

D R A F T

SUMMARY

Provides structure and procedures by which business corporation and nonprofit corporation may ratify and approve defective corporate actions. Permits certain persons to challenge ratification and approval of defective corporate actions.

A BILL FOR AN ACT

1
2 Relating to procedures for correcting defective corporate actions; creating
3 new provisions; and amending ORS 60.011, 60.084, 60.207, 65.011, 65.084 and
4 65.207.

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

6 **SECTION 1. Sections 2 to 9 of this 2019 Act are added to and made**
7 **a part of ORS chapter 60.**

8 **SECTION 2. As used in sections 2 to 9 of this 2019 Act:**

9 (1) **“Corporate action” means an action that a corporation takes or**
10 **an action that an incorporator, the board of directors, a committee,**
11 **an officer, an agent or another person takes on the corporation’s be-**
12 **half.**

13 (2) **“Corrected corporate action” means a corporate action that a**
14 **corporation ratifies in accordance with sections 2 to 9 of this 2019 Act.**

15 (3) **“Date of the defective corporate action” means the date, or the**
16 **approximate date, on which a corporation took a defective corporate**
17 **action.**

18 (4) **“Defective corporate action” means:**

19 (a) **An action that, but for a failure of authorization, is within the**

1 corporation's power to take and would have been within the
2 corporation's power to take at the time the corporation took the
3 action; and

4 (b) An overissue.

5 (5) "Effective date of validation" means, irrespective of a filing or
6 the pendency of a judicial proceeding under section 9 of this 2019 Act
7 and unless a court orders otherwise, the later of the time at which:

8 (a) The shareholders of the corporation approve a ratification of a
9 defective corporate action or, if the ratification does not require
10 shareholder approval, the date on which the notice described in section
11 6 of this 2019 Act becomes effective in accordance with ORS 60.034; or

12 (b) Articles of validation filed in accordance with section 8 of this
13 2019 Act become effective.

14 (6) "Failure of authorization" means a failure to authorize, approve
15 or otherwise effect a corporate action in compliance with this chapter,
16 the corporation's articles of incorporation or bylaws, a resolution or
17 any plan or agreement to which the corporation is a party if, and to
18 the extent that, the failure renders the corporate action void or
19 voidable.

20 (7) "Overissue" means an issuance of shares of a class or series of
21 the corporation that:

22 (a) Exceeds the number of shares of a class or series that the cor-
23 poration has the power to issue under ORS 60.131 at the time the cor-
24 poration issued the shares; or

25 (b) The corporation's articles of incorporation do not authorize.

26 (8) "Putative share" means a share of any class or series of the
27 corporation that the corporation created or issued as a result of a de-
28 fective corporate action, including a share the corporation issued upon
29 an exercise of rights, warrants or other securities that are convertible
30 into shares of the corporation or interests with respect to shares of
31 the corporation, and that:

1 (a) Would be a valid share, but for the defective corporate action;
2 or

3 (b) The board of directors cannot determine to be a valid share.

4 (9) "Valid share" means a share of any class or series of the cor-
5 poration that the corporation duly authorizes and validly issues in
6 accordance with this chapter, including an authorization and issuance
7 that is a result of a ratification or validation under sections 2 to 9 of
8 this 2019 Act.

9 **SECTION 3.** (1) A defective corporate action is not void or voidable
10 if the corporation ratifies the defective corporate action in accordance
11 with section 4 of this 2019 Act or validates the defective corporate
12 action in accordance with section 8 of this 2019 Act.

13 (2) Ratification under section 4 of this 2019 Act or validation under
14 section 8 of this 2019 Act is not the exclusive means of ratifying or
15 validating a defective corporate action. An absence or failure to ratify
16 or validate a corporate action in accordance with sections 2 to 9 of this
17 2019 Act does not:

18 (a) Affect the validity or effectiveness of a corporate action that is
19 properly ratified under common law or otherwise; or

20 (b) Create a presumption that the corporate action is or was a de-
21 fective corporate action or is or was void or voidable.

22 (3)(a) A putative share becomes a valid share as of the date on
23 which a corporation:

24 (A) Effectively amends the corporation's articles of incorporation
25 under this chapter to create, designate or authorize the share; or

26 (B) Takes another action under sections 2 to 9 of this 2019 Act to
27 ratify or validate a creation, designation or authorization of the share.

28 (b) The effective date of a putative share that becomes a valid share
29 in accordance with paragraph (a) of this subsection is the date on
30 which the corporation originally or purportedly issued the putative
31 share.

1 **SECTION 4. (1) Except as provided in section 3 (2) of this 2019 Act,**
2 **a corporation's board of directors may ratify a defective corporate**
3 **action only in accordance with this section. In a notice of a proposal**
4 **to ratify the defective corporate action, the corporation shall:**

5 **(a) Identify the defective corporate action the proposal seeks to**
6 **ratify and, if the defective corporate action involved an issuance of**
7 **putative shares, the number and type of putative shares the corpo-**
8 **ration purportedly issued;**

9 **(b) State the date on which the defective corporate action occurred;**

10 **(c) Describe the nature of the failure of authorization or overissue**
11 **that resulted in the corporate action becoming a defective corporate**
12 **action; and**

13 **(d) State that the board of directors intends to ratify the defective**
14 **corporate action.**

