

House Bill 2330

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

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**.

Allows business entities that convert to or merge with other business entities to specify location of plan of conversion or plan of merger and to provide copy of plan of conversion or plan of merger upon request and at no cost to owners, in lieu of including plan of conversion or plan of merger with articles of conversion or articles of merger that are filed with Secretary of State.

Provides that corporations must deliver written dissenters' notice to shareholders who are entitled to assert dissenters' rights in connection with proposed corporate action that creates dissenters' rights and that is authorized by written consent of shareholders without meeting.

A BILL FOR AN ACT

1
2 Relating to business entity operations; creating new provisions; and amending ORS 60.476, 60.494,
3 60.561, 60.567, 63.476, 63.494, 65.491, 67.346, 67.364, 70.515 and 70.535.

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

5 **SECTION 1.** ORS 60.476 is amended to read:

6 60.476. (1) After [*conversion is approved by*] the owners **approve a conversion**, the converting
7 business entity shall:

8 (a) File articles of conversion[, *which shall*] **that** state the name and type of business entity
9 [*prior to*] **that existed before** conversion and the name and type of business entity **that will exist**
10 after conversion[, *and shall include the plan of conversion.*]; **and**

11 (b) **File a plan of conversion or, in lieu of a plan of conversion, a written declaration that:**

12 (A) **Identifies an address for an office of the converted entity where the plan of conver-**
13 **sion is on file; and**

14 (B) **States that the converted entity will provide any owner with a copy of the plan of**
15 **conversion upon request and at no cost.**

16 (2) The conversion takes effect at the later of the date and time determined [*pursuant to*] **in**
17 **accordance with** ORS 60.011 or the date and time determined [*pursuant to*] **under** the statutes
18 [*governing*] **that govern** the business entity that is not a corporation.

19 **SECTION 2.** ORS 60.494 is amended to read:

20 60.494. (1) After **the owners of each business entity approve** a plan of merger or share ex-
21 change, [*is approved by the owners of each business entity, or adopted by*] **or** a board of directors
22 **adopts the plan of merger or share exchange** if shareholder approval is not required, the sur-
23 viving or acquiring business entity shall deliver to the office of the Secretary of State[,] for
24 filing[.]:

25 (a) Articles of merger or articles of share exchange [*setting*] **that set** forth:

26 [(a) *The plan of merger or share exchange;*]

27 [(b) *For each corporation that is a party to the merger or share exchange;*]

28 [(A) *If shareholder approval was not required, a statement to that effect; or*]

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 *[(B) If shareholder approval was required:]*

2 *[(i) The designation, number of outstanding shares and number of votes entitled to be cast by each*
 3 *voting group entitled to vote separately on the plan as to each corporation; and]*

4 *[(ii) The total number of votes cast for and against the plan by each voting group entitled to vote*
 5 *separately on the plan; and]*

6 *[(c) For each business entity other than a corporation that is a party to the merger, a statement that*
 7 *the plan of merger was duly authorized and approved in accordance with the statutes governing that*
 8 *business entity.]*

9 **(A) The name and type of each business entity that intends to merge and the name and**
 10 **type of the business entity that will survive the merger; or**

11 **(B) The name of the corporation that intends to acquire shares in a share exchange and**
 12 **the name of the corporation whose shares will be acquired;**

13 **(b) A plan of merger or plan of share exchange, as appropriate, or in lieu of a plan of**
 14 **merger or plan of share exchange, a written declaration that:**

15 **(A) Identifies an address for an office of the surviving entity where the plan of merger**
 16 **or plan of share exchange is on file; and**

17 **(B) States that the surviving entity will provide any owner or shareholder of any con-**
 18 **stituent entity with a copy of the plan of merger or plan of share exchange upon request and**
 19 **at no cost; and**

20 **(c) A written declaration that states that:**

21 **(A) Each corporation that is a party to the merger or share exchange:**

22 **(i) Obtained the requisite shareholder approval; or**

23 **(ii) Did not require shareholder approval.**

24 **(B) Each business entity, other than a corporation, that is a party to the merger or share**
 25 **exchange obtained authorization and approval in accordance with the statutes that govern**
 26 **the business entity.**

27 (2) The merger or share exchange takes effect on the later of the date and time determined
 28 *[pursuant to]* **in accordance with** ORS 60.011 or the date and time determined *[pursuant to]* **in ac-**
 29 **cordance with** the statutes governing any business entity, other than a corporation, that is a party
 30 to the merger.

