1) The name of the corporation.

(2) The text of each amendment adopted.

(3) The date of each amendment's adoption.

(4) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators.

(5) If approval by members entitled to vote on articles **of incorporation** was required:

(a) The designation and number of members of, and number of votes entitled to be cast by, each class entitled to vote separately on the amendment; and

(b) The total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment.

(6) If approval of the amendment by some person or persons other than the members entitled to vote on articles **of incorporation**, the board **of directors** or the incorporators is required pursuant to ORS 65.467, a statement that the approval was obtained.

**SECTION 77.** ORS 65.451 is amended to read:

65.451. (1) A corporation's board of directors may restate *[its]* **the corporation's** articles of incorporation at any time with or without approval by the members entitled to vote on articles **of incorporation** or any other person.

(2) The restatement may include one or more amendments to the articles **of incorporation**. If the restatement includes an amendment requiring approval by the members entitled to vote on articles **of incorporation** or any other person, *[it]* **the restatement** must be adopted as provided in ORS 65.437.

(3) If the board seeks to have the restatement approved by the members entitled to vote on articles **of incorporation** at a membership meeting, the corporation shall give *[written notice]* to the members entitled to vote on articles **of incorporation** **written notice** of the proposed membership meeting in accordance with ORS 65.214. 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 or summary of the restatement that identifies any amendments or other change *[it]* **the restatement** would make in the articles **of incorporation**.

(4) If the board **of directors** seeks to have the restatement approved by the members entitled to vote on articles **of incorporation** by written ballot

or written consent, the material soliciting the approval *[shall]* **must** contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change *[it]* **the restatement** would make in the articles **of incorporation**.

(5) A restatement requiring approval by the members entitled to vote on articles **of incorporation** must be approved by the same vote as an amendment to articles **of incorporation** under ORS 65.437.

(6) A corporation restating *[its]* **the corporation's** articles of incorporation shall deliver to *[the Office of]* the Secretary of State 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 **of incorporation** requiring approval by the members entitled to vote on articles **of incorporation** or any other person other than the board of directors and, if *[it]* **the restatement** does not, that the board of directors adopted the restatement, or if the restatement contains an amendment to the articles **of incorporation** requiring approval by the members entitled to vote on articles **of incorporation**, the information required by ORS 65.447; and

(b) If the restatement contains an amendment to the articles **of incorporation** requiring approval by a person whose approval is required pursuant to ORS 65.467, a statement that such approval was obtained.

(7) Restated articles of incorporation *[shall]* **must** include all statements required to be included in original articles of incorporation except that *[no]* **a** statement is **not** 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.

(8) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to *[them]* **the original articles of incorporation**.

(9) 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 (6) of this section.

**SECTION 78.** ORS 65.454 is amended to read:

65.454. (1) A corporation's articles **of incorporation** may be amended without *[board]* approval **by the board of directors**, *[or]* approval by the members entitled to vote on articles **of incorporation**[,] or approval required pursuant to ORS 65.467:

(a) To carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute; or

(b) In a proceeding brought by the Attorney General *[in the Circuit Court for Marion County]* to correct the statement in the articles of incorporation or the annual report with regard to whether the corporation is a public benefit **corporation** or mutual benefit corporation or, subject to the provisions of ORS 65.042, a religious corporation.

(2) The articles **of incorporation** after amendment *[shall]* **must** contain only provisions required or permitted by ORS 65.047.

(3) The individual or individuals designated by the court in a reorganization proceeding, or the Attorney General in a proceeding brought by the Attorney General, shall deliver to *[the Office of]* the Secretary of State 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 proceeding in which the order or decree was entered; and

(e) A statement whether the court had jurisdiction of the proceeding under federal statute or under subsection (1)(b) of this section.

(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.

**SECTION 79.** ORS 65.461 is amended to read:

65.461. *[Unless otherwise provided in its articles or bylaws,]* A corporation *[with no]* **that does not have** members with the power to vote on bylaws shall amend *[its]* **the corporation's** bylaws **only** as provided in this section. The corporation's incorporators, until directors have been chosen, and thereafter *[its]* **the corporation's** board of directors may adopt one or more amendments to the corporation's bylaws subject to any approval required *[pursuant to]* **under** ORS 65.467. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice *[shall]* **must** be in accordance with ORS 65.344 (2). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the bylaws and **must** contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

**SECTION 80.** ORS 65.464 is amended to read:

65.464. **Except as provided in ORS 65.241 and 65.244:**

(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]* **the power to amend or repeal** exclusively to the members, or to a party authorized under ORS 65.467, or both, in whole or in part; or

(b) The members entitled to vote on bylaws, 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 members entitled to vote on bylaws, subject to ORS 65.467, may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by *[its]* **the corporation's** board of directors.

**SECTION 81.** ORS 65.467 is amended to read:

65.467. *[The]* **A corporation's** articles of incorporation may require an amendment to the articles of incorporation or bylaws to be approved in writing by a specified person or persons other than the board of directors. *[Such an article]* **A provision of the articles of incorporation that has this requirement** may not be amended without the approval in writing of *[such]* **the specified** person or persons.

**SECTION 82.** ORS 65.484 is amended to read:

65.484. (1) Without the prior written consent of the Attorney General or the prior approval of the circuit court of the county *[where the]* **in which** 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, in a proceeding in which the Attorney General has been given written notice, a public benefit **corporation** or religious corporation may merge only with:

(a) A public benefit **corporation** or religious corporation;

(b) A foreign corporation *[which]* **that** would qualify under this chapter as a public benefit **corporation** or religious corporation;

(c) A wholly owned foreign **corporation** or domestic business **corporation** or mutual benefit corporation, provided the public benefit **corporation** or religious corporation is the surviving corporation and continues to be a public benefit **corporation** or religious corporation after the merger; or

(d) A foreign **corporation** or domestic business **corporation** or mutual benefit corporation, provided that:

(A) On or *[prior to]* **before** the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit **corporation** or religious corporation or the fair market value of the public benefit **corporation** or religious corporation if *[it]* **the public benefit corporation or religious corporation** were to be operated as a business concern are transferred or conveyed to one or more persons *[who]* **that** would have received *[its]* **the assets of the public benefit corporation or religious corporation** under ORS 65.637 (1)(e) and (f) had *[it]* **the public benefit corporation or religious corporation** dissolved;

(B) *[It]* **The public benefit corporation or religious corporation** shall return, transfer or convey any assets *[held by it]* **the public benefit corpo-**

**ration or religious corporation holds** upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and

(C) The merger is approved by a majority of directors of the public benefit **corporation** or religious corporation who are not and will not become members or shareholders in, or officers, employees, agents or consultants of, the surviving corporation.