15 **(2) If the board of directors proposes to ratify a defective corporate**
16 **action that relates to the election under ORS 60.057 of the initial board**
17 **of directors, a majority of the individuals who are exercising the**
18 **powers of the corporation's directors, in a notice of the proposal to**
19 **ratify the defective corporate action, shall:**

20 **(a) Identify the person or persons who first took action in the name**
21 **of the corporation as the initial board of directors;**

22 **(b) State the date on which, as appropriate, the person or persons:**

23 **(A) First took the action; or**

24 **(B) Were purportedly elected as the initial board of directors;**

25 **(c) Describe the nature of the failure of authorization that resulted**
26 **in the corporate action becoming a defective corporate action; and**

27 **(d) State that the board of directors intends to ratify the defective**
28 **corporate action.**

29 **(3) If the board of directors takes action to ratify a defective cor-**
30 **porate action, the board shall submit the ratification to the share-**
31 **holders for approval in accordance with section 5 of this 2019 Act if a**

1 provision of this chapter, the corporation's articles of incorporation
2 or bylaws, a resolution or any plan or agreement to which the corpo-
3 ration is a party requires shareholder approval of the ratification or
4 would have required shareholder approval of the defective corporate
5 action on the date of the defective corporate action.

6 (4) Unless the proposal for ratification under subsection (1) of this
7 section provides otherwise, after the board of directors ratifies the
8 defective corporate action and the shareholders, if required, approve
9 the ratification, the board of directors may abandon the ratification
10 at any time before the effective date of validation without further
11 action from the shareholders.

12 SECTION 5. (1) Quorum and voting requirements that applied to
13 the board of directors at the time a corporation took a defective cor-
14 porate action apply also to the board of directors in taking an action
15 to ratify the defective corporate action.

16 (2)(a) Except as provided in paragraph (b) of this subsection, if the
17 shareholders of a corporation must, under section 4 (3) of this 2019
18 Act, approve a ratification of a defective corporate action at a meet-
19 ing, the corporation shall send notice of the meeting to each person,
20 whether or not the person may vote, that holds valid and putative
21 shares of the corporation on:

22 (A) The record date for notice of the meeting; and

23 (B) The date of the defective corporate action.

24 (b) A corporation need not send notice to a person that holds valid
25 or putative shares if the corporation cannot determine from the
26 corporation's records the person's identity or contact information for
27 notice.

28 (3) A notice under subsection (2) of this section must:

29 (a) State that the purpose, or one of the purposes, of the meeting
30 is to consider an approval of the ratification of a defective corporate
31 action.

1 **(b) Include a copy of the action the board of directors took in ac-**
2 **cordance with, or information required under, section 4 of this 2019**
3 **Act.**

4 **(c)(A) Except as provided in subparagraph (B) of this paragraph,**
5 **state conspicuously the calendar date by which a person that wishes**
6 **to challenge the ratification must bring an action in a court of this**
7 **state under section 9 of this 2019 Act. The calendar date must be**
8 **within 120 days after the later of the effective date of validation or the**
9 **date of the notice.**

10 **(B) If at the time that the corporation sends notice under this sec-**
11 **tion the corporation cannot state the calendar date by which a person**
12 **must bring an action in a court of this state under section 9 of this**
13 **2019 Act, the notice must:**

14 **(i) State the date on which the corporation anticipates that a per-**
15 **son must bring an action; or**

16 **(ii) State that a person may contact the corporation to determine**
17 **the exact date by which the person must bring the action and provide**
18 **the information necessary to contact the corporation.**

19 **(4)(a) Except as provided in paragraph (b) of this subsection, if a**
20 **board of directors' ratification of a defective corporate action under**
21 **section 4 of this 2019 Act requires shareholder approval, the quorum**
22 **and voting requirements that applied to shareholders at the time the**
23 **shareholders approved the defective corporate action apply also to the**
24 **shareholders' approval of the ratification of the defective corporate**
25 **action.**

26 **(b) Shareholder approval of a ratification of an election of a director**
27 **requires that at a meeting at which a quorum is present the number**
28 **of votes that shareholders cast that favor the ratification exceeds the**
29 **number of votes that shareholders cast that oppose the ratification.**

30 **(5)(a) Except as provided in paragraph (b) of this subsection, puta-**
31 **tive shares that exist on the record date for determining the share-**

1 holders who may vote to approve a ratification of a defective corporate
2 action, including putative shares that might become valid shares as a
3 result of ratifying the defective corporate action, may not vote or be
4 counted for the purpose of determining a quorum in a vote to approve
5 the ratification of the defective corporate action.

6 (b) If a corporation has only putative shares outstanding and no
7 valid shares outstanding, all putative shares may vote and be counted
8 for the purpose of determining a quorum in a vote to approve the
9 ratification of a defective corporate action.

10 (6) If approving an issue of putative shares would result in an
11 overissue, in addition to obtaining the ratification required under
12 section 4 of this 2019 Act and, if necessary, the approval required under
13 subsections (4) and (5) of this section, the corporation shall amend the
14 corporation's articles of incorporation in accordance with this chapter
15 to increase the number of shares of an authorized class or series, or
16 authorize the creation of a class or series of shares, that is sufficient
17 to prevent the overissue.

