

House Bill 2354

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Secretary of State Jeanne P. Atkins)

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**.

Requires person to obtain or renew license from Secretary of State in order to serve as commercial registered agent in this state. Specifies application requirements and requires Secretary of State to issue license unless Secretary of State makes certain findings. Requires nonrefundable processing fee of \$500 for each location at which person will receive service of process on behalf of another person. Provides that license expires at end of each calendar year.

Permits licensee to update information licensee submitted in application at any time, but requires licensee to update certain information by specific date. Requires licensee to notify person for which licensee accepts service of process when licensee updates information. Permits licensee to terminate license at any time with notice to persons for which licensee accepts service of process.

Specifies duties of, and prohibits certain conduct by, licensee. Enables Secretary of State 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.

Becomes operative January 1, 2018.

Takes effect on 91st day after adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to licensing commercial registered agents; and prescribing an effective date.

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

4 **SECTION 1. Sections 2 to 9 of this 2017 Act are added to and made a part of ORS chapter**
5 **56.**

6 **SECTION 2. As used in sections 2 to 9 of this 2017 Act:**

7 (1) "Affiliate" means a person that controls, is controlled by, is under common control
8 with another person, or is engaged in a joint venture with another person, to advertise or
9 market the person's services.

10 (2) "Business entity" means a corporation, cooperative, limited liability company,
11 nonprofit corporation, limited partnership or other entity that the laws of this state require
12 to have a registered agent.

13 (3) "Commercial registered agent" means a registered agent that accepts service of pro-
14 cess on behalf of 50 or more persons.

15 (4) "Licensee" means a person who has a license from the Secretary of State to serve
16 as a commercial registered agent in this state.

17 (5) "Person" means an individual or a business entity.

18 (6) "Principal owner, member, director or manager" means an individual who:

19 (a) Owns five percent or more of the total equitable interest in a business entity;

20 (b) Exercises sole control, or substantial control in common with another principal
21 owner, member, director or manager, over the affairs of a business entity;

22 (c) Has a right under a business entity's articles of incorporation, articles of organization
23 or bylaws to:

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 (A) Inspect the books, papers and other records, including electronic records, that con-
2 cern the affairs of the business entity; or

3 (B) Receive information concerning, and vote on, any or all issues that involve the affairs
4 of the business entity; or

5 (d) Has a right under a business entity's articles of incorporation, articles of organization
6 or bylaws to receive distributions of moneys or property from the business entity.

7 (7) "Registered agent" means a person that has a physical residence or business address
8 in this state at which the person accepts service of process on behalf of another person.

9 **SECTION 3.** (1) A person may not serve as a commercial registered agent in this state
10 unless the person has a current unexpired license from the Secretary of State.

11 (2) A person may apply to obtain or renew a license to serve as a commercial registered
12 agent by submitting a form to the Secretary of State in a format and with contents that the
13 Secretary of State specifies by rule. The Secretary of State shall require that each applica-
14 tion, at a minimum:

15 (a) States the person's full legal name and assumed business name, if the person uses
16 an assumed business name.

17 (b) Lists the full legal names and full, current and correct street addresses for each of
18 the person's principal owners, members, directors and managers and specifies the legal form
19 of organization and the jurisdiction under which the person operates, if the person is a
20 business entity.

21 (c) Lists full, current and correct street addresses for:

22 (A) The person's principal business office;

23 (B) Each location in this state at which the person conducts business; and

24 (C) Each location in this state at which the person will receive service of process on be-
25 half of another person, if the person will receive service of process on behalf of another
26 person at an address that differs from the person's principal business address.

27 (d) Lists the name of each employee or agent that the person has authorized to accept
28 service of process on behalf of another person.

29 (e) Lists the days of the week and the hours in each day on which the person will accept
30 service of process on behalf of another person.

31 (f) States that the person is authorized to conduct business in this state, has filed all
32 required annual reports and has any other current and unexpired licenses, registrations or
33 other authorizations that are necessary to conduct business under the laws of this state.

34 (g) States that the person has not, or the person's principal owners, members, directors
35 and managers have not, been convicted of a felony.

36 (h) States that the person has not, or the person's principal owners, members, directors
37 and managers have not, had an authorization to serve as a registered agent denied, revoked
38 or enjoined in this state or in another jurisdiction because of the person's or the principal
39 owner's, member's, director's or manager's conduct as a registered agent or while perform-
40 ing functions equivalent to the functions of a registered agent or because the person or
41 principal owner, member, director or manager engaged in conduct that was intended to or
42 likely would deceive or defraud a member of the public.

