

House Bill 2567

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

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**.

Permits board of directors of corporation to authorize participation in shareholders' meeting by remote communication subject to guidelines and procedures of board. Requires board to implement measures to verify that participants are shareholders or proxy holders and that participation by remote communication is effective.

A BILL FOR AN ACT

1
2 Relating to shareholders' meetings conducted by remote communication; amending ORS 60.001,
3 60.201, 60.204, 60.221, 60.222 and 60.307.

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

5 **SECTION 1.** ORS 60.001 is amended to read:

6 60.001. As used in this chapter:

7 (1) "Anniversary" means *[that]* **the** day each year **that is** exactly one or more years after:

8 (a) The date *[of filing by]* **on which** the Secretary of State *[of]* **files** the articles of incorporation
9 *[in the case of]* **for** a domestic corporation.

10 (b) The date *[of filing by]* **on which** the Secretary of State *[of]* **files** an application for authority
11 to transact business *[in the case of]* **for** a foreign corporation.

12 (2) "Articles of incorporation" *[include]* **means the articles described in ORS 60.047**, amended
13 and restated articles of incorporation, articles of conversion *[and]* **or** articles of merger.

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

16 (4) "Conspicuous" means *[so]* written, **printed or typed in text that is italicized, boldfaced,**
17 **of a contrasting color, capitalized or underlined or similarly enhanced so** that a reasonable
18 person against whom the writing is to operate should have noticed the writing. *[For example, a*
19 *writing printed in italics, boldface or contrasting color, typed in capitals or underlined is*
20 *conspicuous.]*

21 (5) "Corporation" or "domestic corporation" means a corporation for profit **that is** incorporated
22 under or subject to the provisions of this chapter **and** that is not a foreign corporation.

23 (6) "Delivery" means any method of delivery used in conventional commercial practice, *[includ-*
24 *ing delivery]* **whether** by hand, mail, commercial delivery *[and]* **or** electronic transmission.

25 (7) "Distribution" means a direct or indirect transfer of money or other property, except of a
26 corporation's own shares, or **an** incurrence of indebtedness by a corporation to or for the benefit
27 of the corporation's shareholders in respect of any of the corporation's shares*[. A distribution may*
28 *be]*, in the form of a declaration or payment of a dividend, a purchase, redemption or other acqui-
29 sition of shares, a distribution of indebtedness, or otherwise.

30 (8) "Domestic limited liability company" means an entity that is an unincorporated association

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 *[having]* **that has** one or more members and that is organized under ORS chapter 63.

2 (9) “Domestic nonprofit corporation” means a corporation not for profit **that is** incorporated
3 under ORS chapter 65.

4 (10) “Domestic professional corporation” means a corporation organized under ORS chapter 58
5 for the purpose of rendering professional services and for the purposes provided under ORS chapter
6 58.

7 (11) “Electronic signature” has the meaning given that term in ORS 84.004.

8 (12) “Electronic transmission” means any process of communication that does not directly in-
9 volve the physical transfer of paper and that is suitable for *[the retention, retrieval and reproduction*
10 *of]* **the recipient to retain, retrieve and reproduce** information *[by the recipient]*.

11 (13) “Employee” includes an officer but not a director, unless the director accepts duties that
12 make the director also an employee.

13 (14) “Entity” includes a corporation, foreign corporation, nonprofit corporation, profit and
14 nonprofit unincorporated association, business trust, partnership, two or more persons having a joint
15 or common economic interest, any state, the United States, a federally recognized Native American
16 or American Indian tribal government and any foreign government.

17 (15) “Foreign corporation” means a corporation for profit **that is** incorporated under laws other
18 than the laws of this state.

19 (16) “Foreign limited liability company” means an entity that is an unincorporated association
20 organized under laws other than the laws of this state and that is organized under a statute under
21 which an association may be formed that affords to each of the entity’s members limited liability
22 with respect to liabilities of the entity.

23 (17) “Foreign nonprofit corporation” means a corporation not for profit **that is** organized under
24 laws other than the laws of this state.

25 (18) “Foreign professional corporation” means a professional corporation **that is** organized un-
26 der laws other than the laws of this state.

27 (19) “Governmental subdivision” includes an authority, county, district and municipality.

28 *[(20) “Includes” denotes a partial definition.]*

29 *[(21)]* **(20)** “Individual” means a natural person. *“Individual” includes]* **or** the estate of an in-
30 competent individual or a deceased individual.

31 *[(22) “Means” denotes an exhaustive definition.]*

32 *[(23)]* **(21)** “Office,” when used to refer to the administrative unit directed by the Secretary of
33 State, means the office of the Secretary of State.