18 **SECTION 6.** (1)(a) Except as provided in paragraph (b) of this sub-
19 section, unless the shareholders of a corporation must approve a rat-
20 ification of a defective corporate action under section 4 (3) of this 2019
21 Act, the corporation shall send notice of the ratification to each per-
22 son, whether or not the person may vote, that holds valid and putative
23 shares of the corporation on:

24 (A) The later of the date on which the board of directors ratified
25 the defective corporate action or the shareholders approved the rat-
26 ification; and

27 (B) The date of the defective corporate action.

28 (b) A corporation need not send notice to a person that holds valid
29 or putative shares if the corporation cannot determine from the
30 corporation's records the person's identity or contact information for
31 notice.

1 **(2) A notice under subsection (1) of this section must:**

2 **(a) Provide a copy of the action the board of directors took and the**
3 **information required under section 4 of this 2019 Act.**

4 **(b)(A) Except as provided in subparagraph (B) of this paragraph,**
5 **state conspicuously the calendar date by which a person that wishes**
6 **to challenge the ratification must bring an action in a court of this**
7 **state under section 9 of this 2019 Act. The calendar date must be**
8 **within 120 days after the later of the effective date of validation or the**
9 **date of the notice.**

10 **(B) If at the time that the corporation sends notice under this sec-**
11 **tion the corporation cannot state the calendar date by which a person**
12 **must bring an action in a court of this state under section 9 of this**
13 **2019 Act, the notice must:**

14 **(i) State the date on which the corporation anticipates that a per-**
15 **son must bring an action; or**

16 **(ii) State that a person may contact the corporation to determine**
17 **the exact date by which the person must bring the action and provide**
18 **the information necessary to contact the corporation.**

19 **(3) A corporation need not send a notice under this section with**
20 **respect to a ratification that the corporation must submit to share-**
21 **holders for approval if the corporation sends notice in accordance with**
22 **section 5 of this 2019 Act.**

23 **(4) A corporation may send a notice required under this section by**
24 **any method permitted under ORS 60.034 and, for any corporation that**
25 **is subject to the reporting requirements of section 13 or 15(d) of the**
26 **Securities Exchange Act of 1934, as in effect on the effective date of**
27 **this 2019 Act, by filing notice with the United States Securities and**
28 **Exchange Commission.**

29 **SECTION 7.** **(1) On and after the date on which a corporation rati-**
30 **fies a defective corporate action under section 4 of this 2019 Act or**
31 **validates a defective corporate action under section 8 of this 2019 Act,**

1 the defective corporate action becomes a corrected corporate action
2 and, notwithstanding the 120-day period provided in section 9 of this
3 2019 Act for challenges to the ratification:

4 (a) A corrected corporate action is not void or voidable and is ef-
5 fective as of the date of the defective corporate action.

6 (b) A putative share or a fraction of a putative share, the issuance
7 of which a corrected corporate action ratifies or validates, is not void
8 or voidable and is a valid share or fraction of a share that is effective
9 as of the date of the putative share's issuance.

10 (c) A defective corporate action that results directly or indirectly
11 from a previous defective corporate action, or a corporate action that
12 a corporation takes in reliance on the previous defective corporate
13 action, is valid and effective as of the date the corporation took the
14 corporate action or the defective corporate action if the corporation
15 ratified the previous defective corporate action under section 4 of this
16 2019 Act or validated the previous defective corporate action under
17 section 8 of this 2019 Act.

18 (2) A corporation's ratification, validation or other approval of a
19 corporate action under sections 2 to 9 of this 2019 Act and a determi-
20 nation, finding, order or judgment in a proceeding under section 9 of
21 this 2019 Act does not affect a cause of action or remedy, other than
22 a cause of action or remedy under section 9 of this 2019 Act, that re-
23 lates to the corporate action or the corporation's ratification, vali-
24 dation or other approval of the corporate action under sections 2 to 9
25 of this 2019 Act.

26 **SECTION 8.** (1) If this chapter requires a corporation to file a rat-
27 ification or approval of a defective corporate action, or would have
28 required the corporation to file the ratification or approval at the time
29 the corporation took the defective corporate action, the corporation
30 shall submit to the Secretary of State articles of validation for filing.
31 The Secretary of State's filing the articles of validation amends, sup-

1 **plements or replaces, as appropriate, any previous filing with respect**
2 **to the defective corporate action.**

3 **(2) Articles of validation must:**

4 **(a) Describe the defective corporate action that the articles of val-**
5 **idation seek to amend, supplement or replace;**

6 **(b) List the number, class and series of any putative shares the**
7 **defective corporate action purported to issue and the date or dates on**
8 **which the corporation issued the putative shares;**

9 **(c) Specify the date of the defective corporate action;**

10 **(d) Specify the nature of the failure of authorization or the overis-**
11 **sue;**

12 **(e) State that the corporation's board of directors ratified the de-**
13 **fective corporate action and that, if necessary, the shareholders ap-**
14 **proved the ratification;**

15 **(f) List the dates of ratification and approval; and**

16 **(g) State the information provided in a notification under section 4**
17 **of this 2019 Act.**

18 **(3)(a) If a corporation previously filed a document related to a de-**
19 **fective corporate action but the articles of validation a corporation**
20 **submits for filing under subsection (1) of this section do not need to**
21 **change any information in the previously filed document to give effect**
22 **to the corporation's ratification of the defective corporate action, the**
23 **articles of validation must have the information required under sub-**
24 **section (2) of this section and must:**

25 **(A) List the name and title or any other method by which the cor-**
26 **poration identifies the previously filed document and the filing date**
27 **for the previously filed document; and**

28 **(B) Include a copy of the previously filed document.**

29 **(b) If a corporation previously filed a document related to a defec-**
30 **tive corporate action and the articles of validation a corporation sub-**
31 **mits for filing under subsection (1) of this section must change**

1 information in the previously filed document to give effect to the
2 corporation's ratification of the defective corporate action, the articles
3 of validation must have the information required under subsection (2)
4 of this section and must:

5 (A) List the name and title or any other method by which the cor-
6 poration identifies the previously filed document and the filing date
7 for the previously filed document; and

8 (B) Include a copy of the previously filed document together with
9 a document that specifies the necessary corrections to the previously
10 filed document.