(2) **The public benefit corporation or religious corporation must deliver** notice *[, including]* **and** a copy of the proposed plan of merger *[, must be delivered]* to the Attorney General at least 20 days before **the public benefit corporation or religious corporation files articles of merger** *[consummation of any merger of a public benefit corporation or a religious corporation pursuant to subsection (1)(d) of this section].*

(3) Without the prior written consent of the Attorney General or the prior approval of the court specified in subsection (1) of this section in a proceeding in which the Attorney General has been given written notice, *[no]* **a member of a public benefit corporation or religious corporation may not** receive or keep anything as a result of a merger other than a membership in the surviving public benefit **corporation** or religious corporation. *[Where]* Approval or consent **that** is required by this section *[, it shall]* **must** be given if the transaction is consistent with the purposes of the public benefit **corporation** or religious corporation or is otherwise in the public interest.

**SECTION 83.** ORS 65.487 is amended to read:

65.487. (1) Unless this chapter, *[the]* **a corporation's** articles of incorporation, bylaws or the **corporation's** board of directors or members, acting *[pursuant to]* **in accordance with** subsection (3) of this section, require a greater vote or voting by class, adoption of a plan of merger requires, with respect to each corporation party to the merger, approval:

(a) By the board of directors;

(b) By the members of a mutual benefit **corporation** entitled to vote on the merger, if any, by at least two-thirds of the votes cast or a majority of the voting power, whichever is less, **or by a majority of the votes cast, if the corporation is a public benefit corporation or religious corporation;** and

(c) In writing *[,]* by any person or persons whose approval is required for an amendment to the articles of incorporation or bylaws by a provision of the articles of incorporation or bylaws *[,]* as authorized by ORS 65.467.

(2) **Unless the articles of incorporation or bylaws provide for, or the board of directors or members acting in accordance with subsection (3) of this section require, a greater vote or voting by class, and** if the corporation does not have members entitled to vote on the merger, **the board of directors must approve** the merger. *[must be approved by a majority of the directors in*

office at the time the merger is approved. In addition,] The corporation shall provide notice of any **board of directors'** meeting at which such approval is to be obtained in accordance with ORS 65.344 (2). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(3) The board of directors may condition [its] **the board's** submission of the proposed merger to a vote of members, and the members entitled to vote on the merger may condition [their] **the members'** approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board of directors seeks to have [the plan approved by] the members **approve the plan** at a membership meeting, the corporation shall give notice to [its] **the corporation's** members of the proposed [membership] meeting in accordance with ORS 65.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and **must** contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation [shall] **must** include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of each disappearing corporation [shall] **must** include a copy or summary of the articles of incorporation and bylaws [which] **that** will be in effect immediately after the merger takes effect.

(5) If the board seeks to have [the plan approved by] the members **approve the plan** by written consent or written ballot, the material soliciting the approval [shall] **must** contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation [shall] **must** include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of each disappearing corporation [shall] **must** include a copy or summary of the articles of incorporation and bylaws [which] **that** will be in effect immediately after the merger takes effect.

(6) **Unless the articles of incorporation or bylaws provide for, or the board of directors or members acting in accordance with subsection (3) of this section require, a greater vote or voting by class, voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would entitle the class of members to vote as a class on the proposed amendment under ORS 65.441. The plan [is] must be approved by a class of members of a mutual benefit corporation by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less, or by a majority of the votes cast, if the corporation is a public benefit corporation or religious corporation.**

(7) After a **plan of** merger is [adopted] **approved**, and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan, in accordance with the procedure set forth in the plan of merger or, if [none is] **the plan does not set forth a procedure**, in the manner determined by the board of directors.

**SECTION 84.** ORS 65.491 is amended to read:

65.491. (1) After the board of directors of each merging corporation and, if required under ORS 65.487, **the members of each merging corporation** and any other persons **that must** approve a plan of merger **approve the plan**, the surviving corporation shall deliver to [the Office of] the Secretary of State for filing:

(a) Articles of merger that set forth the name and type of each business entity that intends to merge and the name and type of the business entity that will survive the merger;

(b) A plan of merger or, in lieu of a plan of merger, a written declaration that:

(A) Identifies an address for an office of the surviving entity where the plan of merger is on file; and

(B) States that the surviving entity will provide any owner or shareholder of any constituent entity with a copy of the plan of merger upon request and at no cost;

(c) A written declaration that:

(A) States that a sufficient vote of the board of directors of each corporation approved the plan of merger, if the approval of members was not required[.]; **or**

(B) Sets forth, if the members of one or more corporations were required to approve the plan of merger:

(i) The designation and number of members of each class entitled to vote separately on the plan and the number of votes each class is entitled to cast; and

(ii) The total number of votes that each class entitled to vote separately on the plan cast for and against the plan; [and]

(d) A written declaration that states that a person or persons other than the members of the board approved the plan, if required under ORS 65.487 (1)(c)[.]; **and**

(e) **A written declaration that states that the Attorney General approved the plan, if the plan required the Attorney General's approval.**

(2) Unless a delayed effective date is specified, a merger takes effect when the articles of merger are filed.

**SECTION 85.** ORS 65.494 is amended to read:

65.494. When a merger takes effect:

(1) [Every other] **Each** corporation **that was a** party to the merger merges into the surviving corporation and the separate existence of [every] **each** corporation except the surviving corporation ceases;

(2) The title to all real estate and other property owned by each corporation **that was a party** to the merger is vested in the surviving corporation without reversion or impairment **and is** subject to any and all conditions to which the property was subject [prior to] **before** the merger;

(3) The surviving corporation has all liabilities and obligations of each corporation **that was a party** to the merger;

(4) **The surviving corporation remains subject to any restriction that a gift instrument imposes on assets that any party to the merger holds;**

[4] (5) A proceeding pending against any corporation **that was a party** to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

[5] (6) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger; and

[6] (7) The memberships or shares of each [nonprofit or business corporation] **nonprofit corporation, domestic business corporation or foreign business corporation that was a party** to the merger that are to be converted into memberships, obligations, shares or other securities of the surviving **corporation** or any other corporation or into cash or other property are converted and the former holders of the memberships or shares are entitled only to the rights provided in the articles of merger.

**SECTION 86.** ORS 65.534 is amended to read:

65.534. (1) A corporation may sell, lease, exchange or otherwise dispose of all or substantially all of [its] **the corporation's** property, with or without the goodwill, other than in the usual and regular course of [its] **the corporation's** activities, on the terms and conditions and for the consideration determined by the corporation's board of directors if the proposed transaction is authorized by subsection (2) of this section.