31 **SECTION 3.** ORS 63.476 is amended to read:

32 63.476. (1) After *[conversion is approved by]* the owners **approve a conversion**, the converting
 33 business entity shall:

34 **(a) File articles of conversion***[, which shall]* **that** state the name and type of business entity
 35 *[prior to]* **that existed before** conversion and the name and type of business entity **that will exist**
 36 after conversion*[, and shall include the plan of conversion.]*; **and**

37 **(b) File a plan of conversion or, in lieu of a plan of conversion, a written declaration that:**

38 **(A) Identifies an address for an office of the converted entity where the plan of conver-**
 39 **sion is on file; and**

40 **(B) States that the converted entity will provide any owner with a copy of the plan of**
 41 **conversion upon request and at no cost.**

42 (2) The conversion takes effect at the later of the date and time determined *[pursuant to]* **in**
 43 **accordance with** ORS 63.011 or the date and time determined *[pursuant to]* **under** the statutes
 44 *[governing]* **that govern** the business entity that is not a limited liability company.

45 **SECTION 4.** ORS 63.494 is amended to read:

1 63.494. (1) After **each business entity that is a party to a merger approves** a plan of merger
 2 *[is approved by each business entity that is a party to the merger]*, the surviving business entity shall
 3 deliver to the office of the Secretary of State[,] for filing[.];

4 (a) Articles of merger *[setting forth:]* **that set forth the name and type of each business**
 5 **entity that intends to merge and the name and type of the business entity that will survive**
 6 **the merger;**

7 *[(a) The plan of merger; and]*

8 *[(b) A statement that the plan of merger was duly authorized and approved by each business entity*
 9 *that is a party to the merger in accordance with ORS 63.487.]*

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

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

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

15 (c) **A written declaration that states that each business entity that is a party to the**
 16 **merger duly authorized and approved the plan of merger in accordance with ORS 63.487.**

17 (2) The merger takes effect on the later of the date and time determined *[pursuant to]* **in ac-**
 18 **cordance with** ORS 63.011 or the date and time determined *[pursuant to]* **under** the statutes *[gov-*
 19 *erning]* **that govern** any party to the merger that is a business entity other than a limited liability
 20 company.

21 **SECTION 5.** ORS 65.491 is amended to read:

22 65.491. (1) After **the board of directors of each merging corporation and, if required under**
 23 **ORS 65.487, members and any other persons approve** a plan of merger *[is approved by the board*
 24 *of directors of each merging corporation and, if required by ORS 65.487, by the members and any other*
 25 *persons]*, the surviving corporation shall deliver to the Office of the Secretary of State for filing:

26 (a) Articles of merger *[setting forth:]* **that set forth the name and type of each business**
 27 **entity that intends to merge and the name and type of the business entity that will survive**
 28 **the merger;**

29 *[(a) The plan of merger.]*

30 *[(b) If approval of members was not required, a statement to that effect and a statement that the*
 31 *plan was approved by a sufficient vote of the board of directors of each corporation.]*

32 *[(c) If approval by the members of one or more corporations was required:]*

33 *[(A) The designation and number of members of, and number of votes entitled to be cast by, each*
 34 *class entitled to vote separately on the plan; and]*

35 *[(B) The total number of votes cast for and against the plan by each class entitled to vote separately*
 36 *on the plan.]*

37 *[(d) If approval of the plan by some person or persons other than the members or the board is re-*
 38 *quired pursuant to ORS 65.487 (1)(c), a statement that the approval was obtained.]*