43 (i) States that the person has served as a registered agent in this state for at least one
44 year before the date on which the person submits the application.

45 (j) Includes any other information the Secretary of State requires by rule.

1 (k) Includes a complete set of fingerprints for each of the person's principal owners,
 2 members, directors and managers and for each employee or agent that the person authorizes
 3 to accept service of process on behalf of another person, along with signed written permis-
 4 sion for the Secretary of State to forward the fingerprints to the Department of State Police
 5 and the Federal Bureau of Investigation for a criminal background check.

6 (L) Includes a nonrefundable processing fee of \$500 for each location at which the person
 7 will accept service of process on behalf of another person.

8 (m) Includes the signature of at least one individual that the person has authorized to
 9 sign on the person's behalf and with authority to bind the person to all of the representations
 10 and undertakings in the application underneath a statement that acknowledges that the in-
 11 dividual signs under penalty of perjury.

12 (3) If a name that a person submits on an application under subsection (2)(a) of this
 13 section is not distinguishable from the name of a licensee, the person shall adopt an assumed
 14 business name that is distinguishable from the name of a licensee and shall use the assumed
 15 business name in communications and filings with the Secretary of State and in transactions
 16 with another person when serving as a commercial registered agent in this state. For pur-
 17 poses of this subsection, a person's name is not distinguishable from a licensee's name solely
 18 because the person uses a distinctive typeface, design, trademark, trade name or similar
 19 device or a combination of distinctive typefaces, designs, trademarks, trade names or similar
 20 devices. The Secretary of State may by rule specify requirements for distinguishing among
 21 the names of commercial registered agents.

22 (4) The Secretary of State shall issue or renew a license to serve as a commercial regis-
 23 tered agent to a person that applies under subsection (2) of this section unless the Secretary
 24 of State finds that:

25 (a) The person or one or more of the person's principal owners, members, directors or
 26 managers has been convicted of a felony; or

27 (b) The person or one or more of the person's principal owners, members, directors or
 28 managers has had an authorization to serve as a registered agent denied, revoked or enjoined
 29 in this state or in another jurisdiction because of the person's or the principal owner's,
 30 member's, director's or manager's conduct as a registered agent or while performing func-
 31 tions equivalent to the functions of a registered agent or because the person or principal
 32 owner, member, director or manager engaged in conduct that was intended to or likely would
 33 deceive or defraud a member of the public.

34 (5) A license that the Secretary of State issues under this section expires at the end of
 35 the calendar year in which the Secretary of State issues the license.

36 **SECTION 4.** (1)(a) A licensee at any time may change or update any of the information
 37 the licensee submitted in an application under section 3 of this 2017 Act by filing a statement
 38 with the Secretary of State that identifies the changes the licensee intends to make.

39 (b) If the licensee changes the licensee's name or assumed business name, the address
 40 of the licensee's principal business office or an office at which the licensee conducts business
 41 or receives service of process on behalf of another person or the licensee's legal form of or-
 42 ganization, if the licensee intends to replace or change the names or addresses of any of the
 43 licensee's principal owners, members, directors or managers or if a condition described in
 44 section 3 (4) of this 2017 Act has occurred, the licensee shall file a statement of the changes
 45 with the Secretary of State not later than 31 days before the change becomes effective or,

1 if appropriate, not later than 10 business days after the condition described in section 3 (4)
 2 of this 2017 Act has occurred.

3 (c) If the licensee replaces or changes the names of any of the licensee's principal own-
 4 ers, members, directors or managers, the licensee shall submit, along with the statement
 5 described in paragraph (b) of this subsection, a complete set of fingerprints and an authori-
 6 zation, as provided in section 3 (2)(k) of this 2017 Act, for each new principal owner, member,
 7 director or manager.

8 (2) The Secretary of State by rule may specify a form, format and contents for the
 9 statement described in subsection (1) of this section, but at a minimum the statement must:

10 (a) List the licensee's current name and assumed business name, if any, as the name
 11 appears on the license;

12 (b) Specify each change that the licensee intends to make to the information the licensee
 13 submitted in the licensee's original or amended application;

14 (c) Display the signature of an individual that the licensee has authorized to sign on the
 15 licensee's behalf; and

16 (d) Include a nonrefundable processing fee of \$100.

