

Senate Bill 17

Sponsored by Senator SHIELDS (at the request of Sam Pardue, CEO and founder of Indow Windows) (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**.

Creates Oregon Intellectual Property Protection Corporation. Specifies composition of and qualifications for board of directors and powers of corporation. Specifies laws to which corporation is subject and from which corporation is exempt.

Establishes Oregon Intellectual Property Protection Fund. Continuously appropriates moneys in fund to corporation for purposes set forth in Act. Permits board of directors of corporation to invest moneys in fund subject to certain restrictions. Subjects fund to audit by Secretary of State.

Permits board of directors of corporation to establish program under which corporation accepts and pools contributions of moneys from Oregon businesses for purpose of providing legal defense and litigation assistance to protect intellectual property rights of Oregon businesses from infringement.

A BILL FOR AN ACT

1
2 Relating to protecting the intellectual property rights of Oregon businesses.

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

4 **SECTION 1. (1) As used in sections 1 to 11 of this 2015 Act:**

5 (a) **"Oregon business" means a business with any of these characteristics:**

6 (A) **All or a majority of the business's owners, shareholders, directors or managers are**
7 **residents of this state;**

8 (B) **All or a majority of the business's operations occur within this state or all or a ma-**
9 **ajority of the business's revenues derive from operations within this state;**

10 (C) **All or a majority of the business's employees are residents of this state;**

11 (D) **The business's headquarters or main office is located in this state; or**

12 (E) **The laws that govern the formation and operation of the business are the laws of the**
13 **state.**

14 (b) **"Public corporation" means an entity that the State of Oregon creates to carry out**
15 **a public purpose, mission or service by participating in activities in which a private enter-**
16 **prise may also participate in the course of the private enterprise's business.**

17 (2) **The Oregon Intellectual Property Protection Corporation is created as an independent**
18 **public corporation with the purposes and powers set forth in section 2 of this 2015 Act. The**
19 **Governor shall appoint, subject to Senate confirmation under Article III, section 4, of the**
20 **Oregon Constitution, a board of five directors, as follows:**

21 (a) **One director who represents a small business concern, as defined by the United States**
22 **Small Business Administration in 13 C.F.R. part 121, as in effect on the effective date of this**
23 **2015 Act, that is an Oregon business and that depends on intellectual property for a signif-**
24 **icant portion of the small business's revenue, capital or other assets;**

25 (b) **One director who represents a large Oregon business that depends on intellectual**
26 **property for a significant portion of the Oregon business's revenue, capital or other assets;**

27 (c) **One director who is a member of the Oregon State Bar and who has extensive expe-**

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 rience in filing registration and other applications for intellectual property protection or in
2 licensing intellectual property to or from other entities;

3 (d) One director who is a member of the Oregon State Bar and who has extensive expe-
4 rience in litigating infringements of intellectual property rights; and

5 (e) One director who represents the public.

6 (3) A director of the corporation may not have any pecuniary interest, other than an
7 incidental interest that the director discloses and makes a matter of public record at the
8 time the Governor appoints the director, in any corporation or business entity other than
9 the Oregon Intellectual Property Protection Corporation that, during the director's term of
10 office, will likely benefit, financially or otherwise, from the Oregon Intellectual Property
11 Protection Corporation's operations.

12 (4) A director's term of office is four years, but a director serves at the pleasure of the
13 Governor. The Governor shall appoint a successor before a director's term expires or a re-
14 placement for the remainder of a director's term of office if the director's position is vacant
15 for any reason. The Governor's appointment of a successor or replacement is immediately
16 effective but is subject to Senate confirmation under Article III, section 4, of the Oregon
17 Constitution. A director is eligible for reappointment.

18 (5) A director is entitled to compensation and expenses as provided in ORS 292.495.

19 (6) The board of directors shall select one director as chairperson and another director
20 as vice chairperson, for terms and with duties and powers the board considers necessary to
21 perform the functions of chairperson and vice chairperson. A majority of the members of the
22 board constitutes a quorum for transacting business.

23 (7) The board of directors shall meet at least once every three months at a time and
24 place the board designates or at other times and places the chairperson or a majority of the
25 board specifies.

26 (8) The board of directors shall establish policies for operating the Oregon Intellectual
27 Property Protection Corporation that are consistent with applicable provisions of law.

28 (9) Not later than April 15 of each year, the board of directors shall file with the Gover-
29 nor and the Legislative Assembly a report that describes the operations and activities of the
30 Oregon Intellectual Property Protection Corporation during the preceding year.