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

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

42 (B) **States that the surviving entity will provide any owner or shareholder of any con-**
 43 **stituent entity with a copy of the plan of merger upon request and at no cost;**

44 (c) **A written declaration that:**

45 (A) **States that a sufficient vote of the board of directors of each corporation approved**

1 **the plan of merger, if the approval of members was not required.**

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

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

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

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

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

12 **SECTION 6.** ORS 60.561 is amended to read:

13 60.561. (1) If a proposed corporate action [*creating*] **that creates** dissenters' rights under ORS
 14 60.554 is submitted to a vote at a shareholders' meeting, the meeting notice must state that share-
 15 holders are or may be entitled to assert dissenters' rights under ORS 60.551 to 60.594 and [*be ac-*
 16 *companied by*] a copy of ORS 60.551 to 60.594 **must accompany the notice.**

17 (2) If a corporate action [*creating*] **that creates** dissenters' rights under ORS 60.554 is taken
 18 without [*a vote of*] **approval of the** shareholders, the corporation shall notify in writing all share-
 19 holders entitled to assert dissenters' rights that the action was taken and send the shareholders
 20 entitled to assert dissenters' rights the dissenters' notice described in ORS 60.567.

21 **SECTION 7.** ORS 60.567 is amended to read:

22 60.567. (1) If a proposed corporate action [*creating*] **that creates** dissenters' rights under ORS
 23 60.554 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters'
 24 notice to all shareholders who satisfied the requirements of ORS 60.564. **If a proposed corporate**
 25 **action that creates dissenters' rights under ORS 60.554 is authorized by written consent**
 26 **without a meeting in accordance with ORS 60.211 (1)(b), the corporation shall deliver a**
 27 **written dissenters' notice to all shareholders who are entitled to assert dissenters' rights.**

28 (2) The dissenters' notice [*shall*] **must** be sent no later than 10 days after the corporate action
 29 was taken, and [*shall*] **must**:

30 (a) State where the payment demand [*shall*] **must** be sent and where and when certificates for
 31 certificated shares [*shall*] **must** be deposited[;].

32 (b) Inform holders of uncertificated shares to what extent transfer of the shares will be re-
 33 stricted after the payment demand is received[;].

34 (c) Supply a form for demanding payment that includes the date of the first announcement of the
 35 terms of the proposed corporate action to news media or to shareholders and requires that the
 36 person asserting dissenters' rights certify whether or not the person acquired beneficial ownership
 37 of the shares before that date[;].

38 (d) Set a date by which the corporation must receive the payment demand. This date may not
 39 be fewer than 30 nor more than 60 days after the date **on which the notice described in** subsection
 40 (1) of this section [*notice*] is delivered[; *and*].

41 (e) Be accompanied by a copy of ORS 60.551 to 60.594.

42 **SECTION 8.** ORS 67.346 is amended to read:

43 67.346. (1) After [*conversion is approved by*] the owners **approve a conversion**, the converting
 44 business entity shall:

45 **(a) File articles of conversion[, which shall] that** state the name and type of business entity

1 [prior to] **that existed before** conversion, the name and type of business entity **that will exist** after
 2 conversion and the names and addresses of at least two partners[, *and shall include the plan of*
 3 *conversion.*]; **and**

4 **(b) File a plan of conversion or, in lieu of a plan of conversion, a written declaration that:**

5 **(A) Identifies an address for an office of the converted entity where the plan of conver-**
 6 **sion is on file; and**

7 **(B) States that the converted entity will provide any owner with a copy of the plan of**
 8 **conversion upon request and at no cost.**

9 (2) The conversion takes effect at the later of the date and time determined [*pursuant to*] **in**
 10 **accordance with** ORS 67.017 or the date and time determined [*pursuant to*] **under** the statutes
 11 [*governing*] **that govern** the business entity that is not a partnership.

