

HB 2191-B11
(LC 2916)
7/6/17 (TSB/ps)

Requested by JOINT COMMITTEE ON WAYS AND MEANS

**PROPOSED AMENDMENTS TO RESOLVE CONFLICTS TO
B-ENGROSSED HOUSE BILL 2191**

1 On page 1 of the printed B-engrossed bill, line 4, after the semicolon in-
2 sert “repealing sections 1 and 2, chapter 55, Oregon Laws 2017 (Enrolled
3 House Bill 2610);”.

4 On page 7, after line 11, insert:

5 **“SECTION 8a. If House Bill 2610 becomes law, section 1, chapter 55,**
6 **Oregon Laws 2017 (Enrolled House Bill 2610) (amending ORS 60.001), is**
7 **repealed and ORS 60.001, as amended by section 8 of this 2017 Act, is**
8 **amended to read:**

9 “60.001. As used in this chapter:

10 “(1) ‘Anniversary’ means the day each year that is exactly one or more
11 years after:

12 “(a) The date on which the Secretary of State files the articles of incor-
13 poration for a domestic corporation.

14 “(b) The date on which the Secretary of State files an application for
15 authority to transact business for a foreign corporation.

16 “(2) ‘Articles of incorporation’ means the articles described in ORS 60.047,
17 amended and restated articles of incorporation, articles of conversion or ar-
18 ticles of merger.

19 “(3) ‘Authorized shares’ means the shares of all classes that a domestic
20 or foreign corporation is authorized to issue.

21 “(4) ‘Conspicuous’ means written, printed, [*or*] typed, **displayed or oth-**

1 **erwise presented** [*in text that is italicized, boldfaced, of a contrasting color,*
2 *capitalized or underlined or similarly enhanced*] so that a reasonable person
3 against whom [*the*] a writing is to operate should have noticed the writing
4 **as a consequence of a use of a method to draw attention to the writ-**
5 **ing, such as italics, boldface, contrasting color, capitalization or**
6 **underlining.**

7 “(5) ‘Corporation’ or ‘domestic corporation’ means a corporation for profit
8 that is incorporated under or subject to the provisions of this chapter and
9 that is not a foreign corporation.

10 “(6) ‘Delivery’ means any method of delivery used in conventional com-
11 mercial practice, [*whether*] **including** by hand, mail, commercial delivery
12 [*or*] **and, in accordance with ORS 60.034,** electronic transmission.

13 “(7) ‘Distribution’ means a direct or indirect transfer of money or other
14 property, except of a corporation’s own shares, or a corporation’s incurrence
15 of indebtedness to or for the benefit of the corporation’s shareholders in re-
16 spect of any of the corporation’s shares, in the form of a declaration or
17 payment of a dividend, a purchase, redemption or other acquisition of shares,
18 a distribution of indebtedness, or otherwise.

19 “(8) ‘Document’ means:

20 “(a) **A medium that embodies information in tangible form, in-**
21 **cluding any writing or written instrument; or**

22 “(b) **An electronic medium that embodies information that a person**
23 **may retain, retrieve and reproduce, in tangible form or otherwise, by**
24 **means of an automated process that is used in conventional commer-**
25 **cial practice, except as otherwise provided in ORS 60.034 (4)(c).**

26 “[8] (9) ‘Domestic limited liability company’ means an entity that is an
27 unincorporated association that has one or more members and that is or-
28 ganized under ORS chapter 63.

29 “[9] (10) ‘Domestic nonprofit corporation’ means a corporation not for
30 profit that is incorporated under ORS chapter 65.

1 “[10] (11) ‘Domestic professional corporation’ means a corporation that
2 is organized under ORS chapter 58 for the purpose of rendering professional
3 services and for the purposes provided under ORS chapter 58.

4 “(12) ‘Electronic notice revocation’ means a notice in which a per-
5 son states that the person will not accept delivery of certain commu-
6 nications by means of electronic transmission.

7 “[11] (13) ‘Electronic signature’ has the meaning given that term in ORS
8 84.004.

9 “[12] (14) ‘Electronic transmission’ means [any] a form or process of
10 communication that does not directly involve [the physical transfer of]
11 physically transferring paper or another tangible medium and that [is
12 suitable for the recipient] enables a recipient to retain, retrieve and re-
13 produce information by means of an automated process that is used in
14 conventional commercial practice, except as provided in ORS 60.034
15 (4)(c).