34 *[(24)]* **(22)** “Person” *[includes]* **means** individual *[and]* **or** entity.

35 *[(25)]* **(23)** “Principal office” means the office, in or out of this state, where the principal exec-
36 utive offices of a domestic or foreign corporation are located and designated in the annual report
37 or **in the** application for authority to transact business in this state.

38 *[(26)]* **(24)** “Proceeding” *[includes]* **means a** civil, criminal, administrative *[and]* **or** investigatory
39 action.

40 *[(27)]* **(25)** “Record date” means the date established under this chapter on which a corporation
41 determines the identity of the corporation’s shareholders and their shareholdings for purposes of this
42 chapter. *[The determinations shall be made as of the close of business on the record date unless an-*
43 *other time for doing so is specified when the record date is fixed.]*

44 **(26) “Remote communication” means any method by which a person that is not physically**
45 **present at the location at which a meeting occurs may nevertheless hear or otherwise com-**

1 **municate at substantially the same time with other persons at the meeting and have access**
 2 **to materials necessary to participate or vote in the meeting to the extent of the person's**
 3 **authorization to participate or vote.**

4 [(28)] (27) "Shares" means the units into which the proprietary interest in a corporation [are]
 5 is divided.

6 [(29)] (28) "Shareholder" means the person in whose name shares are registered in the records
 7 of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee
 8 certificate on file with a corporation.

9 [(30)] (29) "Signature" [includes] **means** any manual, facsimile, conformed or electronic signa-
 10 ture.

11 **(30) "Single voting group" means a voting group the shares of which are entitled by the**
 12 **articles of incorporation or this chapter to vote generally on a matter.**

13 (31) "State," when referring to a part of the United States, [includes] **means** a state, common-
 14 wealth, territory [and] **or** insular possession of the United States and the agencies and governmental
 15 subdivisions of the state, commonwealth, territory or insular possession.

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

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

20 (34) "Voting group" means all shares of one or more classes or series that under the articles
 21 of incorporation or this chapter are entitled to vote and be counted together collectively on a matter
 22 at a meeting of shareholders. [*All shares entitled by the articles of incorporation or this chapter to*
 23 *vote generally on the matter are for that purpose a single voting group.*]

24 **SECTION 2.** ORS 60.201 is amended to read:

25 60.201. (1) Except as provided in subsection (4) of this section, a corporation shall hold an an-
 26 nual meeting of the shareholders at a time stated in or fixed in accordance with the bylaws.

27 (2) **An** annual shareholders' [*meetings*] **meeting** may be held in or out of this state at the place
 28 stated in or fixed in accordance with the bylaws[. *If no place is stated in or fixed in accordance with*
 29 *the bylaws, annual meetings shall*] **or at a place the board of directors specifies, provided that**
 30 **the board's specification is not inconsistent with the bylaws. If the bylaws do not state or**
 31 **fix a place for the annual meeting and the board of directors does not determine that the**
 32 **meeting will occur solely by means of remote communication, the annual meeting must** be
 33 held at the corporation's principal office.

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

36 (4) If the articles of incorporation or bylaws of a corporation registered under the Investment
 37 Company Act of 1940, as amended, so provide, the corporation [*shall*] **may** not be required to hold
 38 an annual meeting in any year in which an election of directors is not required under the Invest-
 39 ment Company Act of 1940, as amended.

40 **SECTION 3.** ORS 60.204 is amended to read:

41 60.204. (1) A corporation shall hold a special meeting of shareholders:

42 (a) On call of the board of directors of the corporation or **of** a person [*authorized to do so by*]
 43 **that** the articles of incorporation or bylaws **authorize to call the meeting;** or

44 (b) Except as provided in this paragraph and in subsection (2) of this section, if the holders of
 45 at least 10 percent of all votes entitled to be cast on any issue proposed for consideration at the

1 proposed special meeting sign, date and deliver to the corporation’s secretary one or more written
 2 demands for the meeting [*describing*] **that describe** the purpose or purposes for which the meeting
 3 is to be held. The articles of incorporation may fix a lower percentage or a higher percentage not
 4 exceeding 25 percent of all the votes entitled to be cast on any issue proposed for consideration.
 5 Unless otherwise provided in the articles of incorporation, a shareholder who signed the original
 6 demand for a special meeting may revoke the shareholder’s demand by signing a writing that con-
 7 tains a revocation. The revocation is effective if the corporation receives the writing before the
 8 corporation receives a demand sufficient to require the corporation to hold a special meeting.

9 (2) A publicly traded corporation shall hold a special meeting at the demand of shareholders of
 10 the publicly traded corporation only if the articles of incorporation or bylaws authorize the share-
 11 holders to demand a special meeting. The articles of incorporation or bylaws may also specify what
 12 percentage of votes entitled to be cast on an issue proposed for consideration at the special meeting
 13 will be necessary to require the publicly traded corporation to hold the special meeting.