12 **SECTION 9.** ORS 67.364 is amended to read:

13 67.364. (1) After **each business entity that is a party to a merger has approved** a plan of
 14 merger [*is approved by each business entity that is a party to the merger*], the surviving business en-
 15 tity shall deliver to the office of the Secretary of State[,] for filing[.];

16 **(a) Articles of merger that set forth the name and type of each business entity that in-**
 17 **tends to merge and the name and type of the business entity that will survive the merger,**
 18 except that no filing is required if all of the parties to the merger are partnerships that have not
 19 registered as limited liability partnerships[. *The articles of merger shall set forth:*];

20 [*(a) The plan of merger; and*]

21 [*(b) A statement that the plan of merger was duly authorized and approved by each business entity*
 22 *that is a party to the merger in accordance with ORS 67.360.*]

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

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

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

28 **(c) A written declaration that states that each business entity that is a party to the**
 29 **merger duly authorized and approved the plan of merger in accordance with ORS 67.360.**

30 (2) The merger takes effect on the later of the date and time determined [*pursuant to*] **in ac-**
 31 **cordance with** ORS 67.017 or the date and time determined [*pursuant to*] **under** the statutes [*gov-*
 32 *erning*] **that govern** any party to the merger that is a business entity other than a partnership.

33 **SECTION 10.** ORS 70.515 is amended to read:

34 70.515. (1) After [*conversion is approved by*] the owners **approve a conversion**, the converting
 35 business entity shall:

36 **(a) File articles of conversion[, which shall] that state the name and type of business entity**
 37 **[prior to] that existed before** conversion and the name and type of business entity **that will exist**
 38 **after conversion[, and shall include the plan of conversion.]; and**

39 **(b) File a plan of conversion or, in lieu of a plan of conversion, a written declaration that:**

40 **(A) Identifies an address for an office of the converted entity where the plan of conver-**
 41 **sion is on file; and**

42 **(B) States that the converted entity will provide any owner with a copy of the plan of**
 43 **conversion upon request and at no cost.**

44 (2) The conversion takes effect on the latest of:

45 (a) The [*filing of*] **time and date on which** the articles of conversion **are filed;**

1 (b) *[If the surviving business entity is not a limited partnership, satisfaction of]* **The time and**
2 **date on which** any additional filing requirements imposed pursuant to the statutes *[governing]* that
3 **govern the surviving** business entity **are satisfied**; or

4 (c) On the delayed effective date and time set forth in the filings.

5 **SECTION 11.** ORS 70.535 is amended to read:

6 70.535. (1) After **each business entity that is a party to a merger has approved** a plan of
7 merger *[is approved by each business entity that is a party to the merger]*, the surviving business en-
8 tity shall deliver to the Office of Secretary of State[,] for filing[.]:

9 (a) Articles of merger *[setting forth:]* **that set forth the name and type of each business**
10 **entity that intends to merge and the name and type of the business entity that will survive**
11 **the merger;**

12 *[(a) The plan of merger; and]*

13 *[(b) A statement that the plan of merger was duly authorized and approved by any party that was*
14 *a limited partnership in accordance with ORS 70.525, and by any party that was another business*
15 *entity in accordance with the statutes governing that business entity.]*

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

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

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

21 (c) **A written declaration that states that any party that was a limited partnership ap-**
22 **proved the plan of merger in accordance with ORS 70.525 and any party that was another**
23 **business entity approved the plan of merger in accordance with the statutes that govern the**
24 **other business entity.**

25 (2) The merger takes effect on the latest of:

26 (a) The **time and date on which** *[filing of]* the articles of merger **are filed;**

27 (b) The **time and date on which** *[filing of]* all documents required to be filed by the statute
28 *[governing]* **that governs** any party to the merger that is a business entity other than a limited
29 partnership **are filed;** or

30 (c) Any later effective date specified in the articles of merger.

31 **SECTION 12.** The amendments to ORS 60.476, 60.494, 60.561, 60.567, 63.476, 63.494, 65.491,
32 67.346, 67.364, 70.515 and 70.535 by sections 1 to 11 of this 2015 Act apply to filings with the
33 Secretary of State that occur, and corporate actions that are proposed to occur, on or after
34 the effective date of this 2015 Act.