

HB 2191 -4 STAFF MEASURE SUMMARY

House Committee On Business and Labor

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 3/6, 3/8, 4/12

WHAT THE MEASURE DOES:

Commercial Registered Agent licensing: Requires person obtain license from Secretary of State (SoS) in order to serve as commercial registered agent in this state (“commercial” agent provides service to at least 50 persons). Requires nonrefundable processing fee of \$500 for each location at which person will receive service of process on behalf of another person. Specifies duties of, and prohibits certain conduct by, licensee. Enables SoS to examine licensee’s books, papers and records to enforce provisions of Act and to revoke licensee’s license or order licensee to remove principal owner, member, director or manager under certain circumstances.

Physical location: Specifies that principal office of business entity incorporated or organized in this state or authorized to transact business in this state must have physical street address that may not be commercial mail receiving agency, mail forwarding business or virtual office.

Investigatory authority of SoS: Authorizes SoS to investigate alleged or potential violations of business entity statutes. Permits SoS to impose penalties or seek dissolution of business entity that violates statutes or fails to cooperate with investigation.

Authority of DOR: Permits Department of Revenue to recommend dissolution of business entity that fails to comply with tax laws of state.

Liability: Subjects directors, officers, employees, members and managers of business entity to claim for damages from person that suffers ascertainable loss of money or property resulting from knowing dissemination of materially false statement concerning certain aspects of business entity’s finances and operations.

Authority of Attorney General: Permits Attorney General to bring action to enjoin business entity from continuing violation of business entity statutes or to seek judicial dissolution or other relief necessary to protect shareholders or remedy consequences of violation.

Beneficial ownership information: Require corporations and LLCs to either file document declaring they have or will file tax return or to list information on beneficial owners.

ISSUES DISCUSSED:

- Victims of scams operated by shell companies
- Difficult trail prosecutors must uncover when investigating shell companies
- Reports of Financial Crimes Enforcement Network (FinCEN)
- Ability to access and use information from FinCEN
- Impact on workload of Secretary of State’s Office

EFFECT OF AMENDMENT:

-4 Replaces original measure. Allows Secretary of State (SOS) to order a corporation or limited liability company (LLC) to submit information upon request, including name and address of shareholders and number of shares each hold. Allows SOS to share this information with law enforcement. Allows SOS to impose civil penalty, revoke incorporation/organization or dissolve business if business fails to comply with order. Allows Director of Department
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of Revenue to recommend SOS dissolve a business for failure to comply with Oregon tax laws. Prohibits SOS from reinstating dissolved business unless certain criteria met. Allows court to dissolve corporation/LLC if Attorney General states specified evidence in affidavit.

Holds officer, director, employee or agent of corporation (or member, manager, employee or agent of LLC) liable for damages to corporation (or LLC) or to person who suffers as result of creating documents known to be false or deceptively altering documents.

Prohibits person from incorporating/organizing for any illegal purpose or with intent to fraudulently conceal any business activity. Requires person filing business entity documents with SOS to declare documents do not fraudulently misrepresent identity of person or any of officers directors, employees of agents of corporation (or members, managers, employees or agents of LLC). Requires articles of incorporation/organization to include initial physical street address of principal office and name and address of at least one director or controlling shareholder of corporation (or member or manager of LLC).

Specifies that principal office of business entity incorporated or organized in this state or authorized to transact business in this state must have physical street address that may not be commercial mail receiving agency, mail forwarding business or virtual office. Specifies that address for registered agent of business entity may not be a mail receiving or forwarding business or a virtual office.

Prohibits corporation from issuing document (i.e., bearer bond) entitling unidentified individual or entity possessing document to a share in corporation.

BACKGROUND:

The Financial Crimes Enforcement Network of the U.S. Treasury Department issued a report in 2006 on financial crime and money laundering. It listed Oregon as one of four states that make it easy for people who want to hide illicit activity and their identify to register a corporation. The business registrants can open a bank account in another county under the name of the Oregon business. Money from illicit activities can be laundered through the bank account. Because Oregon does not require the beneficial owner or the directors to be listed on filings with the Secretary of State, it may be very hard for law enforcement to trace the activity and the money.

After the federal report was issued, the Legislative Assembly considered legislation in 2007 to create a Task Force on Business Entity Information to investigate and make recommendations regarding the content of ownership information needed from businesses registering in Oregon. Though it was approved by the House of Representatives, it was referred to Ways and Means and remained there upon adjournment sine die.

The Uniform Law Commission approved model legislation in 2009 but since withdrew support for its adoption by the states. The model legislation was meant to be a substitute for federal legislation that was under consideration at the time. As reported to the House Interim Committee on Business and Labor in September 2015, the Uniform Law Commission agrees with the National Association of Secretary of States that beneficial ownership information can be obtained by law enforcement through an existing paper trail of documents files with the Internal Revenue Service and the U.S. Treasury.