(2) Unless this chapter, the articles **of incorporation**, bylaws or the board of directors or members, acting [pursuant to] **in accordance with** subsection (4) of this section, require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(a) By the board **of directors**;

(b) By the members **of a mutual benefit corporation** entitled to vote on the transaction by at least two-thirds of the votes cast or a majority of the voting power, whichever is less, **or by a majority of the votes cast, if the corporation is a public benefit corporation or religious corporation**; and

(c) In writing by any person or persons whose approval is required for an amendment to the articles **of incorporation** or bylaws by a provision of the articles **of incorporation** as authorized by ORS 65.467.

(3) If the corporation does not have members entitled to vote on the transaction, the **board of directors must approve the** transaction [must be

*approved by a majority of the directors in office at the time the transaction is approved*]. In addition, the corporation shall provide notice of any **board of directors' meeting** at which such approval is to be obtained in accordance with ORS 65.344 (2). 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 of the property of the corporation and **must** contain or be accompanied by a description of the transaction.

(4) The board of directors may condition [its] **the board's** submission of the proposed transaction to a vote of members, and the members entitled to vote on the transaction may condition [their] **the members'** approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the board seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to [its] **the corporation's** members of the proposed [membership] meeting in accordance with ORS 65.214. 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 of the property of the corporation and **must** contain or be accompanied by a description of the transaction.

(6) If the board seeks to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval [shall] **must** contain or be accompanied by a description of the transaction.

(7) A public benefit **corporation** or religious corporation must give written notice to the Attorney General [20] **30** days before [it] **the public benefit corporation or religious corporation** sells, leases, exchanges or otherwise disposes of all or substantially all of [its] **the public benefit corporation's or religious corporation's** property unless the transaction is in the usual and regular course of [its] **the public benefit corporation's or religious corporation's** activities or the Attorney General has given the **public benefit corporation or religious** corporation a written waiver of this notice requirement.

(8) After a sale, lease, exchange or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction, in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

**SECTION 87.** ORS 65.554 is amended to read:

65.554. Unless prohibited by [its] **the corporation's** articles **of incorporation** or bylaws:

(1) A mutual benefit corporation may purchase [its] **the mutual benefit corporation's** memberships and, under the circumstances indicated in ORS 65.147 and 65.171, a public benefit **corporation** or

religious corporation may purchase *[its]* **the public benefit corporation's or religious corporation's** memberships, if after the purchase is completed:

(a) The corporation would be able to pay *[its]* **the corporation's** debts as they become due in the usual course of *[its]* **the corporation's** activities; and

(b) The corporation's total assets would at least equal the sum of *[its]* **the corporation's** total liabilities.

(2) A corporation may make distributions upon dissolution in conformity with ORS 65.621 to 65.674.

(3) A corporation may make distributions to a member *[which]* **that** is a religious **corporation** or public benefit corporation or **to** a foreign nonprofit corporation *[which]* **that**, if incorporated in this state, would qualify as a religious **corporation** or public benefit corporation.

**SECTION 88.** ORS 65.621 is amended to read:

65.621. (1) A majority of the incorporators of a corporation that has no members and that does not yet have initial directors may, subject to any approval required by the **corporation's** articles of **incorporation** or bylaws, dissolve the corporation by delivering articles of dissolution to *[the Office of]* the Secretary of State for filing.

(2) The corporation shall give the incorporators notice equivalent to that specified in ORS 65.344 (2), of any meeting at which dissolution will be considered. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

(3) The incorporators in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

**SECTION 89.** ORS 65.624 is amended to read:

65.624. (1) Unless *[this chapter, the]* **a corporation's** articles of **incorporation**, bylaws or the board of directors or members, acting *[pursuant to]* **in accordance with** subsection (3) of this section, require a greater vote or voting by class, dissolution is authorized if *[it]* **the dissolution** is approved:

(a) By the board of **directors**;

(b) By the members of a **mutual benefit corporation** entitled to vote on dissolution, if any, by at least two-thirds of the votes cast or a majority of the voting power, whichever is less, **or by a majority of the votes cast, if the corporation is a public benefit corporation or religious corporation**; and

(c) In writing, by any person or persons whose approval is required for an amendment of the articles of **incorporation** or bylaws, as authorized by ORS 65.467, or for dissolution.

(2) If the corporation does not have members entitled to vote on dissolution, *[dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved]* **the board of directors must approve the dissolution**

**and may do so even if the board does not have a quorum.** In addition, the corporation shall provide notice of any meeting of the board of directors at which such approval is to be considered in accordance with ORS 65.344 (2). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and **must** contain or be accompanied by a copy or summary of the plan of dissolution.

(3) The board of **directors** may condition *[its]* **the board's** submission of the proposed dissolution to a vote of members, and the members may condition *[their]* **the members'** approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board of **directors** seeks to have dissolution approved by the members at a membership meeting, the corporation shall give all members, whether or not entitled to vote, notice of the proposed *[membership]* meeting in accordance with ORS 65.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and **must** contain or be accompanied by a copy or summary of the plan of dissolution.

(5) If the board of **directors** seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval *[shall]* **must** contain or be accompanied by a copy or summary of the plan of dissolution.

(6) The plan of dissolution *[shall]* **must** indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

**SECTION 90.** ORS 65.627 is amended to read:

65.627. (1) **A public benefit corporation or religious corporation may not transfer or convey assets as part of a dissolution until 30 days after the public benefit corporation or religious corporation has notified the Attorney General in accordance with subsection (2) of this section or until the Attorney General in writing has consented to the transfer or conveyance or indicated that the Attorney General will not take action with respect to the transfer or conveyance, whichever is earlier.**

*[(1)]* (2) A public benefit **corporation** or religious corporation shall give the Attorney General written notice that *[it]* **the public benefit corporation or religious corporation** intends to dissolve at or before the time *[it]* **the public benefit corporation or religious corporation** delivers articles of dissolution to the Secretary of State. The notice *[shall]* **must** include a copy or summary of the plan of dissolution.

*[(2)]* **No assets shall be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) of this section to the Attorney General or until the Attorney General has consented in writing, or indicated in writing, that the Attorney General will take no action**

in respect to the transfer or conveyance, whichever is earlier.]

(3) [When] **After** all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board **of directors** shall deliver to the Attorney General a list showing [those, other than creditors,] **the persons** to whom the assets were transferred or conveyed. The list [shall] **must** indicate the addresses of each person[, other than creditors,] who received assets and indicate what assets each received.