11 (c) If a corporation did not previously file a document related to a
12 defective corporate action that a provision of this chapter would have
13 required to be filed to give effect to the defective corporate action, the
14 articles of validation a corporation submits for filing under subsection
15 (1) of this section must have the information required under sub-
16 section (2) of this section and must include the document the corpo-
17 ration should have filed previously.

18 **SECTION 9. (1)(a)** Subject to subsection (2) of this section, a circuit
19 court of this state may:

20 (A) Determine the validity and effectiveness of a corporate action
21 or a defective corporate action;

22 (B) Determine the validity and effectiveness of a ratification or
23 approval of a defective corporate action;

24 (C) Determine the validity of any putative shares;

25 (D) Order the corporation to conduct a meeting of shareholders for
26 the purposes specified in sections 4 (3) and 5 of this 2019 Act; or

27 (E) Modify or waive any of the provisions specified in section 4 or
28 5 of this 2019 Act.

29 (b) In connection with an action under paragraph (a) of this sub-
30 section, a court may make any findings or orders and consider any
31 matters the court deems proper under the circumstances.

1 **(2)(a) The following persons may bring an action to have a court**
2 **make a determination or modification or allow a waiver under sub-**
3 **section (1) of this section:**

4 **(A) The corporation or a successor entity to the corporation;**

5 **(B) A director of the corporation;**

6 **(C) A shareholder or beneficial shareholder of the corporation;**

7 **(D) An unrestricted voting trust beneficial owner of the corpo-**
8 **ration; and**

9 **(E) Any other person that claims that a ratification of a defective**
10 **corporate action substantially and adversely affects the person.**

11 **(b) For the purposes of paragraph (a) of this subsection, the persons**
12 **with the status described in paragraph (a)(C) and (D) of this subsection**
13 **include persons that had the described status on the date on which the**
14 **corporation ratified the defective corporate action.**

15 **(3) A person may serve process on the corporation in an action**
16 **under this section in accordance with the manner appropriate for**
17 **service of process specified under the laws of this state. The court may**
18 **proceed to adjudicate the action without joining another party, but if**
19 **the corporation brings the action, the court may require the corpo-**
20 **ration to provide notice to other persons the court specifies and may**
21 **permit other persons to intervene in the action.**

22 **(4)(a) A person must bring, within 120 days after the later of the**
23 **effective date of validation or the date of the notice that a corporation**
24 **gives under section 5 or 6 of this 2019 Act, as applicable, any action**
25 **that claims that a ratification of a defective corporate action is not**
26 **valid or effective or that putative shares a corporation issues are not**
27 **valid or effective, or that the defective corporate action or putative**
28 **shares are valid or effective only under certain conditions.**

29 **(b) A person's failure to contact a corporation to determine the**
30 **calendar date by which the person must bring an action under this**
31 **section does not eliminate or extend the 120-day period specified in**

1 paragraph (a) of this subsection.

2 **SECTION 10.** Sections 11 to 18 of this 2019 Act are added to and
3 made a part of ORS chapter 65.

4 **SECTION 11.** As used in sections 11 to 18 of this 2019 Act:

5 (1) “Corporate action” means an action that a corporation takes or
6 an action that an incorporator, the board of directors, a committee,
7 an officer, an agent or another person takes on the corporation’s be-
8 half.

9 (2) “Corrected corporate action” means a corporate action that a
10 corporation ratifies in accordance with sections 11 to 18 of this 2019
11 Act.

12 (3) “Date of the defective corporate action” means the date, or the
13 approximate date, on which a corporation took a defective corporate
14 action.

15 (4) “Defective corporate action” means an action that, but for a
16 failure of authorization, is within the corporation’s power to take and
17 would have been within the corporation’s power to take at the time
18 the corporation took the action.

19 (5) “Effective date of validation” means, irrespective of a filing or
20 the pendency of a judicial proceeding under section 18 of this 2019 Act
21 and unless a court orders otherwise, the later of the time at which:

22 (a) The members of the corporation approve a ratification of a de-
23 fective corporate action or, if the ratification does not require member
24 approval, the date on which the notice described in section 15 of this
25 2019 Act becomes effective in accordance with ORS 65.034; or

26 (b) Articles of validation filed in accordance with section 17 of this
27 2019 Act become effective.

28 (6) “Failure of authorization” means a failure to authorize, approve
29 or otherwise effect a corporate action in compliance with this chapter,
30 the corporation’s articles of incorporation or bylaws, a resolution or
31 any plan or agreement to which the corporation is a party if, and to

1 the extent that, the failure renders the corporate action void or
2 voidable.

