

House Bill 2461

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

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 person that seeks to form business entity to comply with person's obligations under tax laws of state.

Requires Secretary of State to verify that person that seeks to form business entity has complied with person's obligations under tax laws of state. Prohibits Secretary of State from filing articles of incorporation, articles of organization or other documents required to form business entity until person that seeks to form business entity has complied in full with person's obligations under tax laws of state.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to tax obligations of persons seeking to form business entities; creating new provisions;
3 amending ORS 58.085, 60.044, 62.511, 63.044, 65.044, 67.500, 70.075 and 128.575; and declaring an
4 emergency.

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

6 **SECTION 1.** ORS 58.085 is amended to read:

7 58.085. (1) **Except as provided in subsection (2) of this section**, one or more natural persons
8 may act as incorporators of a professional corporation by delivering articles of incorporation to the
9 Office of Secretary of State for filing. The articles of incorporation shall meet the requirements of
10 the Oregon Business Corporation Act and, in addition, shall set forth:

11 *[(1)]* (a) The professional service or services to be rendered through the corporation.

12 *[(2)]* (b) Any other business purposes permitted under ORS 58.076.

13 **(2)(a) A natural person may not act as an incorporator for a professional corporation**
14 **unless the natural person has complied with the natural person's obligations under the tax**
15 **laws of the State of Oregon. Before filing articles of incorporation under this chapter, the**
16 **Secretary of State shall verify with the Department of Revenue that all of the natural per-**
17 **sons that seek to act as incorporators for a professional corporation have complied with the**
18 **natural persons' obligations under the tax laws of this state. Notwithstanding the provisions**
19 **of this chapter that require the Secretary of State to file documents as a ministerial duty,**
20 **the Secretary of State may not file articles of incorporation for a professional corporation**
21 **until every natural person that seeks to act as an incorporator for the professional corpo-**
22 **ration has complied in full with the natural person's obligations under the tax laws of this**
23 **state.**

24 **(b) For purposes of this subsection, a natural person has complied with the natural**
25 **person's obligations under the tax laws of this state if the Department of Revenue deter-**
26 **mines that the natural person has complied, as appropriate, with:**

27 **(A) The personal income tax laws of this state, including the withholding laws in ORS**

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 **316.162 to 316.221;**

2 **(B) The corporate excise or income tax laws of this state; and**

3 **(C) The provisions of ORS 323.005 to 323.482 or 323.500 to 323.645.**

4 **SECTION 2.** ORS 60.044 is amended to read:

5 60.044. (1) **Except as provided in subsection (2) of this section,** one or more individuals 18
6 years of age or older, a domestic or foreign corporation, a partnership or an association may act
7 as incorporators of a corporation by delivering articles of incorporation to the office **of the Sec-**
8 **retary of State** for filing.

9 **(2)(a) An individual, a corporation, a partnership or an association may not act as an**
10 **incorporator for a corporation unless the individual, corporation, partnership or association**
11 **has complied with the individual's, corporation's, partnership's or association's obligations**
12 **under the tax laws of the State of Oregon. Before filing articles of incorporation under this**
13 **chapter, the Secretary of State shall verify with the Department of Revenue that each of the**
14 **individuals, corporations, partnerships or associations that seeks to act as an incorporator**
15 **has complied with the individual's, corporation's, partnership's or association's obligations**
16 **under the tax laws of this state. Notwithstanding the provisions of this chapter that require**
17 **the Secretary of State to file documents as a ministerial duty, the Secretary of State may**
18 **not file articles of incorporation for a corporation until every individual, corporation, part-**
19 **nership or association that seeks to act as an incorporator for the corporation has complied**
20 **in full with the individual's, corporation's, partnership's or association's obligations under**
21 **the tax laws of this state.**

22 **(b) For purposes of this subsection, an individual, corporation, partnership or association**
23 **has complied with the individual's, corporation's, partnership's or association's obligations**
24 **under the tax laws of this state if the Department of Revenue determines that the individual,**
25 **corporation, partnership or association has complied, as appropriate, with:**

26 **(A) The personal income tax laws of this state, including the withholding laws in ORS**
27 **316.162 to 316.221;**

28 **(B) The corporate excise or income tax laws of this state; and**

29 **(C) The provisions of ORS 323.005 to 323.482 or 323.500 to 323.645.**

30 **SECTION 3.** ORS 62.511 is amended to read:

31 62.511. (1) **Except as provided in subsection (2) of this section,** one or more individuals 18
32 years of age or older, a domestic or foreign corporation or cooperative, a partnership or an associ-
33 ation may act as incorporators of a cooperative by delivering articles of incorporation to the Office
34 of Secretary of State for filing.