**SECTION 91.** ORS 65.631 is amended to read:

65.631. (1) At any time after dissolution is authorized, [the] **a** corporation may dissolve by delivering to [the Office of] the Secretary of State for filing, articles of dissolution setting forth:

- (a) The name of the corporation;
- (b) The date dissolution was authorized;
- (c) A statement that dissolution was approved by a sufficient vote of the board **of directors**;
- (d) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;
- (e) If approval by members entitled to vote was required:

(A) The designation and number of members of, and number of votes entitled to be cast by, each class entitled to vote separately on dissolution; and

(B) The total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution;

(f) If approval of dissolution by some person or persons other than the members entitled to vote on dissolution, the board or the incorporators is required pursuant to ORS 65.624 (1)(c), a statement that the approval was obtained; and

(g) If the corporation is a public benefit **corporation** or religious corporation, that the notice to the Attorney General required by ORS 65.627 [(1)] has been given.

(2) A corporation is dissolved upon the effective date of [its] **the corporation's** articles of dissolution.

**SECTION 92.** ORS 65.634 is amended to read:

65.634. (1) A corporation may revoke [its] **the corporation's** dissolution within 120 days [of its] **after the effective date of the dissolution.**

(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 of 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 action by the members or any other person.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the [Office of] Secretary of State 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 members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) If member or third-person action was required to revoke the dissolution, the information required by ORS 65.631 (1)(e) and (f).

(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] **the revocation** relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on [its] **the corporation's** activities as if dissolution had never occurred.

**SECTION 93.** ORS 65.637 is amended to read:

65.637. (1) A dissolved corporation continues the corporation's corporate existence but may not carry on any activities except activities that are appropriate to wind up and liquidate the corporation's affairs, including:

- (a) Preserving and protecting the corporation's assets and minimizing the corporation's liabilities;
- (b) Discharging or providing for discharging the corporation's liabilities and obligations;
- (c) Disposing of the corporation's properties that will not be distributed in kind;

(d) Returning, transferring or conveying assets in accordance with a condition under which the corporation holds the assets subject to a requirement to return, transfer or convey the assets, if the condition occurs by reason of the dissolution;

(e) Transferring, subject to any contractual or legal requirements, the corporation's assets as provided in or authorized by the corporation's articles of incorporation or bylaws;

(f) If the corporation is a public benefit **corporation** or religious corporation, and the corporation has not provided in the corporation's articles **of incorporation** or bylaws for distributing assets on dissolution, transferring, subject to any contractual or legal requirement, the corporation's assets to one or more persons described in ORS 65.001 [(35)(b)] **(38)(b)**;

(g) If the corporation is a mutual benefit corporation and the corporation has not provided in the corporation's articles **of incorporation** or bylaws for distributing assets on dissolution, transferring, subject to any contractual or legal requirements, the

corporation's assets to the corporation's members or, if the corporation has no members, to those persons whom the corporation purports to benefit or serve;

(h) Adopting a plan of merger; and

(i) Doing other acts necessary to liquidate the corporation's assets and wind up the corporation's affairs.

(2) Dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Subject the corporation's directors or officers to standards of conduct different from the standards prescribed in ORS 65.301 to 65.414;

(c) Change quorum or voting requirements for the corporation's board of directors or members, change provisions for selection, resignation or removal of the corporation's directors or officers, or both, or change provisions for amending the corporation's bylaws;

(d) Prevent commencement of a proceeding by or against the corporation in the corporation's corporate name;

(e) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(f) Terminate the authority of the registered agent of the corporation.

**SECTION 94.** ORS 65.644 is amended to read:

65.644. (1) A dissolved corporation may publish notice of *[its]* **the corporation's** dissolution and request that persons with claims against the corporation present *[them]* **the claims** in accordance with the notice.

(2) The *[notice]* **dissolved corporation** must **publish the notice:**

(a) *[Be published]* At least 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]* **the dissolved corporation's** registered office is or was last located; **or**

**(b) On the dissolved corporation's website or in another location where the dissolved corporation maintains an electronic presence, if the website or other location will remain accessible to the public for at least 30 days.**

**(3) A notice that a dissolved corporation publishes under subsection (2) of this section must:**

*[(b)]* (a) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

*[(c)]* (b) State that a claim against the **dissolved** corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

*[(3)]* (4) 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 65.641;

(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.

*[(4)]* (5) A claim may be enforced under this section:

(a) Against the dissolved corporation, to the extent of *[its]* **the dissolved corporation's** undistributed assets; or

(b) Against any person, other than a creditor of the **dissolved** corporation, to whom the **dissolved** corporation distributed *[its]* **the dissolved corporation's** property in liquidation subject to the following:

(A) If the distributee received a pro rata share of a distribution, the distributee's liability will not exceed the same pro rata share of the claim; and

(B) The distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee, less any liability of the **dissolved** corporation paid on behalf of the **dissolved** corporation by that distributee after the date of distribution.

**SECTION 95.** ORS 65.661 is amended to read:

65.661. (1) *[The circuit courts]* **A circuit court** may dissolve a corporation:

(a) In a proceeding by the Attorney General if *[it is established]* **the court finds** that:

(A) The corporation *[obtained its]* **filed** articles of incorporation *[through]* **with fraudulent intent, with fraudulent information or in a manner that otherwise indicates** fraud;

(B) The corporation has exceeded or abused the authority conferred upon *[it]* **the corporation** by law;

(C) The corporation has fraudulently solicited money or has fraudulently used the money solicited;

(D) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; *[or]*

(E) The corporation is a public benefit corporation and is no longer able to carry out *[its]* **the public benefit corporation's** purposes*[:]* **or the Internal Revenue Service has revoked the public benefit corporation's tax exempt status; or**

**(F) The corporation is a shell entity. For purposes of this subparagraph:**

(i) A court may find that a corporation is a shell entity if the court determines that the corporation was used or incorporated for an illegal purpose, was used or incorporated to defraud or deceive a person or a governmental agency or was used or incorporated to fraudulently conceal any business activity from another person or a governmental agency; and

(ii) The Attorney General may make a prima facie showing that a corporation is a shell entity by stating in an affidavit that:

(I) **The corporation did not provide a name or address required by the Secretary of State, or the name or address the corporation provided was false, fraudulent or inadequate;**

(II) **The corporation's articles of incorporation, a record the corporation must keep under ORS 65.771 or the corporation's annual report is false, fraudulent or inadequate;**

(III) **A public body, as defined in ORS 174.109, attempted to communicate with, or serve legal process upon, the corporation at the address or by means of other contract information the corporation provided to the Secretary of State, but the corporation failed to respond; or**

(IV) **The Attorney General has other evidence that shows that the corporation was used or incorporated for an illegal purpose, was used or incorporated to defraud or deceive a person or a governmental agency or was used or incorporated to fraudulently conceal any business activity from another person or a governmental agency.**

(b) Except as provided in the articles of incorporation or bylaws of a religious corporation, in a proceeding by 50 members or members holding five percent or more of the voting power, whichever is less, or by a director or any person specified in the articles of incorporation, if *[it is established]* **the court finds that:**

(A) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break 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 members 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;

(D) The corporate assets are being misapplied or wasted; or

(E) The corporation is a public benefit corporation or religious corporation and is no longer able to carry out *[its]* **the public benefit corporation's or religious corporation's** purposes;

(c) In a proceeding by a creditor if *[it is established]* **the court finds that:**

(A) The creditor's claim has been reduced to judgment, the execution on the judgment has been 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; or

(d) In a proceeding by the corporation to have *[its]* **the corporation's** voluntary dissolution continued under court supervision.