31 (10) The board of directors shall appoint a president and officers the board deems nec-
32 essary to administer and manage the corporation. The president shall direct the
33 corporation's affairs subject to the board's oversight and supervision.

34 **SECTION 2.** (1)(a) The Oregon Intellectual Property Protection Corporation is a govern-
35 mental entity that performs governmental functions and exercises governmental powers, but
36 is not a unit of local or municipal government or a state agency for purposes of state stat-
37 utes or constitutional provisions. The corporation shall carry out the purposes set forth in
38 subsection (2) of this section and has the powers, rights and privileges that sections 1 to 11
39 of this 2015 Act expressly confer on the corporation or that are otherwise implied by law or
40 are incident to expressly conferred powers, rights and privileges.

41 (b) The board of directors of the Oregon Intellectual Property Protection Corporation
42 may choose to incorporate as a for-profit or a nonprofit corporation. Except to the extent
43 set forth in sections 1 to 11 of this 2015 Act, the corporation is subject to ORS chapter 60
44 or 65 with respect to the corporation's formation, governance, operation and dissolution and
45 as to all other matters to which a private corporation or a nonprofit corporation would

1 otherwise be subject. To the extent that a provision of sections 1 to 11 of this 2015 Act con-
2 flicts with a provision of ORS chapter 60 or 65, the provisions of sections 1 to 11 of this 2015
3 Act control the operations of the corporation and supersede the provisions of ORS chapter
4 60 or 65.

5 (2) The purposes of the Oregon Intellectual Property Protection Corporation, in carrying
6 out the corporation's mission as a public corporation, are:

7 (a) To serve the people of the State of Oregon by assisting Oregon businesses in pro-
8 tecting the businesses' intellectual property rights from infringement;

9 (b) To promote research and development within the State of Oregon of new inventions,
10 technologies, devices and other useful arts that create and expand markets for Oregon pro-
11 ducts, that promote employment and that contribute to a robust Oregon economy;

12 (c) To manage and invest the corporation's funds and other assets, or funds and assets
13 committed to the corporation's care, prudently and with consideration for the long-term so-
14 cial and economic consequences of the corporation's management and investment activities;

15 (d) To maintain public accountability and responsible stewardship of public and private
16 funds; and

17 (e) To operate in such a way as to ensure the corporation's continued viability and vi-
18 tality within the marketplace.

19 (3) In order to carry out the purposes set forth in subsection (2) of this section, the
20 Oregon Intellectual Property Protection Corporation has the power to:

21 (a) Acquire or license intellectual property rights and directly enforce, in the
22 corporation's own name, the intellectual property rights that the corporation acquires or li-
23 censes;

24 (b) Sell, license, sublicense or otherwise dispose of intellectual property rights that the
25 corporation acquires or licenses, while ensuring that with the disposition the corporation
26 realizes the highest possible income or rate of return that:

27 (A) Is consistent with the corporation's public purpose to consider the long-term social
28 and economic consequences of managing and investing the corporation's funds and other
29 assets; and

30 (B) Respects the competitive interests and other interests of Oregon businesses and en-
31 tities from which the corporation acquires or licenses the intellectual property rights;

32 (c) Serve as a broker or clearinghouse on behalf of Oregon businesses and entities that
33 intend to acquire or license intellectual property rights from Oregon businesses;

34 (d) Provide funding, expertise and other services to Oregon businesses to assist the
35 businesses in enforcing and defending the businesses' intellectual property rights against
36 infringement or unauthorized use;

37 (e) Enter into partnerships, joint ventures or other business arrangements with any
38 public or private entity;

39 (f) Employ or enter into contracts with intellectual property experts, attorneys, con-
40 sultants and other knowledgeable persons;

41 (g) Sue in the corporation's own name any public or private entity, or be sued in the
42 corporation's own name by any public or private entity, in any local, state or federal forum;

43 (h) Acquire, purchase, receive, hold, own, control, lease, rent, manage, operate, use, im-
44 prove, develop, construct, equip, furnish, lend, sell, convey, exchange or otherwise dispose
45 of real and personal property of any description or nature;

1 (i) Solicit and receive gifts and donations for the benefit of the corporation and, subject
 2 to the terms of the gift or donation, retain, invest and use the gift or donation;

3 (j) Acquire, receive, hold, keep, pledge, control, manage, use, lend, expend and invest all
 4 funds, appropriations, gifts, bequests, securities and revenue from any source;