35 **(2)(a) An individual, a corporation, a cooperative, a partnership or an association may**
36 **not act as an incorporator for a cooperative unless the individual, corporation, cooperative,**
37 **partnership or association has complied with the individual's, corporation's, cooperative's,**
38 **partnership's or association's obligations under the tax laws of the State of Oregon. Before**
39 **filing articles of incorporation under this chapter, the Secretary of State shall verify with**
40 **the Department of Revenue that each of the individuals, corporations, cooperatives, part-**
41 **nerships or associations that seeks to act as an incorporator has complied with the**
42 **individual's, corporation's, cooperative's, partnership's or association's obligations under the**
43 **tax laws of this state. Notwithstanding the provisions of this chapter that require the Sec-**
44 **retary of State to file documents as a ministerial duty, the Secretary of State may not file**
45 **articles of incorporation for a cooperative until every individual, corporation, cooperative,**

1 **partnership or association that seeks to act as an incorporator for the cooperative has**
 2 **complied in full with the individual's, corporation's, cooperative's, partnership's or**
 3 **association's obligations under the tax laws of this state.**

4 **(b) For purposes of this subsection, an individual, corporation, cooperative, partnership**
 5 **or association has complied with the individual's, corporation's, cooperative's, partnership's**
 6 **or association's obligations under the tax laws of this state if the Department of Revenue**
 7 **determines that the individual, corporation, cooperative, partnership or association has**
 8 **complied, as appropriate, with:**

9 **(A) The personal income tax laws of this state, including the withholding laws in ORS**
 10 **316.162 to 316.221;**

11 **(B) The corporate excise or income tax laws of this state; and**

12 **(C) The provisions of ORS 323.005 to 323.482 or 323.500 to 323.645.**

13 **SECTION 4.** ORS 63.044 is amended to read:

14 **63.044. (1) Except as provided in subsection (2) of this section, one or more individuals 18**
 15 **years of age or older or other entities may form a limited liability company by executing and de-**
 16 **livering articles of organization to the office of the Secretary of State for filing. Organizers need**
 17 **not be members of the limited liability company.**

18 **(2)(a) An individual or entity may not form a limited liability company unless the indi-**
 19 **vidual or entity has complied with the individual's or entity's obligations under the tax laws**
 20 **of the State of Oregon. Before filing articles of organization under this chapter, the Secre-**
 21 **tary of State shall verify with the Department of Revenue that each of the individuals or**
 22 **entities that seek to form a limited liability company has complied with the individual's or**
 23 **entity's obligations under the tax laws of this state. Notwithstanding the provisions of this**
 24 **chapter that require the Secretary of State to file documents as a ministerial duty, the**
 25 **Secretary of State may not file articles of organization for a limited liability company until**
 26 **every individual or entity that seeks to form a limited liability company has complied in full**
 27 **with the individual's or entity's obligations under the tax laws of this state.**

28 **(b) For purposes of this subsection, an individual or entity has complied with the**
 29 **individual's or entity's obligations under the tax laws of this state if the Department of Re-**
 30 **venue determines that the individual or entity has complied, as appropriate, with:**

31 **(A) The personal income tax laws of this state, including the withholding laws in ORS**
 32 **316.162 to 316.221;**

33 **(B) The corporate excise or income tax laws of this state; and**

34 **(C) The provisions of ORS 323.005 to 323.482 or 323.500 to 323.645.**

35 **SECTION 5.** ORS 65.044 is amended to read:

36 **65.044. (1) Except as provided in subsection (2) of this section, one or more individuals 18**
 37 **years of age or older, a domestic or foreign corporation, a partnership or an association may act**
 38 **as incorporators of a corporation by delivering articles of incorporation to the Secretary of State**
 39 **for filing.**

40 **(2)(a) An individual, a corporation, a partnership or an association may not act as an**
 41 **incorporator for a corporation unless the individual, corporation, partnership or association**
 42 **has complied with the individual's, corporation's, partnership's or association's obligations**
 43 **under the tax laws of the State of Oregon. Before filing articles of incorporation under this**
 44 **chapter, the Secretary of State shall verify with the Department of Revenue that each of the**
 45 **individuals, corporations, partnerships or associations that seeks to act as an incorporator**

1 **has complied with the individual's, corporation's, partnership's or association's obligations**
 2 **under the tax laws of this state. Notwithstanding the provisions of this chapter that require**
 3 **the Secretary of State to file documents as a ministerial duty, the Secretary of State may**
 4 **not file articles of incorporation for a corporation until every individual, corporation, part-**
 5 **nership or association that seeks to act as an incorporator for the corporation has complied**
 6 **in full with the individual's, corporation's, partnership's or association's obligations under**
 7 **the tax laws of this state.**