(2) *[Prior to]* **Before** dissolving a corporation, the court shall consider whether:

(a) *[There are]* Reasonable alternatives to dissolution **exist;**

(b) Dissolution is in the public interest, if the corporation is a public benefit corporation; or

(c) Dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

(3) **In addition to subjecting a corporation to dissolution under subsection (1)(a)(F) of this section, a finding that a corporation is a shell entity has the following effects:**

(a) A court may rebuttably presume that the corporation's filings with the Secretary of State constitute a false claim, as defined in ORS 180.750, in any action the Attorney General brings against the corporation under ORS 180.760 and may award to the Attorney General reasonable attorney fees and the costs of investigation, preparation and litigation if the Attorney General prevails in the action; and

(b) A public body, as defined in ORS 174.109, in any proceeding against the corporation, may move to enjoin a director, officer or other person that exercises significant direction or control over the corporation from engaging in commercial activity in this state, including but not limited to incorporating or organizing an entity in this state.

(4) A corporation may affirmatively defend against an allegation that the corporation is a shell entity by showing that the corporation, within 60 days after receiving a request to provide or correct a name, address or other information required for a filing or in articles of incorporation, a record the corporation must keep or an annual report, or within 60 days after the date of a request to respond to a communication or service of process, provided or corrected the name, address or other information or responded to the communication or service of process.

**SECTION 96.** ORS 65.664 is amended to read:

65.664. (1) Venue for a proceeding by the Attorney General to dissolve a corporation lies in Marion County, in Multnomah County or *[Venue for a proceeding brought by any other party named in ORS 65.661 lies]* in the county where a corporation's principal office is located or, if the principal office is not in this state, where *[its]* **the corporation's** registered office is or was last located. **A party named in ORS 65.661, other than the Attorney General, must bring a proceeding to dissolve a corporation in the county where the corporation's principal office is located or, if the principal office is not in this state, in the county where the corporation's registered office is or was last located.**

(2) *[It is not necessary to make]* Directors or members **are not necessary** parties to a proceeding to dissolve a corporation unless relief is sought against *[them]* **a director or member** 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 activities of the corporation until a full hearing can be held.

(4) A person other than the Attorney General who brings [*an involuntary*] a **judicial** dissolution proceeding for a public benefit **corporation** or religious corporation shall [*forthwith*] give **immediate** written notice of the proceeding to the Attorney General, who may intervene.

**SECTION 97.** ORS 65.667 is amended to read:

65.667. (1) A court, **at the Attorney General's request or** in a judicial proceeding brought to dissolve a public benefit **corporation** or mutual benefit corporation, may appoint one or more receivers **or custodians** [*to wind up and liquidate the affairs of the corporation, or one or more custodians*] to manage the affairs of the corporation **or to wind up and liquidate 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*] **of the corporation's** property wherever located.

(2) The court may appoint **as a receiver or custodian** an individual, [*or*] a domestic **business corporation** or foreign business [*or nonprofit*] corporation[,] authorized to transact business in this state[,] **or a nonprofit corporation** [*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*] **the court's** appointing order, which may be amended periodically. Among other powers:

(a) The receiver:

(A) 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, provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and

(B) 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*] **the corporation's** board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of [*its*] **the corporation and the corporation's** members 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 interest of the corporation[, *its*] **and the corporation's** members 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 attorney from the assets of the corporation or proceeds from the sale of the assets.

(6) If applicable under ORS 37.040, the Oregon Receivership Code controls over conflicting provisions of this section.

**SECTION 98.** ORS 65.671 is amended to read:

65.671. (1) If after a hearing [*the*] a court determines that one or more grounds for judicial dissolution described in ORS 65.661 exist, [*it*] **the court** 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 of*] the Secretary of State for filing.

(2) After entering the judgment of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with ORS 65.637 and the notification of claimants in accordance with ORS 65.641 and 65.644.

**SECTION 99.** ORS 65.707 is amended to read:

65.707. (1) A foreign corporation may apply for authority to transact business in this state by delivering an application to [*the office of*] the Secretary of State for filing. The application must set forth:

(a) The name of the foreign corporation or, if the name the foreign corporation uses is unavailable for use in this state, a corporate name that satisfies the requirements of ORS 65.717;

(b) The name of the state or country under whose law the foreign corporation is incorporated;

(c) The foreign corporation's registry number in the state or country under whose law the foreign corporation is incorporated;

(d) The foreign corporation's date of incorporation and period of duration if the period is not perpetual;

(e) The address including street and number and mailing address, of the foreign corporation's principal office;

(f) The address, including street and number, of the foreign corporation's registered office in this state and the name of the foreign corporation's registered agent at the registered office;

(g) The names and respective addresses of the president and secretary of the foreign corporation;

(h) Whether the foreign corporation has members; and

(i) Whether the foreign corporation, if the foreign corporation had been incorporated in this state, would be a public benefit **corporation**, mutual benefit **corporation** or religious corporation.

(2)(a) Except as provided in paragraph (b) of this subsection, 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 the foreign corporation is incorporated.

(b) A foreign corporation need not submit a certificate of existence or document in accordance with

paragraph (a) of this subsection if the official who has custody of corporate records in the state or country under whose law the foreign corporation is incorporated provides free access via the Internet to a searchable database that contains evidence of corporate registrations.

(3) A foreign corporation may not be denied authority to transact business in this state by reason of the fact that the laws of the state or country under which the corporation is organized governing the corporation's organization and internal affairs differ from the laws of this state.

**SECTION 100.** ORS 65.711 is amended to read:

65.711. (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 of] the Secretary of State for filing if [it] **the foreign corporation** changes:

(a) [Its] **The foreign corporation's** corporate name as shown on [the records of the office] **the Secretary of State's records;**

(b) The period of [its] **the foreign corporation's** duration; or

(c) [Its] **The foreign corporation's** designation under ORS 65.707 as a public benefit **corporation**, mutual benefit **corporation** or religious corporation.