5 (k) Borrow money in amounts, for times and on terms that the corporation's board of
 6 directors deems appropriate;

7 (L) Purchase insurance, operate a self-insurance program or otherwise arrange for
 8 equivalent insurance of any nature;

9 (m) Indemnify and defend the corporation's directors, officers, agents or employees;

10 (n) Adopt, amend and repeal bylaws, administrative rules, orders and policies and other-
 11 wise administer and manage the corporation's affairs;

12 (o) Perform any other act that in the judgment of the corporation's board of directors
 13 is necessary or appropriate to carry out the corporation's purposes; and

14 (p) Exercise the powers set forth in this subsection notwithstanding that by exercising
 15 the powers the corporation engages in activities that state or federal antitrust laws may
 16 deem anticompetitive.

17 **SECTION 3.** (1) Except as otherwise provided by law, the provisions of ORS 279.835 to
 18 279.855 and ORS chapters 240, 276, 279A, 279B, 279C, 282, 283, 291, 292 and 293 do not apply
 19 to the Oregon Intellectual Property Protection Corporation.

20 (2) The Oregon Intellectual Property Protection Corporation may contract with any state
 21 agency to perform duties, functions and powers imposed by law or otherwise committed to
 22 or conferred upon the corporation.

23 (3) Notwithstanding subsection (1) of this section, the provisions of ORS 293.240, 293.260,
 24 293.262 and 293.505 (2) apply to the directors, officers, employees and accounts of the Oregon
 25 Intellectual Property Protection Corporation and any subsidiary corporation that the Oregon
 26 Intellectual Property Protection Corporation forms or acquires to the same extent that the
 27 provisions apply to a state agency.

28 (4) Notwithstanding subsection (1) of this section, the provisions of ORS 279A.100 apply
 29 to the directors, officers and employees of the Oregon Intellectual Property Protection Cor-
 30 poration.

31 (5)(a) Except as provided in paragraph (b) of this subsection, the provisions of ORS 30.260
 32 to 30.460, 200.005 to 200.025, 200.045 to 200.090, 236.605 to 236.640, 243.650 to 243.782, 297.040,
 33 307.090 and 307.112 and ORS chapters 35, 190, 192, 244 and 295 apply to the Oregon Intellectual
 34 Property Protection Corporation under the same terms as the provisions apply to public
 35 bodies other than the State of Oregon.

36 (b) Documents, records, technologies, devices, apparatuses or any other materials that
 37 constitute intellectual property that the Oregon Intellectual Property Protection Corporation
 38 acquires or licenses from another person are not public records and are exempt from dis-
 39 closure under ORS chapter 192.

40 **SECTION 4.** (1) The Oregon Intellectual Property Protection Fund is established, sepa-
 41 rate and distinct from the General Fund. Interest, income, dividends or profits earned on
 42 moneys in the Oregon Intellectual Property Protection Fund must be credited to the fund
 43 and are continuously appropriated in accordance with subsection (2) of this section.

44 (2) Except for moneys otherwise designated by statute, the Oregon Intellectual Property
 45 Protection Corporation shall pay all fees, assessments, proceeds and any other moneys the

1 corporation receives to the State Treasury and to the credit of the Oregon Intellectual
2 Property Protection Fund. All moneys in the fund are continuously appropriated to the cor-
3 poration for the purposes set forth in sections 1 to 11 of this 2015 Act.

4 (3) Subject to the terms or limits specified for a particular gift or donation, the Oregon
5 Intellectual Property Protection Corporation may invest the moneys in the Oregon Intellec-
6 tual Property Protection Fund in accordance with standards set forth in section 5 of this 2015
7 Act.

8 (4) The Oregon Intellectual Property Protection Corporation may establish accounts and
9 subaccounts within the Oregon Intellectual Property Protection Fund if the corporation's
10 board of directors determines that accounts or subaccounts are necessary. The board may
11 credit any account or subaccount within the fund with interest, income, dividends or profits.
12 The board shall keep a record of the moneys deposited into the fund and shall indicate by
13 separate cumulative accounts and subaccounts the sources from which the moneys are de-
14 rived and the activity or program against which each withdrawal is charged.

15 **SECTION 5.** (1) The board of directors of the Oregon Intellectual Property Protection
16 Corporation may invest moneys in the Oregon Intellectual Property Protection Fund and
17 shall manage the investments the board makes as a prudent investor would do under the
18 circumstances then prevailing and in light of the purposes, terms, distribution requirements
19 and laws that govern the fund. The board may contract with or delegate authority to another
20 person to invest the moneys or manage the investments, provided that the board requires
21 the other person to invest the moneys or manage the investments in accordance with the
22 provisions of this section.