3 **SECTION 12. (1) A defective corporate action is not void or voidable**
4 **if the corporation ratifies the defective corporate action in accordance**
5 **with section 13 of this 2019 Act or validates the defective corporate**
6 **action in accordance with section 17 of this 2019 Act.**

7 **(2) Ratification under section 13 of this 2019 Act or validation under**
8 **section 17 of this 2019 Act is not the exclusive means of ratifying or**
9 **validating a defective corporate action. An absence or failure to ratify**
10 **or validate a corporate action in accordance with sections 11 to 18 of**
11 **this 2019 Act does not:**

12 **(a) Affect the validity or effectiveness of a corporate action that is**
13 **properly ratified under common law or otherwise; or**

14 **(b) Create a presumption that the corporate action is or was a de-**
15 **fective corporate action or is or was void or voidable.**

16 **SECTION 13. (1) Except as provided in section 12 (2) of this 2019 Act,**
17 **a corporation's board of directors may ratify a defective corporate**
18 **action only in accordance with this section. In a notice of a proposal**
19 **to ratify the defective corporate action, the corporation shall:**

20 **(a) Identify the defective corporate action the proposal seeks to**
21 **ratify;**

22 **(b) State the date on which the defective corporate action occurred;**

23 **(c) Describe the nature of the failure of authorization that resulted**
24 **in the corporate action becoming a defective corporate action; and**

25 **(d) State that the board of directors intends to ratify the defective**
26 **corporate action.**

27 **(2) If the board of directors proposes to ratify a defective corporate**
28 **action that relates to the election under ORS 65.057 of an initial board**
29 **of directors, a majority of the individuals who are exercising the**
30 **powers of the corporation's directors, in a notice of the proposal to**
31 **ratify the defective corporate action, shall:**

1 (a) Identify the person or persons who first took action in the name
2 of the corporation as the initial board of directors;

3 (b) State the date on which, as appropriate, the person or persons:

4 (A) First took the action; or

5 (B) Were purportedly elected as the initial board of directors;

6 (c) Describe the nature of the failure of authorization that resulted
7 in the corporate action becoming a defective corporate action; and

8 (d) State that the board of directors intends to ratify the defective
9 corporate action.

10 (3) If the board of directors takes action to ratify a defective cor-
11 porate action, the board shall submit the ratification to the members
12 of the corporation, if any, for approval in accordance with section 14
13 of this 2019 Act if a provision of this chapter, the corporation's articles
14 of incorporation or bylaws, a resolution or any plan or agreement to
15 which the corporation is a party requires member approval of the
16 ratification or would have required member approval of the defective
17 corporate action on the date of the defective corporate action.

18 (4) Unless the proposal for ratification under subsection (1) of this
19 section provides otherwise, after the board of directors ratifies the
20 defective corporate action and the members, if required, approve the
21 ratification, the board of directors may abandon the ratification at any
22 time before the effective date of validation without further action from
23 the members.

24 SECTION 14. (1) Quorum and voting requirements that applied to
25 the board of directors at the time a corporation took a defective cor-
26 porate action apply also to the board of directors in taking an action
27 to ratify the defective corporate action.

28 (2)(a) Except as provided in paragraph (b) of this subsection, if the
29 members of a corporation must, under section 13 (3) of this 2019 Act,
30 approve a ratification of a defective corporate action at a meeting, the
31 corporation shall send notice of the meeting to each person, whether

1 or not the person may vote, that is a member of the corporation on:

2 (A) The record date for notice of the meeting; and

3 (B) The date of the defective corporate action.

4 (b) A corporation need not send notice to a person that is a member
5 if the corporation cannot determine from the corporation's records the
6 person's identity or contact information for notice.

7 (3) A notice under subsection (2) of this section must:

8 (a) State that the purpose, or one of the purposes, of the meeting
9 is to consider an approval of the ratification of a defective corporate
10 action.

11 (b) Include a copy of the action the board of directors took in ac-
12 cordance with, or information required under, section 13 of this 2019
13 Act.

14 (c)(A) Except as provided in subparagraph (B) of this paragraph,
15 state conspicuously the calendar date by which a person that wishes
16 to challenge the ratification must bring an action in a court of this
17 state under section 18 of this 2019 Act. The calendar date must be
18 within 120 days after the later of the effective date of validation or the
19 date of the notice.

20 (B) If at the time that the corporation sends notice under this sec-
21 tion the corporation cannot state the calendar date by which a person
22 must bring an action in a court of this state under section 18 of this
23 2019 Act, the notice must:

24 (i) State the date on which the corporation anticipates that a per-
25 son must bring an action; or

26 (ii) State that a person may contact the corporation to determine
27 the exact date by which the person must bring the action and provide
28 the information necessary to contact the corporation.