(2) The amendment to the application for authority to transact business in this state [shall] **must** set forth the corporate name shown on the **Secretary of State's** records [of the office] and the new corporate name, the new period of duration or the new designation as **a** public benefit **corporation**, mutual benefit **corporation** or religious corporation. The corporate name as changed must satisfy the requirements of ORS 65.717.

**SECTION 101.** ORS 65.717 is amended to read:

65.717. (1) Except as provided in subsection (2) of this section, the Secretary of State [shall] **may** not authorize a foreign corporation to transact business in this state unless the corporate name of the **foreign** corporation satisfies the requirements of ORS 65.094.

(2) If a corporate name, professional corporate name, business 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] **Secretary of State** is not distinguishable on the **Secretary of State's** records [of the office] from the corporate name of the applicant foreign corporation, the Secretary of State [shall] **may** 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 65.707 as "(name under which incorporated), a corporation of (place of incorporation)," the entirety of which [shall] **must** be the real and true name of the corporation under ORS chapter 648.

(3) If a foreign corporation authorized to transact business in this state changes [its] **the foreign corporation's** corporate name to [one] **a name** that does not satisfy the requirements of ORS 65.094, [it shall] **the foreign corporation may** not transact business in this state under the changed name until [it] **the foreign corporation** adopts a name [satisfying] **that satisfies** the requirements of ORS 65.094 and delivers to [the Office of] the Secretary of State for filing an amendment to the application for authority under ORS 65.711.

**SECTION 102.** ORS 65.724 is amended to read:

65.724. (1) A foreign corporation authorized to transact business in this state may change [its] **the foreign corporation's** 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 current registered office is to be changed,] The address, including the street and number, of the new registered office, **if the foreign corporation intends to change the current registered office;**

(c) [If the current 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, **if the foreign corporation intends to change the current registered agent; and**

(d) A statement that after the change or changes are made, the street addresses of [its] **the foreign corporation's** registered office and the office or residence address of [its] **the foreign corporation's** registered agent will be identical.

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

(3) The **Secretary of State's** filing [of] the statement under this section [by the Office of the Secretary of State shall terminate] **terminates** the existing registered office or agent, or both, on the effective date of the filing [by the Office of the Secretary of State] and [establish] **establishes** the newly appointed registered office or agent, or both, as that of the foreign corporation.

**SECTION 103.** ORS 65.727 is amended to read:

65.727. (1) The registered agent of a foreign corporation may resign as agent by delivering a signed statement of resignation to [the Office of] the Secretary of State and giving notice in the form of a copy of the statement to the foreign corporation for filing.

The statement of resignation may include a statement that the registered office is also discontinued.

(2) Upon receipt of the signed statement in proper form, 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]* **must** 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 **Secretary of State filed the statement** *[was filed by the Office of the Secretary of State]* unless the foreign corporation sooner appoints a successor registered agent as provided in ORS 65.724, thereby terminating the capacity of the prior agent.

**SECTION 104.** ORS 65.734 is amended to read:

65.734. (1) A foreign corporation authorized to transact business in this state may apply to *[the Office of]* the Secretary of State to withdraw from this state. The application *[shall]* **must** set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law *[it]* **the foreign corporation** is incorporated;

(b) That *[it]* **the foreign corporation** is not transacting business in this state and that *[it]* **the foreign corporation** surrenders *[its]* **the foreign corporation's** authority to transact business in this state;

(c) That *[it]* **the foreign corporation** revokes the authority of *[its]* **the foreign corporation's** registered agent to accept service on *[its]* **the foreign corporation's** behalf and appoints the Secretary of State as *[its]* **the foreign corporation's** agent for service of process in any proceeding based on a cause of action arising during the time *[it]* **the foreign corporation** 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 the mailing address.

(2) *[Upon filing by the Office of]* **After** the Secretary of State *[of]* **files** the application to withdraw, the authority of the foreign corporation to transact business in this state *[shall cease]* **ceases**.

**SECTION 105.** ORS 65.751 is amended to read:

65.751. (1) *[The circuit courts]* **A circuit court** may revoke the authority of a foreign corporation to transact business in this state:

(a) In a proceeding by the Attorney General if *[it is established]* **the court finds** that:

(A) The **foreign** corporation obtained *[its]* authority to transact business in this state **with fraudulent intent, with fraudulent information or in a manner that otherwise indicates** *[through]* fraud;

(B) The **foreign** corporation has exceeded or abused the authority conferred upon *[it]* **the foreign corporation** by law;

(C) The **foreign** corporation would have been a public benefit corporation had *[it]* **the foreign corporation** been incorporated in this state and *[its]* **the foreign corporation's** corporate assets are being misapplied or wasted;

(D) The **foreign** corporation would have been a public benefit corporation had *[it]* **the foreign corporation** been incorporated in this state and *[it]* **the foreign corporation** is no longer able to carry out *[its]* **the foreign corporation's** purposes;

(E) An incorporator, director, officer or agent of the **foreign** corporation signed a document knowing *[it]* **that the document** was false in any material respect with the intent that the document be delivered to *[the Office of]* the Secretary of State for filing; *[or]*

(F) The **foreign** corporation has fraudulently solicited money or has fraudulently used the money solicited*[.]; or*

(G) **The foreign corporation is a shell entity. For purposes of this subparagraph:**

(i) **A court may find that a foreign corporation is a shell entity if the court determines that the foreign corporation was used or incorporated for an illegal purpose, was used or incorporated to defraud or deceive a person or governmental agency or was used or incorporated to fraudulently conceal any business activity from another person or a governmental agency; and**

(ii) **The Attorney General may make a prima facie showing that a foreign corporation is a shell entity by stating in an affidavit that:**

(I) **The foreign corporation did not provide a name or address required by the Secretary of State, or the name or address the foreign corporation provided was false, fraudulent or inadequate;**

(II) **The foreign corporation's application for authority to transact business in this state, a record the foreign corporation must keep under 65.771 or the foreign corporation's annual report is false, fraudulent or inadequate;**

(III) **A public body, as defined in ORS 174.109, attempted to communicate with, or serve legal process upon, the foreign corporation at the address or by means of other contact information the foreign corporation provided to the Secretary of State, but the foreign corporation failed to respond; or**

(IV) **The Attorney General has other evidence that shows that the foreign corporation was used or incorporated for an illegal purpose, was used or incorporated to defraud or deceive a person or a governmental agency or was used**

or incorporated to fraudulently conceal any business activity from another person or governmental agency.