23 (2) For the purposes of this section, investing the moneys of the Oregon Intellectual
24 Property Protection Fund or the investments the board of directors makes as a prudent in-
25 vestor would do means that the board or the person with which the board contracts or to
26 which the board delegates authority shall exercise reasonable care, skill and caution in the
27 context of each investment and shall manage each investment as part of an overall invest-
28 ment strategy that incorporates risk and return objectives that are reasonably suited to the
29 board's goals and subject to requirements imposed by law.

30 (3) The board of directors and any person with which the board contracts or to which the
31 board delegates authority to invest the moneys of the Oregon Intellectual Property Pro-
32 tection Fund or manage the investments the board makes has a duty to diversify the in-
33 vestments unless under the circumstances diversification is not prudent. In addition to the
34 duty to diversify investments, the board or the person:

35 (a) Has the fiduciary duties of loyalty and impartiality with respect to the interests of
36 the Oregon Intellectual Property Protection Corporation;

37 (b) Shall act with prudence in deciding whether and how to delegate authority and in
38 selecting and supervising agents; and

39 (c) Shall incur only costs that are reasonable in amount and appropriate to the invest-
40 ment responsibilities imposed by law.

41 (4)(a) Except as provided in paragraph (b) of this subsection, a member of the board of
42 directors or a person with which the board has contracted or to which the board has deleg-
43 ated authority to invest moneys and manage investments, within three business days after
44 becoming aware that an investment decision or other matter that is pending before the board
45 might lead to a private pecuniary benefit or detriment to the member, the person, a relative

1 of the member or person or to a business with which the member, the person or the relative
2 is associated, shall notify the board in writing that the member's or person's action, decision
3 or recommendation may constitute an actual or potential conflict of interest.

4 (b) The requirement under paragraph (a) of this subsection for a member of the board
5 of directors to notify the board of a potential conflict of interest does not apply if the
6 member's pecuniary benefit or detriment arises out of:

7 (A) An interest or membership in a particular business, industry, occupation or class the
8 member must have in order to be a member of the board;

9 (B) An action the member would take in the member's official capacity as a member of
10 the board that would affect to the same degree a class that consists of all residents of this
11 state or a smaller class that consists of an industry, occupation or other group with which
12 the member is associated or with which a relative of the member is associated; or

13 (C) Membership in, or membership on the board of directors of, a nonprofit corporation
14 that is tax exempt under section 501(c) of the Internal Revenue Code.

15 (5) A member of the board of directors of the Oregon Intellectual Property Protection
16 Corporation shall resolve an actual or potential conflict of interest described in this section
17 in accordance with the procedure set forth in ORS 244.120.

18 **SECTION 6.** (1) The Oregon Intellectual Property Protection Fund is a trust fund exclu-
19 sively for the uses and purposes declared in sections 1 to 11 of this 2015 Act, except that this
20 provision does not amend or impair the force or effect of any law of the state that specif-
21 ically authorizes the Oregon Intellectual Property Protection Corporation to invest moneys
22 from the fund.

23 (2) Subject to the right of the State of Oregon to direct legislatively the disposition of
24 any surplus that exceeds reserves or that is necessary to assure the corporation's fiscal
25 soundness for current operations and future capital needs, the State of Oregon declares that
26 the state does not have a proprietary interest in the Oregon Intellectual Property Protection
27 Fund.

28 **SECTION 7.** (1) The Oregon Intellectual Property Protection Corporation shall set aside
29 a portion of the interest and other income the corporation receives from investing moneys
30 from the Oregon Intellectual Property Protection Fund in an amount the corporation con-
31 siders necessary to maintain one or more reserve accounts. The corporation shall maintain
32 and use the reserve accounts to offset gains and losses of invested capital.

33 (2) The corporation may amortize gains and losses of capital that the corporation invests
34 whenever the corporation determines that amortization is preferable to offsetting the gain
35 or loss with moneys from a reserve account described in subsection (1) of this section.

36 **SECTION 8.** (1)(a) The Secretary of State shall conduct an annual audit of the Oregon
37 Intellectual Property Protection Corporation and the Oregon Intellectual Property Protection
38 Fund in accordance with ORS 297.210. As part of the audit, the Secretary of State shall
39 contract with a firm qualified to audit accounts of the type that the corporation maintains.