17 (3) On the same date on which a licensee submits a statement to the Secretary of State
 18 under subsection (1) of this section, the licensee shall send a copy of the statement to each
 19 of the persons for which the licensee serves as a registered agent in this state. The licensee,
 20 within 10 business days after submitting a statement under subsection (1) of this section,
 21 shall submit an affidavit to the Secretary of State that states that the licensee has complied
 22 with the notification requirements set forth in this subsection and that lists the name of
 23 each person to which the licensee sent a copy of the statement.

24 (4) The Secretary of State may impose a civil penalty of not more than \$500 as provided
 25 in ORS 183.745 on a licensee that fails to submit a statement as required under subsection
 26 (1)(b) of this section and, if appropriate, the fingerprints and authorization described in
 27 subsection (1)(c) of this section.

28 **SECTION 5.** (1) A licensee at any time may terminate a license to serve as a commercial
 29 registered agent in this state by filing a termination notice with the Secretary of State. The
 30 Secretary of State by rule may specify a form, format and contents for the termination no-
 31 tice, but at a minimum the termination notice must:

32 (a) List the licensee's name and assumed business name, if any, as the name appears on
 33 the license;

34 (b) State that the licensee will no longer serve as a commercial registered agent in this
 35 state;

36 (c) Display the signature of an individual that the licensee has authorized to sign on the
 37 licensee's behalf; and

38 (d) Include a nonrefundable processing fee of \$100.

39 (2) A license termination is effective 31 days after the date on which the Secretary of
 40 State receives and files a licensee's termination notice.

41 (3) On the same date on which a licensee submits a termination notice to the Secretary
 42 of State, the licensee shall notify each person for which the licensee serves as a registered
 43 agent that the licensee has terminated the licensee's license to serve as a commercial reg-
 44 istered agent in this state. In the notice, the licensee shall also specify the date on which the
 45 termination is effective. The licensee, within 10 business days after submitting a notice of

1 termination under subsection (1) of this section, shall submit an affidavit to the Secretary
 2 of State that states that the licensee has complied with the notification requirements set
 3 forth in this subsection and that lists the name of each person to which the licensee sent
 4 notice.

5 (4) A licensee ceases to serve as the registered agent for all persons for which the
 6 licensee previously served as a registered agent on the date the licensee's termination is ef-
 7 fective as provided in subsection (2) of this section. A license termination under this section
 8 does not affect any contractual or other rights that a licensee may have against a person for
 9 which the licensee served as a registered agent or that the person may have against the
 10 licensee.

11 **SECTION 6.** (1) A licensee, including as appropriate the licensee's principal owners,
 12 members, directors and managers and the licensee's employees or agents, shall:

13 (a) Accept service of process on behalf of all persons for which the licensee serves as a
 14 registered agent in this state;

15 (b) Forward all process served and other related documents that a registered agent must
 16 accept and forward under the laws of this state to the person identified in the process or
 17 documents at the current address the licensee has for the person in the licensee's records;

18 (c) Notify the Secretary of State of any material changes to the information described in
 19 section 4 (1)(b) of this 2017 Act and, if appropriate, provide the fingerprints and authorization
 20 described in section 4 (1)(c) of this 2017 Act in accordance with the requirements of section
 21 4 of this 2017 Act; and

22 (d) Otherwise comply with the requirements set forth in sections 2 to 9 of this 2017 Act.

23 (2) A licensee, including as appropriate the licensee's principal owners, members, direc-
 24 tors and managers and the licensee's employees, agents or affiliates, may not:

25 (a) Engage in any misleading, deceptive or fraudulent business practice or any practice
 26 that shows evidence of an intention to mislead or deceive members of the public or a person
 27 for which the licensee serves as a registered agent;

28 (b) Advertise or market through any medium of communication or in any manner the
 29 licensee's assistance or services, or the assistance or services of an affiliate of the licensee,
 30 in establishing "shell," "shelf," "aged-shelf" or similar business entities in this state; or

31 (c) Advertise, claim, represent or state in any medium of communication or in any
 32 manner that the State of Oregon, an officer or employee of the State of Oregon, the Secre-
 33 tary of State or any law of this state provides "anonymity," "secrecy" or "hidden
 34 ownership," or use similar words or phrases with which the licensee intends to convey the
 35 impression that a person may conceal the identities of the person's principal owners, mem-
 36 bers, directors or managers or other information about the person or the person's principal
 37 owners, members, directors or managers that is lawfully accessible to the public.