(b) Except as provided in the articles of incorporation or bylaws of a foreign corporation that would have been a religious corporation had [it] the foreign corporation been incorporated in this state, in a proceeding by 50 members or members holding five percent or more of the voting power, whichever is less, or by a director or any person specified in the articles of incorporation, if [it is established] the court finds that:

(A) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;

(B) The directors or those in control of the foreign corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent;

(C) The members 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;

(D) The corporate assets are being misapplied or wasted; or

(E) The foreign corporation [is a foreign corporation that] would have been a public benefit corporation or religious corporation had [it] the foreign corporation been incorporated in this state, and is no longer able to carry out [its] the foreign corporation's purposes.

(c) In a proceeding by a creditor if [it is established] the court finds that:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied[,] and the foreign corporation is insolvent; or

(B) The foreign corporation has admitted in writing that the creditor's claim is due and owing and the foreign corporation is insolvent.

(2) [Prior to] Before revoking a foreign corporation's authority, the court shall consider whether:

(a) [There are] Reasonable alternatives to revocation of authority exist;

(b) Revocation of authority is in the public interest, if the [corporation is a] foreign corporation [that] would have been a public benefit corporation had [it] the foreign corporation been incorporated in this state; or

(c) Revocation of authority is the best way to protect the interests of members, if the [corporation is a] foreign corporation [that] would have been a mutual benefit corporation had [it] the foreign corporation been incorporated in this state.

(3) In addition to subjecting a foreign corporation to revocation of the foreign corporation's authority to transact business in this state under subsection (1)(a)(G) of this section, a finding that a foreign corporation is a shell entity has the following effects:

(a) A court may rebuttably presume that the foreign corporation's filings with the Secretary of State constitute a false claim, as defined in

ORS 180.750, in any action the Attorney General brings under ORS 180.760 and may award to the Attorney General reasonable attorney fees and the costs of investigation, preparation and litigation if the Attorney General prevails in the action; and

(b) A public body, as defined in ORS 174.109, in any proceeding against the foreign corporation, may move to enjoin a director, officer or other person that exercises significant direction or control over the foreign corporation from engaging in commercial activity in this state including, but not limited to, incorporating or organizing an entity in this state.

(4) A foreign corporation may affirmatively defend against an allegation that the foreign corporation is a shell entity by showing that the foreign corporation, within 60 days after receiving a request to provide or correct a name, address or other information required for a filing or in an application for authority to transact business in this state, a record the foreign corporation must keep or an annual report, or within 60 days after the date of a request to respond to a communication or service of process, provided or corrected the name, address or other information or responded to the communication or service of process.

**SECTION 106.** ORS 65.757 is amended to read:

65.757. (1) If after a hearing [the] a court determines that one or more grounds for judicial revocation of authority described in ORS 65.751 exists, [it] the court may enter a judgment revoking [the] a foreign corporation's authority to transact business in Oregon and specifying the effective date of the revocation. The clerk of the court shall deliver a certified copy of the judgment to [the Office of] the Secretary of State for filing.

(2) The authority of a foreign corporation to transact business in Oregon ceases as of the date of the judgment of revocation.

(3) The judgment of 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.

(4) Revocation of a foreign corporation's authority to transact business in this state terminates the authority of the foreign corporation's registered agent [of the corporation].

**SECTION 107.** ORS 65.771 is amended to read:

65.771. (1) A corporation shall keep as permanent records minutes of all meetings of [its] the corporation's members and board of directors, a record of all corporate action taken by the members or directors without a meeting, and a record of all actions taken by committees 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]* **the corporation's** agent shall maintain a record of *[its]* **the corporation's** members in a form that permits preparation of a list of the *[name and address]* **names and contact information** of all members, *in alphabetical order* by class showing the number of votes each member *[is entitled to vote]* **may cast.**

(4) A corporation shall maintain *[its]* **the corporation's** records in written form or **as documents** in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records for inspection:

(a) *[Articles or restated articles of incorporation and all amendments to them]* **The articles of incorporation that are** currently in effect;

(b) Bylaws or restated bylaws and all amendments to *[them]* **the bylaws that are** currently in effect;

(c) Resolutions adopted by *[its]* **the** board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members of any class or category of members;

(d) The minutes of all meetings of members and records of all actions approved by the members for the past three years;

(e) Written communications required by this chapter and those regarding general membership matters made to members within the past three years;

(f) A list of the names and *[business or home addresses]* **other contact information for the corporation's** *[of its]* current directors and officers;

(g) The last three annual financial statements, if any. The statements may be consolidated or combined statements of the corporation and one or more of *[its]* **the corporation's** subsidiaries or affiliates, as appropriate, including a balance sheet and statement of operations, if any, for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis;

(h) The last three accountant's reports if annual financial statements are reported upon by a public accountant; and

(i) The most recent annual report delivered to the Secretary of State under ORS 65.787.

**(6) A director of the corporation has a right to inspect any records a corporation keeps under this section.**

**SECTION 108.** ORS 65.774 is amended to read:

65.774. (1) Subject to subsection (5) of this section and ORS 65.777 (3), a member *[is entitled to]* **may** inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in ORS 65.771 (5) if the member gives the corporation written notice of the member's demand at least five business days

before the date on which the member wishes to inspect and copy.

(2) Subject to subsection (5) of this section, a member *[is entitled to]* **may** inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) of this section and gives the corporation written notice of the member's demand at least five business days before the date on which the member wishes to inspect and copy:

(a) Excerpts from any records required to be maintained under ORS 65.771 (1), to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) Subject to ORS 65.782, the membership list.

(3) A member may inspect and copy the records identified in subsection (2) of this section only if:

(a) The member's demand is made in good faith and for a proper purpose;

(b) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(c) The records are directly connected with this purpose.

(4) This section does not affect:

(a) The right of a member to inspect records under ORS 65.224 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of the court, independently of this chapter, to compel the production of corporate records for examination.

(5)(a) The articles **of incorporation** or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

(b) The articles **of incorporation** of a public benefit corporation organized primarily for political or social action, including but not limited to political or social advocacy, education, litigation or a combination thereof, may limit or abolish:

(A) The right of a member to obtain from the **public benefit** corporation information as to the identity of contributors to the **public benefit** corporation; and

(B) The right of a member or the member's agent or attorney to inspect or copy the membership list if the **public benefit** corporation provides a reasonable means to mail communications to other members through the **public benefit** corporation at the expense of the member making the request.

**SECTION 109.** ORS 65.782 is amended to read: 65.782. Without consent of the board **of directors**, a membership list or any part of a membership list may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of this section, without the consent of the board **of directors**, a membership list or any part *[thereof]* **of a membership list** may not be:

(1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) Used for any commercial purpose; or

(3) Sold or purchased by any person.

