

House Bill 2948

Sponsored by Representative CLEM (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Secretary of State to provide option on form for articles of incorporation or organization by means of which articles can indicate whether corporation, cooperative or limited liability company will indemnify or pay expenses for director, officer, member, manager, employee or agent of corporation, cooperative or limited liability company.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to forms for business registrations; creating new provisions; amending ORS 60.047, 63.047
3 and 65.047; and declaring an emergency.

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

5 **SECTION 1.** ORS 60.047 is amended to read:

6 60.047. (1) The articles of incorporation shall set forth:

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

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

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

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

13 (e) A mailing address to which notices, as required by this chapter, may be mailed until **the**
14 **corporation has designated** an address *[has been designated by the corporation]* in *[its]* **the**
15 **corporation's** annual report.

16 (2) The articles of incorporation may set forth:

17 (a) The names of the initial directors;

18 (b) The addresses of the initial directors;

19 (c) Provisions regarding:

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

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

22 (C) Defining, limiting and regulating the powers of the corporation, *[its]* **the corporation's**
23 board of directors and shareholders; and

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

25 (d) A provision eliminating or limiting the personal liability of a director to the corporation or
26 *[its]* **the corporation's** shareholders for monetary damages for conduct as a director, provided that
27 *[no such]* a provision *[shall]* **may not** eliminate or limit the liability of a director for *[any]* **an** act
28 or omission *[occurring prior to]* **that occurs before** the date when *[such]* **the** provision becomes ef-
29 fective and *[such]* **the** provision *[shall]* **may not** eliminate or limit the liability of a director for:

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 shareholders;

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

4 (C) [Any] **An** unlawful distribution under ORS 60.367; or

5 (D) [Any] **A** transaction from which the director derived an improper personal benefit;

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

8 (f) [Any] **A** provision that under this chapter is required or permitted to be set forth in the by-
9 laws.

10 (3) The articles of incorporation need not set forth any of the corporate powers enumerated in
11 this chapter.

12 **(4) If under ORS 60.016 the Secretary of State offers or by rule requires the use of a form**
13 **for the articles of incorporation, the form that the Secretary of State offers or requires must**
14 **include, in addition to the information specified in subsection (1) of this section, a provision**
15 **by means of which the articles indicate whether the corporation elects to indemnify or pay**
16 **the expenses of a director, officer, employee or agent of the corporation under ORS 60.387**
17 **to 60.414.**

18 **SECTION 2. Section 3 of this 2011 Act is added to and made a part of ORS chapter 62.**

19 **SECTION 3. If under ORS 62.045 the Secretary of State offers or by rule requires the use**
20 **of a form for articles of incorporation for a cooperative, the form that the Secretary of State**
21 **offers or requires must include, in addition to information the Secretary of State requires**
22 **for the articles, a provision by means of which the articles indicate whether the cooperative**
23 **elects to indemnify or pay the expenses of a director, officer, employee or agent of the co-**
24 **operative under ORS 62.462 to 62.482.**

25 **SECTION 4. ORS 63.047 is amended to read:**

26 63.047. (1) The articles of organization shall set forth:

27 (a) The name of the limited liability company, which [*satisfies*] **must satisfy** the requirements
28 of ORS 63.094;

29 (b) The address, including street and number, and mailing address, if different, of the limited li-
30 ability company's initial registered office and the name of [*its*] **the limited liability company's** ini-
31 tial registered agent at [*that*] **the** office;

32 (c) A mailing address to which notices, as required by this chapter, may be mailed until **the**
33 **limited liability company designates** an address [*has been designated by the limited liability com-*
34 *pany in its*] **in the limited liability company's** annual report;

35 (d) If the limited liability company is to be manager-managed, a statement that the limited li-
36 ability company will be manager-managed or a statement that the limited liability company is to be
37 managed by a manager or managers;

38 (e) The name and address of each organizer;

39 (f) The latest date on which the limited liability company is to dissolve or a statement that
40 [*its*] **the limited liability company's** existence is perpetual; and

41 (g) If a limited liability company is to render professional service or services, as defined in ORS
42 58.015, the professional service or services to be rendered through the limited liability company.

43 (2) The articles of organization may set forth any other provisions, not inconsistent with law,
44 for the regulation of the internal affairs of the limited liability company, including [*any*] **a** provision
45 that is required or permitted to be included in [*any*] **an** operating agreement of the limited liability

1 company under this chapter.

2 (3) The articles of organization need not set forth any of the powers enumerated in this chapter.

3 **(4) If under ORS 63.016 the Secretary of State offers or by rule requires the use of a form**
 4 **for the articles of organization, the form that the Secretary of State offers or requires must**
 5 **include, in addition to the information specified in subsection (1) of this section, a provision**
 6 **by means of which the articles of organization indicate whether the limited liability company**
 7 **elects to indemnify a member, manager, employee or agent of the limited liability company**
 8 **under ORS 63.160.**

9 **SECTION 5.** ORS 65.047 is amended to read:

10 65.047. (1) The articles of incorporation formed pursuant to this chapter, subsequent to October
 11 3, 1989, shall set forth:

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

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

14 (A) This corporation is a public benefit corporation;

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

16 (C) This corporation is a religious corporation;

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

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

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

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

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

27 (2) The articles of incorporation may set forth:

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

29 (b) Provisions regarding:

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

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

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

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

36 (c) A provision eliminating or limiting the personal liability of a director or uncompensated of-
 37 ficer to the corporation or *[its]* **the corporation's** members for monetary damages for conduct as a
 38 director or officer, provided that *[no such]* a provision *[shall]* **may not** eliminate or limit the liability
 39 of a director or officer for *[any]* **an** act or omission *[occurring prior to]* **that occurs before** the date
 40 when *[such]* **the** provision becomes effective, and *[such]* **the** provision *[shall]* **may not** eliminate or
 41 limit the liability of a director or officer for:

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

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

1 (C) [Any] **An** unlawful distribution;

2 (D) [Any] **A** transaction from which the director or officer derived an improper personal benefit;

3 and

4 (E) [Any] **An** act or omission in violation of ORS 65.361 to 65.367; and

5 (d) [Any] **A** provision that under this chapter is required or permitted to be set forth in the
6 bylaws.

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

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

12 **(5) If under ORS 65.016 the Secretary of State offers or by rule requires the use of a form**
13 **for the articles of incorporation, the form that the Secretary of State offers or requires must**
14 **include, in addition to the information specified in subsection (1) of this section, a provision**
15 **by means of which the articles indicate whether the corporation elects to indemnify or pay**
16 **the expenses of a director, officer, employee or agent of the corporation under ORS 65.387**
17 **to 65.414.**

18 **SECTION 6. (1) Section 3 of this 2011 Act and the amendments to ORS 60.047, 63.047 and**
19 **65.047 by sections 1, 4 and 5 of this 2011 Act become operative 91 days after the effective date**
20 **of this 2011 Act.**

21 **(2) The Secretary of State may take any action before the operative date specified in**
22 **subsection (1) of this section that is necessary to enable the Secretary of State to exercise,**
23 **on and after the operative date specified in subsection (1) of this section, all of the duties,**
24 **functions and powers conferred on the Secretary of State by section 3 of this 2011 Act and**
25 **the amendments to ORS 60.047, 63.047 and 65.047 by sections 1, 4 and 5 of this 2011 Act.**

26 **SECTION 7. This 2011 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
28 **on its passage.**

29