40 (b) The firm that conducts the audit required under paragraph (a) of this subsection
41 must be familiar with the accounting standards that apply to the reserves under review and
42 shall maintain errors and omissions insurance with limits that the Secretary of State pre-
43 scribes.

44 (c) The Secretary of State shall determine the scope of the audit required under para-
45 graph (a) of this subsection, which must include, but not be limited to:

1 (A) Reviewing the sources and uses of the moneys in the Oregon Intellectual Property
 2 Protection Fund;

3 (B) Reconciling changes in reserve values from the prior year;

4 (C) Examining the development of reserve inadequacies or redundancies over time;

5 (D) Assessing the future financial viability of the Oregon Intellectual Property Protection
 6 Fund; and

7 (E) Evaluating losses and loss adjustment expense reserves in accordance with standards
 8 developed for reasonably comparable operating and investment funds.

9 (d) The corporation shall cooperate with the auditing firm in all respects and shall permit
 10 the firm full access to all information the firm deems necessary for a true and complete
 11 audit. Documents, records, technologies, devices, apparatuses or any other materials pro-
 12 vided to the auditing firm that constitute intellectual property that the corporation acquires
 13 or licenses from another person are not public records and are exempt from disclosure under
 14 ORS chapter 192.

15 (e) The auditing firm shall conduct the audit required under paragraph (a) of this sub-
 16 section using generally accepted accounting principles.

17 (f) The corporation shall pay the cost of the audit required under paragraph (a) of this
 18 subsection.

19 (2) The Secretary of State shall issue an annual audit report to the Governor, the Pres-
 20 ident of the Senate and the Speaker of the House of Representatives on the results of the
 21 audit. The report of the audit is available for public inspection in accordance with the Sec-
 22 retary of State's established rules and procedures that govern public disclosure of audit
 23 documents.

24 (3) This section does not preclude the corporation from conducting an internal audit or
 25 an independent audit of the corporation's operations or of the Oregon Intellectual Property
 26 Protection Fund whenever the corporation's board of directors deems an audit necessary or
 27 prudent.

28 **SECTION 9.** The board of directors of the Oregon Intellectual Property Protection Cor-
 29 poration shall report to the Secretary of State by March 15 of each year:

30 (1) The total amount of assets in the Oregon Intellectual Property Protection Fund as
 31 of December 31 of the prior year;

32 (2) The reserves and surplus moneys the board established for the fund;

33 (3) Any funds in addition to the funds described in subsection (2) of this section; and

34 (4) The total amount of investment gain the fund generated during the prior year that
 35 ended on December 31.

36 **SECTION 10.** Not later than the 90th day after the Secretary of State completes and de-
 37 livers to the appropriate authority an audit under section 8 of this 2015 Act, the Oregon In-
 38 tellectual Property Protection Corporation or any subsidiary corporation the Oregon
 39 Intellectual Property Protection Corporation formed or acquired shall notify the Secretary
 40 of State in writing of the measures the corporation or the subsidiary has taken or proposes
 41 to take, if any, to respond to the recommendations in the audit report. The Secretary of
 42 State may extend the 90-day period for good cause.

43 **SECTION 11.** (1)(a) The board of directors of the Oregon Intellectual Property Protection
 44 Corporation may establish a program under which the corporation accepts and pools contri-
 45 butions of moneys from Oregon businesses for the purpose of providing legal defense and

1 litigation assistance to protect the intellectual property rights of Oregon businesses from
2 infringement. The board shall establish a separate account within the Oregon Intellectual
3 Property Protection Fund to receive and hold the moneys that Oregon businesses contribute
4 under the terms of the program. The moneys in the account are continuously appropriated
5 to the corporation for the purposes set forth in this section.

6 (b)(A) The board of directors by rule may establish requirements that an Oregon business
7 must meet to contribute moneys for the purposes of funding a program that the board es-
8 tablishes under this subsection and to receive benefits through the program.

9 (B) Requirements for an Oregon business to contribute moneys to a program that the
10 board of directors establishes under this subsection must include:

11 (i) That the Oregon business joins the program as a member with a specified term of
12 membership;

13 (ii) That the Oregon business contributes moneys to the Oregon Intellectual Property
14 Protection Fund in amounts that the board of directors determines are necessary to pay the
15 expenses of administering the program and to ensure the viability and continued operation
16 of the program;

17 (iii) That the Oregon business executes a contract with the Oregon Intellectual Property
18 Protection Corporation with terms and conditions that require the Oregon business to abide
19 by the program's requirements and rules; and

20 (iv) That the Oregon business indemnifies the Oregon Intellectual Property Protection
21 Corporation against all claims and losses that arise out of and are attributable to the Oregon
22 business's willfully, intentionally or negligently infringing on another person's intellectual
23 property rights or bringing a false or frivolous claim against another person for infringing
24 on the Oregon business's intellectual property rights.