29 (4)(a) Except as provided in paragraph (b) of this subsection, if a
30 board of directors' ratification of a defective corporate action under
31 section 13 of this 2019 Act requires member approval, the quorum and

1 **voting requirements that applied to members at the time the members**
2 **approved the defective corporate action apply also to the members'**
3 **approval of the ratification of the defective corporate action.**

4 **(b) Member approval of a ratification of an election of a director**
5 **requires that at a meeting at which a quorum is present the number**
6 **of votes that members cast that favor the ratification exceeds the**
7 **number of votes that members cast that oppose the ratification.**

8 **SECTION 15. (1)(a) Except as provided in paragraph (b) of this**
9 **subsection, unless the members of a corporation must approve a rat-**
10 **ification of a defective corporate action under section 13 (3) of this 2019**
11 **Act, the corporation shall send notice of the ratification to each per-**
12 **son, whether or not the person may vote, that is a member of the**
13 **corporation on:**

14 **(A) The later of the date on which the board of directors ratified**
15 **the defective corporate action or the members approved the ratifica-**
16 **tion; and**

17 **(B) The date of the defective corporate action.**

18 **(b) A corporation need not send notice to a person that is a member**
19 **of the corporation if the corporation cannot determine from the**
20 **corporation's records the person's identity or contact information for**
21 **notice.**

22 **(2) A notice under subsection (1) of this section must:**

23 **(a) Provide a copy of the action the board of directors took and the**
24 **information required under section 13 of this 2019 Act.**

25 **(b)(A) Except as provided in subparagraph (B) of this paragraph,**
26 **state conspicuously the calendar date by which a person that wishes**
27 **to challenge the ratification must bring an action in a court of this**
28 **state under section 18 of this 2019 Act. The calendar date must be**
29 **within 120 days after the later of the effective date of validation or the**
30 **date of the notice.**

31 **(B) If at the time that the corporation sends notice under this sec-**

1 tion the corporation cannot state the calendar date by which a person
2 must bring an action in a court of this state under section 18 of this
3 2019 Act, the notice must:

4 (i) State the date on which the corporation anticipates that a per-
5 son must bring an action; or

6 (ii) State that a person may contact the corporation to determine
7 the exact date by which the person must bring the action and provide
8 the information necessary to contact the corporation.

9 (3) A corporation need not send a notice under this section with
10 respect to a ratification that the corporation must submit to members
11 for approval if the corporation sends notice in accordance with section
12 14 of this 2019 Act.

13 (4) A corporation may send a notice required under this section by
14 any method permitted under ORS 65.034.

15 SECTION 16. (1) On and after the date on which a corporation rat-
16 ifies a defective corporate action under section 13 of this 2019 Act or
17 validates a defective corporate action under section 17 of this 2019 Act,
18 the defective corporate action becomes a corrected corporate action
19 and, notwithstanding the 120-day period provided in section 18 of this
20 2019 Act for challenges to the ratification, a corrected corporate action
21 is not void or voidable and is effective as of the date of the defective
22 corporate action.

23 (2) A defective corporate action that results directly or indirectly
24 from a previous defective corporate action, or a corporate action that
25 a corporation takes in reliance on the previous defective corporate
26 action, is valid and effective as of the date the corporation took the
27 corporate action or the defective corporate action if the corporation
28 ratified the previous defective corporate action under section 13 of this
29 2019 Act or validated the previous defective corporate action under
30 section 17 of this 2019 Act.

31 (3) A corporation's ratification, validation or other approval of a

1 corporate action under sections 11 to 18 of this 2019 Act and a deter-
2 mination, finding, order or judgment in a proceeding under section 18
3 of this 2019 Act does not affect a cause of action or remedy, other than
4 a cause of action or remedy under section 18 of this 2019 Act, that re-
5 lates to the corporate action or the corporation's ratification, vali-
6 dation or other approval of the corporate action under sections 11 to
7 18 of this 2019 Act.

8 **SECTION 17.** (1) If this chapter requires a corporation to file a
9 ratification or approval of a defective corporate action, or would have
10 required the corporation to file the ratification or approval at the time
11 the corporation took the defective corporate action, the corporation
12 shall submit to the Secretary of State articles of validation for filing.
13 The Secretary of State's filing the articles of validation amends, sup-
14 plements or replaces, as appropriate, any previous filing with respect
15 to the defective corporate action.

16 (2) Articles of validation must:

17 (a) Describe the defective corporate action that the articles of val-
18 idation seek to amend, supplement or replace;

19 (b) Specify the date of the defective corporate action;

20 (c) Specify the nature of the failure of authorization;

21 (d) State that the corporation's board of directors ratified the de-
22 fective corporate action and that, if necessary, the members approved
23 the ratification;

24 (e) List the dates of ratification and approval; and

25 (f) State the information provided in a notification under section
26 13 of this 2019 Act.

27 (3)(a) If a corporation previously filed a document related to a de-
28 fective corporate action but the articles of validation a corporation
29 submits for filing under subsection (1) of this section do not need to
30 change any information in the previously filed document to give effect
31 to the corporation's ratification of the defective corporate action, the

1 articles of validation must have the information required under sub-
2 section (2) of this section and must:

3 (A) List the name and title or any other method by which the cor-
4 poration identifies the previously filed document and the filing date
5 for the previously filed document; and

6 (B) Include a copy of the previously filed document.

7 (b) If a corporation previously filed a document related to a defec-
8 tive corporate action and the articles of validation a corporation sub-
9 mits for filing under subsection (1) of this section must change
10 information in the previously filed document to give effect to the
11 corporation's ratification of the defective corporate action, the articles
12 of validation must have the information required under subsection (2)
13 of this section and must:

14 (A) List the name and title or any other method by which the cor-
15 poration identifies the previously filed document and the filing date
16 for the previously filed document; and

17 (B) Include a copy of the previously filed document together with
18 a document that specifies the necessary corrections to the previously
19 filed document.

20 (c) If a corporation did not previously file a document related to a
21 defective corporate action that a provision of this chapter would have
22 required to be filed to give effect to the defective corporate action, the
23 articles of validation a corporation submits for filing under subsection
24 (1) of this section must have the information required under sub-
25 section (2) of this section and must include the document the corpo-
26 ration should have filed previously.

