

**Enrolled**  
**House Bill 2304**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Business Law Section)

CHAPTER .....

AN ACT

Relating to corporate mergers; creating new provisions; and amending ORS 60.491 and 60.554.

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

**SECTION 1.** ORS 60.491 is amended to read:

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

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

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

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

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

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

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

**(b) The parent, not later than 10 days after the effective date of the merger, shall:**

**(A) Notify each shareholder of the subsidiary that the merger has become effective; and**

**(B) Mail a copy or a summary of the plan of merger to each shareholder of the subsidiary that does not waive this mailing requirement in writing.**

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

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

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

(A) The names of the parent and subsidiary;

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

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

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

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

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

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

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

**(b) The parent, not later than 10 days after the effective date of the merger, shall:**

**(A) Notify each shareholder of the subsidiary and each shareholder of the parent that the merger has become effective; and**

**(B) Mail a copy or summary of the plan of merger to each shareholder of the subsidiary and each shareholder of the parent that does not waive this mailing requirement in writing.**

*[(d)] (c) The surviving corporation shall be a domestic corporation.*

**SECTION 2.** ORS 60.554 is amended to read:

60.554. (1) Subject to subsection (2) of this section, a shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate acts:

(a) Consummation of a plan of merger to which the corporation is a party if shareholder approval is required for the merger by ORS 60.487 or the articles of incorporation and the shareholder is entitled to vote on the merger or if the corporation is a subsidiary that is merged with its parent under ORS 60.491;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all or substantially all of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(A) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities; or

(B) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under ORS 60.141;

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or

(f) Conversion to a noncorporate business entity pursuant to ORS 60.472.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under ORS 60.551 to 60.594 may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(3) Dissenters' rights shall not apply to the holders of shares of any class or series if the shares of the class or series were registered on a national securities exchange [or quoted on the National Association of Securities Dealers, Inc. Automated Quotation System as a National Market System issue] on the record date for the meeting of shareholders at which the corporate action described in subsection (1) of this section is to be approved or [on the date a copy or summary of the plan of merger is mailed to shareholders] **on the effective date of the merger** under ORS 60.491, unless the articles of incorporation otherwise provide.

**SECTION 3. The amendments to ORS 60.491 and 60.554 by sections 1 and 2 of this 2009 Act apply to mergers consummated under the provisions of ORS 60.491 on or after the effective date of this 2009 Act.**

**Passed by House March 31, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate May 19, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State