8 **(b) For purposes of this subsection, an individual, corporation, partnership or association**
 9 **has complied with the individual's, corporation's, partnership's or association's obligations**
 10 **under the tax laws of this state if the Department of Revenue determines that the individual,**
 11 **corporation, partnership or association has complied, as appropriate, with:**

12 **(A) The personal income tax laws of this state, including the withholding laws in ORS**
 13 **316.162 to 316.221;**

14 **(B) The corporate excise or income tax laws of this state; and**

15 **(C) The provisions of ORS 323.005 to 323.482 or 323.500 to 323.645.**

16 **SECTION 6.** ORS 67.500 is amended to read:

17 67.500. (1)(a) Notwithstanding any other provision of this chapter, a partnership, not including
 18 a limited partnership, may register as a limited liability partnership or apply for authority as a
 19 foreign limited liability partnership only if *[it]*:

20 *[(a)]* **(A) The partnership:**

21 **(i) Renders professional service; or**

22 *[(b)]* **(ii) Is affiliated with a limited liability partnership or a foreign limited liability partnership**
 23 **that renders professional service and *[renders services related to or complementary to the professional***
 24 ***service rendered by, or provides services or facilities to, the limited liability partnership or foreign***
 25 ***limited liability partnership that renders professional service]* the partnership renders services that**
 26 **complement or are related to professional services that the limited liability partnership or**
 27 **foreign limited liability partnership renders, or the partnership provides facilities or services**
 28 **to a limited liability partnership or foreign limited liability partnership that renders profes-**
 29 **sional services; and**

30 **(B) The partnership and the individuals or entities that constitute the partnership have**
 31 **complied with, as appropriate, the partnership's, individual's or entity's obligations under the**
 32 **tax laws of the State of Oregon. Before registering a partnership as a limited liability part-**
 33 **nership or granting authority to a partnership as a foreign limited liability partnership, the**
 34 **Secretary of State shall verify with the Department of Revenue that the partnership or an**
 35 **individual or entity that is a partner in the partnership has complied with the partnership's,**
 36 **individual's or entity's obligations under the tax laws of this state. Notwithstanding the**
 37 **provisions of this chapter that require the Secretary of State to file documents as a**
 38 **ministerial duty, the Secretary of State may not file an application for registration as a**
 39 **limited liability partnership or for authority as a foreign limited liability partnership until the**
 40 **partnership and every individual or entity that is a partner in the partnership have complied**
 41 **in full with the partnership's, individual's or entity's obligations under the tax laws of this**
 42 **state.**

43 **(b) For purposes of this subsection, a partnership, individual or entity has complied with**
 44 **the partnership's, individual's or entity's obligations under the tax laws of this state if the**
 45 **Department of Revenue determines that the partnership, individual or entity has complied,**

1 as appropriate, with:

2 (A) The personal income tax laws of this state, including the withholding laws in ORS
3 316.162 to 316.221;

4 (B) The corporate excise or income tax laws of this state; and

5 (C) The provisions of ORS 323.005 to 323.482 or 323.500 to 323.645.

6 (2) For purposes of subsection (1)(a)(A)(ii) of this section, a partnership is affiliated with a
7 limited liability partnership or foreign limited liability partnership that renders professional services
8 if:

9 (a) At least a majority of partners in one partnership are partners in the other partnership;

10 (b) At least a majority of the partners in each partnership also are partners or hold interest in
11 another person and each partnership renders services pursuant to an agreement with *[such]* **the**
12 other person; or

13 (c) One partnership directly or indirectly through one or more intermediaries controls, is con-
14 trolled by or is under common control with the other partnership.

15 (3) The terms and conditions by which a partnership becomes a limited liability partnership and
16 a decision to cancel registration as a limited liability partnership must be approved by either:

17 (a) The vote of the partners necessary to amend the partnership agreement; or

18 (b) In the case of a partnership agreement that includes provisions that expressly address the
19 obligations of partners to make contributions to cover partnership losses, the vote of the partners
20 necessary to amend such provisions.

21 **SECTION 7.** ORS 70.075 is amended to read:

22 70.075. (1) To form a limited partnership, a certificate of limited partnership must be executed
23 and submitted for filing to the Office of Secretary of State. The certificate *[shall]* **must** set forth the
24 following:

25 (a) The name of the limited partnership.

26 (b) The address of the office *[required to be maintained]* **the limited partnership must main-**
27 **tain** under ORS 70.020 and the name and street address of the agent.

28 (c) A mailing address to which the Secretary of State may mail notices as *[required by]* this
29 chapter **requires**.

30 (d) The name and the business address of each general partner.

31 (e) The latest date upon which the limited partnership is to dissolve.