**SECTION 110.** ORS 65.787 is amended to read:

65.787. (1) A domestic corporation, and a foreign corporation authorized to transact business in this state, shall by the corporation's anniversary deliver to [the office of] the Secretary of State for filing an annual report that sets forth:

(a) The name of the corporation and the state or country under whose law the corporation is incorporated;

(b) The street address of the corporation's registered office and the name of the corporation's registered agent at the registered office in this state;

(c) If the registered agent is changed, a statement that indicates that the new registered agent has consented to the appointment;

(d) The address including street and number and mailing address if different from the corporation's principal office;

(e) The names and addresses of the president and secretary of the corporation;

(f) A brief description of the nature of the activities of the corporation;

(g) Whether or not the corporation has members;

(h) If the corporation is a domestic corporation, whether the **domestic corporation** is a public benefit **corporation**, mutual benefit **corporation** or religious corporation;

(i) If the corporation is a foreign corporation, whether the **foreign corporation** would be a public benefit **corporation**, mutual benefit **corporation** or religious corporation had the **foreign corporation** been incorporated in this state; and

(j) Additional identifying information that the Secretary of State may require by rule.

(2) The information contained in the annual report must 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 domestic **corporation** or foreign corporation in the **Secretary of State's** current records [of the office of the Secretary of State]. The failure of the domestic **corporation** or foreign corporation to receive the annual report form from the Secretary of State does not relieve the corporation of the [corporation's] duty under this section to deliver an annual report to the [office] **Secretary of State**.

(4) If an annual report does not contain the information this section requires, the Secretary of State shall promptly notify the reporting domestic **corporation** or foreign corporation in writing and return the report to the corporation for correction. The domestic **corporation** or foreign corporation must correct the error within 45 days after the Secretary of State gives the notice.

(5)(a) A domestic **corporation** or foreign corporation may update information that is required or permitted in an annual report filing at any time by delivering to [the office of] the Secretary of State for filing:

(A) 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] **Secretary of State** for filing and before the next anniversary; or

(B) A statement with the change if the update occurs before the domestic **corporation** or foreign corporation files the first annual report.

(b) This subsection applies only to a change that is not required to be made by an amendment to the articles of incorporation.

(c) The amendment to the annual report filed under paragraph (a) of this subsection must set forth:

(A) The name of the corporation as shown on the **Secretary of State's** records [of the office]; and

(B) The information as changed.

(6) The Secretary of State may not charge a nonprofit corporation a fee to file an annual report under ORS 56.140 if the nonprofit corporation provides evidence to the Secretary of State that:

(a) The purpose of the nonprofit corporation as set forth in the articles of incorporation is to maintain a historic cemetery; and

(b) The historic cemetery that the nonprofit corporation maintains is listed with the Oregon Commission on Historic Cemeteries under ORS 97.782.

**SECTION 111.** ORS 65.990 is amended to read:

65.990. (1) A person commits the crime of signing a false document for filing if the person:

(a) Knows the document is false in any material respect; and

(b) Signs the document with an intent that the document be delivered to [the Office of] the Secretary of State for filing under this chapter.

(2) Signing a false document for filing is a Class A misdemeanor.

**SECTION 112.** ORS 271.330 is amended to read:

271.330. (1) Any political subdivision is granted express power to relinquish the title to any of the political subdivision's property not needed for public use to any governmental body, providing the property [shall be] is used for not less than 20 years for a public purpose by the governmental body in the State of Oregon. These transfers for public purposes may include transfers without consideration of property held by counties as a result of tax foreclosures.

(2)(a) Any political subdivision is granted express power to relinquish the title to any of the political subdivision's property to a qualifying nonprofit corporation or a municipal corporation for the purpose of providing any of the following:

(A) Low income housing;

(B) Social services; or

(C) Child care services.

(b) As used in this subsection:

(A) “Qualifying nonprofit corporation” means a corporation that is a public benefit corporation as defined in ORS 65.001 [(35)] and that has obtained a ruling from the federal Internal Revenue Service providing that the corporation is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code.

(B) “Social services” and “child care services” include but are not limited to education, training, counseling, health and mental health services and the provision of facilities and administrative services to support social services and child care services.

(3) Any political subdivision is granted express power to convey real property to a nonprofit or municipal corporation to be used by the nonprofit or municipal corporation for the creation of open space, parks or natural areas for perpetual public use. The instrument conveying the real property [shall] **must** include a restriction on the use of the property that limits the uses of the property to those uses described in this subsection. The instrument conveying the property [shall] **must** also contain a provision for the reversion of the property to the political subdivision if the property is not used in conformance with the restriction. Real property conveyed under this subsection may include real property held by a political subdivision as a result of tax foreclosures.

(4) Transfers under this section may include transfers without consideration of property held by counties as a result of tax foreclosures.

(5) Before any county court or board of county commissioners may transfer, under subsection (1) of this section, any tax foreclosed lands in which the state or a political subdivision has represented delinquent and uncollected taxes, liens or assessments, the county court or board of county commissioners shall advertise in a newspaper of general circulation in the county for two successive weeks the court’s or the board’s intention to so transfer the property. The notice [shall] **must** state when the county court will hear objections to the transfer and must specifically describe the property intended to be transferred. After the hearing set in the notice is held

and objections are heard, the court may, in the court’s sound discretion, proceed with the transfer. Except in the case of a transfer for low income housing, real property [shall] **must** be conveyed by deed, subject to a reversionary interest retained by the granting political subdivision in the event that the property is used for a purpose that is inconsistent with the grant. The granting political subdivision may waive the subdivision’s right to a reversionary interest at the time the property is conveyed. After the transfer the interests of the state or any political subdivision in the land on account of uncollected taxes, liens or assessments are extinguished, and the county is relieved of the necessity to account for uncollected taxes, liens or assessments.

**SECTION 113. ORS 65.501 is repealed.**

**SECTION 114. (1) Sections 2, 4 and 6 of this 2019 Act, the amendments to statutes by sections 7 to 112 of this 2019 Act and the repeal of ORS 65.501 by section 113 of this 2019 Act become operative on January 1, 2020.**

**(2) The Secretary of State and the Attorney General may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the Secretary of State and the Attorney General to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the Secretary of State and the Attorney General by sections 2, 4 and 6 of this 2019 Act and the amendments to statutes by sections 7 to 112 of this 2019 Act.**

**SECTION 115. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.**

Approved by the Governor May 24, 2019  
 Filed in the office of Secretary of State May 28, 2019  
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