

## Testimony on HB House 2191

Chair, members of the committee, my name is Chris Hall and I am a partner in the business group of the law firm of Perkins Coie LLP.

I became involved with the substance of HB 2191 in my role as co-chair of the Oregon State Bar Business Law Section Legislative Committee. Given what I thought was widely understood issues with the proposal and the last minute scheduling of this hearing, I have not had the opportunity to obtain an endorsed position from the Business Section or Bar, so I am not representing those views.

I am in favor of crime prevention and enforcement, and I am not here to weigh-in on the policy decisions leading to proposal or the overall merits. Instead, my focus is on significant issues within the proposals.

The following are some examples of what the bill provides for:

- Every year, an employee has to certify -- under the penalty of perjury -- who receives a “substantial economic benefit from the assets of the [company]” and for entity shareholders or trusts, which individuals control the shareholders or trusts or receives a benefit from the shareholders. Or of the shareholders of the shareholders.
  - This guesswork will require disclosure and copies of state IDs from every shareholder, and every shareholder of every shareholder and every beneficiary of every trust (with certain exceptions). Many companies have multi-layered shareholder structures for legitimate purposes ultimately supporting the conduct of business in Oregon.
- Every year, an employee has to certify -- under the penalty of perjury -- whether shareholders of shareholders or beneficiaries under trusts have changed, or if any shareholder has moved.
  - These requirement might be practical for small closely-held companies. Otherwise, how is the certifying employee to know?
  - Many companies have dozens or hundreds of shareholders. (Nike, which has thousands of shareholders, is covered by this requirement, in addition to private companies with literally hundreds of shareholders.) The certifying company employee will need to obtain driver’s license from each individual within the shareholder structure.
  - Venture capital funds, which the state dearly wants to invest in Oregon, may have to report, and provide IDs for, each of its significant investors.
- If the Department of Revenue decides in an audit a tax was not paid (i.e., a failure to comply with state law), then Revenue can cause the taxpaying company to be dissolved. Revenue will have no requirement to even demonstrate that its views are supportable. This is case even if the taxpayer position was reasonable.

- Persons involved with the company will then be barred from another enterprise in Oregon, regardless of their involvement in non-payment of the tax or the tax position the company took. These include passive capital investors and employees.
- Also, the incorporators -- many times law firms just getting a new company started -- would also be barred from ever being able to incorporate another company in Oregon. This is the case even if the failure to pay a tax is years after the law firm helped form the company.
- If the Department of Revenue decides in an audit a tax was not paid, it can ask a court to appoint a receiver or other action. There is no standard for the court to review.
- If the Attorney General decides to investigate a company and does not “deem [the] answer satisfactory,” the AG may seek to dissolve the company or have a receiver appointed. Again, there is no standard of review, just that the AG doesn’t like the company response. In addition, the same ban from Oregon applies to all involved with the company, regardless of their involvement with AG’s issue.
- Articles of incorporation will need to require a description of the company’s primary business activity. Many times a company evolves and a failure to amend its Articles, which absolutely will happen in most instances, means many otherwise perfectly ordinary business corporate acts will be void. There currently is no such requirement now because of this very issue. It is hard to understand how this requirement will prevent a fraudster from forming a company in Oregon, as if the fraudster would be unwilling to describe its fake business it already planned to put on its website, etc.

For brevity, I will stop here.

For these reasons, I ask that the committee address the many issues in HB 2191 to provide a more workable solution.