25 (C) Subject to the requirements set forth in rules that the board of directors adopts un-
26 der subparagraph (A) of this paragraph, options the board may consider for accepting con-
27 tributions from Oregon businesses for a program that the board establishes under this
28 subsection include:

29 (i) Allowing different levels of required contributions and categories of membership based
30 on an Oregon business' size, capitalization, revenue, number of employees or other criteria
31 the board of directors specifies by rule;

32 (ii) Allowing an Oregon business to contribute securities or cash equivalents to the
33 Oregon Intellectual Property Protection Fund;

34 (iii) Establishing ongoing or regular contributions to the Oregon Intellectual Property
35 Protection Fund over time periods the board of directors specifies by rule;

36 (iv) Permitting an Oregon business to make contributions to the Oregon Intellectual
37 Property Protection Fund in installments or by means of periodic payments; or

38 (v) Other options the board of directors deems appropriate that are consistent with the
39 board's obligation to ensure the viability and continued operation of the program and to pay
40 the expenses of administering the program.

41 (2)(a) The board of directors, before establishing a program under subsection (1) of this
42 section, shall specify by rule how many Oregon businesses must participate in the program
43 and the amount of contributions that the Oregon businesses must make to the Oregon In-
44 tellectual Property Protection Fund to ensure the viability and continued operation of the
45 program and to pay the expenses the Oregon Intellectual Property Protection Corporation

1 will incur in administering the program. The board may specify a time period within which
2 or a date by which the board must receive applications for membership in the program and
3 agreements under which applicants pledge contributions to the fund.

4 (b) If the board of directors does not receive pledge agreements or contributions that are
5 sufficient to meet the requirement set forth in paragraph (a) of this subsection within the
6 time period or by the deadline the board specifies, the board shall decline to establish the
7 program described in subsection (1) of this section, shall withdraw from any pledge agree-
8 ments with any Oregon businesses that have entered into a pledge agreement with the board
9 and shall return any contributions that the board received from an Oregon business for the
10 purpose specified in subsection (1) of this section.

11 (3)(a) The board of directors by rule shall specify conditions under which and procedures
12 by which an Oregon business may apply for monetary assistance through the program de-
13 scribed in subsection (1) of this section. The board may specify a cap on the moneys an
14 Oregon business may receive through the program, may describe restrictions on, or criteria
15 that will govern, the type of case of legal action for which the board will pay expenses and
16 may specify other terms and conditions under which an Oregon business may receive moneys
17 and other benefits through the program described in subsection (1) of this section as a con-
18 sequence of the Oregon business's membership in and contributions to the program.

19 (b) The board of directors shall adopt rules that specify whether and to what extent the
20 Oregon Intellectual Property Protection Corporation will benefit from a successful defense
21 of an Oregon business's intellectual property rights that the corporation undertakes or con-
22 tracts to have undertaken on the Oregon business's behalf or for which the corporation pays
23 expenses through the program described in subsection (1) of this section. The rules shall
24 specify the proportion, formula or other method that will determine the extent, if any, to
25 which the corporation will have a share in any recovery that results from successfully de-
26 fending an Oregon business's intellectual property rights from infringement.

27 (c) The board of directors shall adopt rules under this subsection only after consulting
28 with Oregon businesses from which the board has accepted applications for membership in
29 and received contributions for the program described in subsection (1) of this section.

30 (4)(a) For the purposes of the Insurance Code, with respect to the program described in
31 subsection (1) of this section, the Oregon Intellectual Property Protection Corporation is not
32 an insurer and implementing the program does not constitute transacting insurance. The
33 activities of the corporation and the board of directors in implementing the program are not
34 subject to the provisions of the Insurance Code.

35 (b) The board of directors may obtain insurance for the purpose of reducing risk to the
36 program or the account described in subsection (1) of this section in such amounts and under
37 such terms as the board deems appropriate.

38 (5) The board of directors may delegate to an officer or employee of the Oregon Intel-
39 lectual Property Protection Corporation, subject to the board's continuing oversight and
40 supervision, any duty, function or responsibility identified in this section as a duty, function
41 or responsibility of the board.

42