32 (f) Any other matters the general partners decide to include in the certificate.

33 (g) Any additional identifying information that the Secretary of State may require by rule.

34 (2)(a) **Subject to the requirements set forth in paragraph (b) of this subsection**, a limited
35 partnership is formed when the Secretary of State has filed the certificate or at any later time
36 specified in the certificate of limited partnership if, in either case, there has been substantial com-
37 pliance with the requirements of this section.

38 (b) **Before filing a certificate of limited partnership, the Secretary of State shall verify**
39 **with the Department of Revenue that each of the general partners in the proposed limited**
40 **partnership has complied with the general partners' obligations under the tax laws of the**
41 **State of Oregon. Notwithstanding the provisions of this chapter that require the Secretary**
42 **of State to file documents as a ministerial duty, the Secretary of State may not file a cer-**
43 **tificate of limited partnership until every general partner in the proposed limited partnership**
44 **has complied in full with the general partner's obligations under the tax laws of this state.**

45 (c) **For purposes of this subsection, a general partner has complied with the general**

1 **partner's obligations under the tax laws of this state if the Department of Revenue deter-**
 2 **mines that the general partner has complied, as appropriate, with:**

3 **(A) The personal income tax laws of this state, including the withholding laws in ORS**
 4 **316.162 to 316.221;**

5 **(B) The corporate excise or income tax laws of this state; and**

6 **(C) The provisions of ORS 323.005 to 323.482 or 323.500 to 323.645.**

7 **SECTION 8.** ORS 128.575 is amended to read:

8 128.575. (1) [Any] **A business trust** [*desiring*] **that intends** to do business in this state shall first
 9 submit to the Office of Secretary of State a copy of the trust instrument [*creating*] **that created** the
 10 trust and any subsequent amendments to the trust and a document [*setting*] **that sets** forth:

11 (a) The business trust name and the state or country of formation;

12 (b) The names and addresses of [*its*] **the business trust's** trustees;

13 (c) The street address of the business trust's registered office in this state and the name of the
 14 registered agent;

15 (d) A mailing address to which the Secretary of State may mail notices; and

16 (e) Any additional identifying information that the Secretary of State by rule may require.

17 (2) The filing described in subsection (1) of this section [*shall*] **must** be accompanied by the
 18 applicable filing fee.

19 (3)(a) If the Secretary of State finds that the document contains the required information **and**
 20 **has made the verification required under paragraph (b) of this subsection**, the Secretary of
 21 State, when all fees have been paid, shall file the trust instrument and document and return an ac-
 22 knowledgment of filing to the sender.

23 **(b) Before filing the trust instrument and document under this section, the Secretary of**
 24 **State shall verify with the Department of Revenue that each of the trustees of the business**
 25 **trust has complied with the trustee's obligations under the tax laws of the State of Oregon.**
 26 **The Secretary of State may not file a trust instrument and document under this section until**
 27 **every trustee of the business trust has complied in full with the trustee's obligations under**
 28 **the tax laws of this state.**

29 **(c) For purposes of this subsection, a trustee has complied with the trustee's obligations**
 30 **under the tax laws of this state if the Department of Revenue determines that the trustee**
 31 **has complied, as appropriate, with:**

32 **(A) The personal income tax laws of this state, including the withholding laws in ORS**
 33 **316.162 to 316.221;**

34 **(B) The corporate excise or income tax laws of this state; and**

35 **(C) The provisions of ORS 323.005 to 323.482 or 323.500 to 323.645.**

36 (4) If a business trust amends [*its*] **the business trust's** trust instrument, [*it*] **the business**
 37 **trust** shall submit for filing a copy of the amendment to the Office of Secretary of State. The
 38 amendment shall set forth:

39 (a) The name of the business trust as shown on the records of the Office of Secretary of State;
 40 and

41 (b) The information as changed.

42 **SECTION 9.** (1) **The amendments to ORS 58.085, 60.044, 62.511, 63.044, 65.044, 67.500, 70.075**
 43 **and 128.575 by sections 1 to 8 of this 2013 Act become operative 91 days after the effective**
 44 **date of this 2013 Act.**

45 **(2) The Secretary of State may take any action before the operative date specified in**

1 subsection (1) of this section that is necessary to enable the Secretary of State to exercise,
2 on and after the operative date specified in subsection (1) of this section, all of the duties,
3 functions and powers conferred on the Secretary of State by the amendments to ORS 58.085,
4 60.044, 62.511, 63.044, 65.044, 67.500, 70.075 and 128.575 by sections 1 to 8 of this 2013 Act.

5 SECTION 10. This 2013 Act being necessary for the immediate preservation of the public
6 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
7 on its passage.

8