38 (3) The Secretary of State may impose a civil penalty as provided in ORS 183.745 of not
 39 more than \$500 for each violation of subsection (2) of this section.

40 **SECTION 7.** (1) The Secretary of State may:

41 (a) Examine a licensee's books, papers, documents or other records, including electronic
 42 records, to ensure compliance with the provisions of sections 2 to 9 of this 2017 Act or any
 43 other provision of the laws of this state that relates to the duties of a registered agent. The
 44 Secretary of State may conduct the examination periodically or after determining that a vi-
 45 olation of sections 2 to 9 of this 2017 Act or any other provision of the laws of this state that

1 relates to the duties of a registered agent has occurred or is about to occur.

2 (b) Issue an interrogatory or an order to provide or produce books, papers, documents
 3 or other records, including electronic records, that are necessary to enable the Secretary
 4 of State to perform duties under paragraph (a) of this subsection.

5 (2) A licensee shall answer an interrogatory or order that the Secretary of State issues
 6 under subsection (1) of this section on or before the time stated in the interrogatory or order
 7 or, if a time is not stated in the interrogatory or order, within 30 days after the date of the
 8 interrogatory or order.

9 **SECTION 8.** (1)(a) The Secretary of State may revoke a licensee's license to serve as a
 10 commercial registered agent in this state if the Secretary of State determines that the
 11 licensee or a principal owner, member, director or manager or an affiliate of the licensee
 12 intentionally violated a provision of section 6 (2) of this 2017 Act or intentionally failed to
 13 provide the information required under section 4 (1)(b) or (c) of this 2017 Act.

14 (b) A licensee may request a hearing from the Secretary of State under ORS chapter 183
 15 concerning a revocation under paragraph (a) of this subsection. If the licensee does not re-
 16 quest a hearing or if the Secretary of State finds after a hearing that good cause exists for
 17 the revocation, the revocation becomes effective 31 days after the date on which the Secre-
 18 tary of State notifies the licensee of the revocation or of the Secretary of State's findings
 19 following the hearing.

20 (2) The Secretary of State may:

21 (a) Order a licensee to remove a principal owner, member, director or manager from the
 22 principal owner's, member's, director's or manager's position with the licensee if the Secre-
 23 tary of State finds that a condition described in section 3 (4) of this 2017 Act has occurred.

24 (b) Revoke a licensee's license if the licensee fails to comply with an order the Secretary
 25 of State issued under paragraph (a) of this subsection by the date the Secretary of State
 26 specifies in the order. A revocation under this paragraph is not subject to a hearing.

27 (c) Apply to a circuit court of this state for an order to enjoin a principal owner, member,
 28 director or manager of a licensee from directing any of the actions of, or performing any
 29 duties with, the licensee as a principal owner, member, director or manager if the court finds
 30 that a condition described in section 3 (4) of this 2017 Act has occurred.

31 (3) If the Secretary of State revokes a licensee's license, the Secretary of State shall
 32 notify each person for which the licensee served as a registered agent that the Secretary of
 33 State has revoked the licensee's license to serve as a commercial registered agent in this
 34 state and shall indicate the date on which the revocation becomes effective. The notice must
 35 also require the person to appoint a new registered agent within 31 days after the date of the
 36 Secretary of State's notice.

37 (4) In addition to any of the penalties provided in subsections (1) to (3) of this section,
 38 if a licensee fails to comply with a provision of sections 2 to 9 of this 2017 Act or an order
 39 of the Secretary of State under sections 2 to 9 of this 2017 Act, the Secretary of State may
 40 refuse to file a document from a person for which a licensee serves as a registered agent
 41 until the licensee complies with the provision or the order.

42 **SECTION 9.** The Secretary of State may adopt rules to implement the provisions of
 43 sections 2 to 9 of this 2017 Act.

44 **SECTION 10.** (1) Sections 2 to 9 of this 2017 Act become operative on January 1, 2018.

45 (2) The Secretary of State may adopt rules and take any other action before the operative

1 **date specified in subsection (1) of this section that is necessary to enable the Secretary of**
2 **State, on and after the operative date specified in subsection (1) of this section, to exercise**
3 **all of the duties, powers and functions conferred on the Secretary of State by sections 2 to**
4 **9 of this 2017 Act.**

5 **SECTION 11. This 2017 Act takes effect on the 91st day after the date on which the 2017**
6 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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