14 (3) If not otherwise fixed under ORS 60.207 or 60.221, the record date for determining share-
 15 holders entitled to demand a special meeting is the date the first shareholder signs the demand.

16 (4) A special shareholders’ [*meetings*] **meeting** may be held in or out of this state at the place
 17 stated in or fixed in accordance with the bylaws[. *If no place is stated or fixed in accordance with*
 18 *the bylaws,*] **or at a place the board of directors specifies, provided that the board’s specifi-**
 19 **cation is not inconsistent with the bylaws. If the bylaws do not state or fix a place for the**
 20 **special meeting and the board of directors does not determine that the special meeting will**
 21 **occur solely by means of remote communication, the special [*meetings shall*] meeting must** be
 22 held at the corporation’s principal office.

23 (5) Only business within the purpose or purposes described in the meeting notice required by
 24 ORS 60.214 (3) may be conducted at a special shareholders’ meeting.

25 (6) As used in this section, “publicly traded corporation” means a corporation the shares of
 26 which are traded on an established exchange or securities market that is subject to the regulatory
 27 authority of a state, the United States, a foreign government or an agency of a state, the United
 28 States or a foreign government.

29 **SECTION 4.** ORS 60.221 is amended to read:

30 60.221. (1) The bylaws may fix or provide the manner of fixing the record date for one or more
 31 voting groups in order to determine the shareholders entitled to notice of a shareholders’ meeting,
 32 to demand a special meeting, to vote or to take any other action. The record date [*shall*] **must** be
 33 the same for all voting groups. If the bylaws do not fix or provide for fixing a record date, the board
 34 of directors of the corporation may fix a future date, or a later time on the date the board of di-
 35 rectors fixes the record date, as the record date.

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

38 (b) **A determination of shareholders must be made as of the close of business on the re-**
 39 **cord date unless another time for making the determination is specified when the record**
 40 **date is fixed.**

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

45 (4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for

1 the original meeting, *[it]* **the court** may provide that the original record date continues in effect or
 2 *[it]* **the court** may fix a new record date.

3 **SECTION 5.** ORS 60.222 is amended to read:

4 60.222. *[(1) Unless the articles of incorporation or bylaws provide otherwise, the bylaws or the*
 5 *board of directors, by resolution adopted in advance either specifically with respect to a particular*
 6 *meeting or generally with respect to future meetings, may permit any or all shareholders to participate*
 7 *in an annual or special meeting by, or may permit the conduct of a meeting through, use of any means*
 8 *of communication by which all shareholders participating may simultaneously hear each other. A*
 9 *shareholder participating in a meeting by this means is deemed to be present in person at the*
 10 *meeting.]*

11 **(1)(a) Shareholders and proxy holders that are not physically present for a shareholders'**
 12 **meeting may participate in the meeting, be deemed present in person and vote if the board**
 13 **of directors authorizes participation by remote communication. Participation by remote**
 14 **communication is subject to guidelines and procedures that the board adopts.**

15 **(b) Before a board of directors may authorize shareholders or proxy holders to partic-**
 16 **ipate by remote communication in a shareholders' meeting, the corporation shall implement**
 17 **measures to:**

18 **(A) Verify that a person that is participating in the meeting by remote communication**
 19 **is a shareholder or a proxy holder; and**

20 **(B) Ensure that a shareholder or proxy holder may participate by remote communication**
 21 **in an effective manner.**

22 **(c) The corporation shall maintain a record of the vote or other action of a shareholder**
 23 **or proxy holder that participates in a shareholders' meeting by remote communication.**

24 (2) The notice of each annual or special meeting of shareholders at which **the board authorizes**
 25 participation in the manner *[referred to]* **described** in subsection (1) of this section *[is permitted]*
 26 shall state that *[fact]* **the board authorizes participation by remote communication** and shall
 27 describe how *[any]* **a** shareholder *[desiring to participate]* may notify the corporation of the
 28 shareholder's desire to *[be included]* **participate in the meeting by remote communication.**

29 **SECTION 6.** ORS 60.307 is amended to read:

30 60.307. (1) A board of directors must consist of one or more individuals, with the number speci-
 31 fied in or fixed in accordance with the articles of incorporation or bylaws. Notwithstanding ORS
 32 60.001 *[(21)]* **(20)**, the estate of an incompetent individual or a deceased individual may not be a di-
 33 rector.

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

36 (3) Directors are elected at the first annual shareholders' meeting and at each annual meeting
 37 thereafter unless their terms are staggered under ORS 60.317.

38