27 **SECTION 18.** (1)(a) Subject to subsection (2) of this section, a cir-
28 cuit court of this state may:

29 (A) Determine the validity and effectiveness of a corporate action
30 or a defective corporate action;

31 (B) Determine the validity and effectiveness of a ratification or

1 approval of a defective corporate action;

2 (C) Order the corporation to conduct a meeting of members for the
3 purposes specified in sections 13 (3) and 14 of this 2019 Act; or

4 (D) Modify or waive any of the provisions specified in section 13 or
5 14 of this 2019 Act.

6 (b) In connection with an action under paragraph (a) of this sub-
7 section, a court may make any findings or orders and consider any
8 matters the court deems proper under the circumstances.

9 (2)(a) The following persons may bring an action to have a court
10 make a determination or modification or allow a waiver under sub-
11 section (1) of this section:

12 (A) The corporation or a successor entity to the corporation;

13 (B) A director of the corporation;

14 (C) A member of the corporation; and

15 (D) Any other person that claims that a ratification of a defective
16 corporate action substantially and adversely affects the person.

17 (b) For the purposes of paragraph (a) of this subsection, a member
18 of the corporation includes a person that was a member on the date
19 on which the corporation ratified the defective corporate action.

20 (3) A person may serve process on the corporation in an action
21 under this section in accordance with the manner appropriate for
22 service of process specified under the laws of this state. The court may
23 proceed to adjudicate the action without joining another party, but if
24 the corporation brings the action, the court may require the corpo-
25 ration to provide notice to other persons the court specifies and may
26 permit other persons to intervene in the action.

27 (4)(a) A person must bring, within 120 days after the later of the
28 effective date of validation or the date of the notice that a corporation
29 gives under section 14 or 15 of this 2019 Act, as applicable, any action
30 that claims that a ratification of a defective corporate action is not
31 valid or effective or that the defective corporate action is valid or ef-

1 **fective only under certain conditions.**

2 **(b) A person's failure to contact a corporation to determine the**
3 **calendar date by which the person must bring an action under this**
4 **section does not eliminate or extend the 120-day period specified in**
5 **paragraph (a) of this subsection.**

6 **SECTION 19.** ORS 60.011 is amended to read:

7 60.011. (1) Except as provided in subsection (2) of this section and ORS
8 60.014 (3) **and sections 3 (3) and 7 of this 2019 Act**, a document accepted
9 for filing is effective on the date [*it is filed by*] the Secretary of State **files**
10 **the document** and at the time, if any, [*specified in*] the document **specifies**
11 as [*its*] **the document's** effective time or at 12:01 a.m. on that date if [*no*]
12 **the document does not specify an** effective time [*is specified*].

13 (2) If a document specifies a delayed effective time and date, the document
14 becomes effective at the time and date specified. If a document specifies a
15 delayed effective date but no time, the document becomes effective at 12:01
16 a.m. on that date. A delayed effective date for a document may not be later
17 than the 90th day after the date [*it*] **the document** is filed.

18 **SECTION 20.** ORS 60.084 is amended to read:

19 60.084. (1) Except as provided in subsection (2) of this section, the validity
20 of corporate action may not be challenged on the ground that the corpo-
21 ration lacks or lacked power to act.

22 (2) A corporation's power to act may be challenged:

23 (a) In a proceeding by a shareholder against the corporation to enjoin the
24 act;

25 (b) In a proceeding by the corporation, directly, derivatively, or through
26 a receiver, trustee or other legal representative against an incumbent or
27 former director, officer, employee or agent of the corporation; [*or*]

28 (c) In a proceeding by the Attorney General under ORS 60.661[.]; **or**

29 **(d) In an action under section 9 of this 2019 Act.**

30 (3) In a shareholder's proceeding under subsection (2)(a) of this section
31 to enjoin an unauthorized corporate act, the court may enjoin or set aside

1 the act, if equitable and if all affected persons are parties to the proceeding,
2 and may award damages for loss other than anticipated profits suffered by
3 the corporation or another party because of enjoining the unauthorized act.

4 **SECTION 21.** ORS 60.207 is amended to read:

5 60.207. (1) The circuit court of the county where a corporation's principal
6 office is located, or, if the principal office is not in this state, where the
7 registered office of the corporation is or was last located, may summarily
8 order a meeting to be held:

9 (a) On application of any shareholder of the corporation entitled to par-
10 ticipate in an annual meeting if an annual meeting was not held within the
11 earlier of six months after the end of the corporation's fiscal year or 15
12 months after *[its]* **the corporation's** last annual meeting; *[or]*

13 (b) On application of a shareholder who signed a demand for a special
14 meeting valid under ORS 60.204 and notice of the special meeting was not
15 given within 30 days after the date the demand was delivered to the
16 corporation's secretary or the special meeting was not held in accordance
17 with the notice*[,]*; **or**

18 **(c) In accordance with section 9 of this 2019 Act for the purpose of**
19 **approving a ratification of a defective corporate action, as defined in**
20 **section 2 of this 2019 Act.**

21 (2) The court may fix the time and place of the meeting, determine the
22 shares entitled to participate in the meeting, specify a record date for de-
23 termining shareholders entitled to notice of and to vote at the meeting, pre-
24 scribe the form and content of the meeting notice, fix the quorum required
25 for specific matters to be considered at the meeting or direct that the votes
26 represented at the meeting constitute a quorum for action on those matters
27 and enter other orders necessary to accomplish the purpose or purposes of
28 the meeting.

29 (3) The shareholders' request *[shall]* **must** be set for hearing at the ear-
30 liest possible time and *[shall]* **must** take precedence over all matters, except
31 matters of the same character and hearings on preliminary injunctions under

1 ORCP 79 B(3). [No] **The court may not issue an** order [*shall be issued by*
2 *the court*] under this section without notice to the corporation at least five
3 days in advance of the time specified for the hearing unless **the court fixes**
4 a different period [*is fixed by*] **in the** order [*of the court*].

5 **SECTION 22.** ORS 65.011 is amended to read:

6 65.011. (1) Except as provided in subsection (2) of this section[,] **and** ORS
7 56.080 and 65.014 **and section 16 of this 2019 Act**, a document accepted for
8 filing after review is effective:

9 (a) On the date [*it is filed by*] the Secretary of State **files the**
10 **document**; and

11 (b) At the time, if any, [*specified in*] the document **specifies** as [*its*] **the**
12 **document's** effective time or at 12:01 a.m. on that date if [*no*] **the docu-**
13 **ment does not specify an** effective time [*is specified*].

14 (2) If a document specifies a delayed effective time and date, the document
15 becomes effective at the time and date specified. If a document specifies a
16 delayed effective date but no time, the document becomes effective at 12:01
17 a.m. on that date. A delayed effective date for a document may not be later
18 than the 90th day after the date [*it*] **the document** is filed.

19 **SECTION 23.** ORS 65.084 is amended to read:

20 65.084. (1) Except as provided in subsection (2) of this section, the validity
21 of corporate action may not be challenged on the ground that the corpo-
22 ration lacks or lacked power to act.

23 (2) A corporation's power to act may be challenged:

24 (a) In a proceeding by a member or members, a director or the Attorney
25 General against the corporation to enjoin the act;

26 (b) In a proceeding by the corporation, directly, derivatively or through
27 a receiver, a trustee or other legal representative, including the Attorney
28 General in the case of a public benefit corporation, against an incumbent or
29 former director, officer, employee or agent of the corporation; [*or*]

30 (c) In a proceeding under ORS 65.664[.]; **or**

31 **(d) In an action under section 18 of this 2019 Act.**

1 (3) In a proceeding under subsection (2)(a) of this section to enjoin an
2 unauthorized corporate act, the court may enjoin or set aside the act, if eq-
3 uitable and if all affected persons are parties to the proceeding, and may
4 award damages for loss other than anticipated profits suffered by the corpo-
5 ration or another party because of enjoining the unauthorized act.

6 **SECTION 24.** ORS 65.207 is amended to read:

7 65.207. (1) The circuit court of the county where a corporation's principal
8 office is located, or, if the principal office is not in this state, where the
9 registered office of the corporation is or was last located, may summarily
10 order a meeting to be held:

11 (a) On application of any member or other person entitled to participate
12 in an annual or regular meeting or, in the case of a public benefit corpo-
13 ration, the Attorney General, if an annual meeting was not held within the
14 earlier of six months after the end of the corporation's fiscal year or 15
15 months after *[its]* **the corporation's** last annual meeting;

16 (b) On application of any member or other person entitled to participate
17 in a regular meeting or, in the case of a public benefit corporation, the At-
18 torney General, if a regular meeting is not held within 40 days after the date
19 *[it]* **the regular meeting** was required to be held; *[or]*

20 (c) On application of a member who signed a demand for a special meeting
21 valid under ORS 65.204, a person or persons entitled to call a special meeting
22 or, in the case of a public benefit corporation, the Attorney General, if notice
23 of the special meeting was not given within 30 days after the date the de-
24 mand was delivered to the corporation's secretary or the special meeting was
25 not held in accordance with the notice[.]; **or**

26 **(d) In accordance with section 18 of this 2019 Act for the purpose**
27 **of approving a ratification of a defective corporate action, as defined**
28 **in section 11 of this 2019 Act.**

29 (2) The court may fix the time and place of the meeting, determine the
30 members entitled to participate in the meeting, specify a record date for de-
31 termining members entitled to notice of and to vote at the meeting, prescribe

1 the form and content of the meeting notice, fix the quorum required for
2 specific matters to be considered at the meeting or direct that the votes re-
3 presented at the meeting constitute a quorum for action on those matters,
4 and enter other orders necessary to accomplish the purpose or purposes of
5 the meeting.

6 (3)(a) Except as provided in paragraph (b) of this subsection, the court
7 may award reasonable attorney fees to the prevailing party in an action
8 under this section.

9 (b) The court may not award attorney fees to the state or a political
10 subdivision of the state if the state or political subdivision prevails in an
11 action under this section.

12 (4) The request [*shall*] **must** be set for hearing at the earliest possible
13 time and [*shall*] **must** take precedence over all matters, except matters of the
14 same character and hearings on preliminary injunctions under ORCP 79 B(3).
15 [*No*] **The court may not issue an** order [*shall be issued by the court*] under
16 this section without notice to the corporation at least five days in advance
17 of the time specified for the hearing unless **the court fixes** a different period
18 [*is fixed by order of the court*] **in the order.**

19 _____