16 “[13] (15) ‘Employee’ includes an officer but not a director, unless the
17 director accepts duties that make the director also an employee.

18 “[14] (16) ‘Entity’ means a corporation, foreign corporation, nonprofit
19 corporation, profit [and] or nonprofit unincorporated association, business
20 trust, partnership, two or more persons that have a joint or common eco-
21 nomic interest, any state, the United States, a federally recognized Native
22 American or American Indian tribal government and any foreign govern-
23 ment.

24 “[15] (17) ‘Foreign corporation’ means a corporation for profit that is
25 incorporated under laws other than the laws of the state.

26 “[16] (18) ‘Foreign limited liability company’ means an entity that is an
27 unincorporated association organized under laws other than the laws of the
28 state and that is organized under a statute under which an association may
29 be formed that affords to each of the entity’s members limited liability with
30 respect to liabilities of the entity.

1 “[(17)] (19) ‘Foreign nonprofit corporation’ means a corporation not for
2 profit that is organized under laws other than the laws of the state.

3 “[(18)] (20) ‘Foreign professional corporation’ means a professional cor-
4 poration that is organized under laws other than the laws of the state.

5 “[(19)] (21) ‘Governmental subdivision’ includes an authority, county,
6 district and municipality.

7 “[(20)] (22) ‘Individual’ means a natural person or the estate of an in-
8 competent individual or a deceased individual.

9 “[(21)] (23) ‘Office,’ when used to refer to the administrative unit directed
10 by the Secretary of State, means the office of the Secretary of State.

11 “[(22)] (24) ‘Person’ means an individual or entity.

12 “[(23)(a)] (25)(a) ‘Principal office’ means the physical street address of an
13 office, in or out of this state, where the principal executive offices of a do-
14 mestic or foreign corporation are located and designated in the annual report
15 or in the application for authority to transact business in this state.

16 “(b) ‘Principal office’ does not include a commercial mail receiving
17 agency, a mail forwarding business or a virtual office.

18 “[(24)] (26) ‘Proceeding’ means a civil, criminal, administrative or
19 investigatory action.

20 “[(25)] (27) ‘Record date’ means the date established under this chapter
21 on which a corporation determines the identity of the corporation’s share-
22 holders and their shareholdings for purposes of this chapter.

23 “[(26)] (28) ‘Remote communication’ means any method by which a person
24 that is not physically present at the location at which a meeting occurs may
25 nevertheless hear or otherwise communicate at substantially the same time
26 with other persons at the meeting and have access to materials necessary to
27 participate or vote in the meeting to the extent of the person’s authorization
28 to participate or vote.

29 “[(27)] (29) [‘Shares’] ‘Share’ means [*the units*] a **unit** into which the
30 proprietary interest in a corporation is divided.

1 “[28] **(30)** ‘Shareholder’ means [*the*] a person in whose name [*shares*
2 *are*] **a share is** registered in the records of a corporation or the beneficial
3 owner of [*shares*] **a share** to the extent of the rights granted by a nominee
4 certificate on file with a corporation.

5 “[29] **(31)** ‘Shell entity’ means an entity that has the characteristics de-
6 scribed in ORS 60.661 (1)(a)(C)(i).

7 “**(32) ‘Sign’ means to indicate a present intent to authenticate or**
8 **adopt a document by:**

9 “**(a) Affixing a symbol to the document;**

10 “**(b) Inscribing or affixing a manual, facsimile or conformed signa-**
11 **ture on the document; or**

12 “**(c) Attaching to, or logically associating with, an electronic**
13 **transmission any electronic sound, symbol or process, including an**
14 **electronic signature.**

15 “[30] **(33)** ‘Signature’ means any [*manual, facsimile, conformed or elec-*
16 *tronic signature*] **embodiment of a person’s intent to sign a document.**

17 “[31] **(34)** ‘Single voting group’ means a voting group, the shares of
18 which are entitled by the articles of incorporation or this chapter to vote
19 generally on a matter.

20 “[32] **(35)** ‘State,’ when referring to a part of the United States, means
21 a state, commonwealth, territory or insular possession of the United States
22 and the agencies and governmental subdivisions of the state, commonwealth,
23 territory or insular possession.

24 “[33] **(36)** ‘Subscriber’ means a person who subscribes for shares in a
25 corporation, whether before or after incorporation.

26 “[34] **(37)** ‘United States’ means the federal government or a district,
27 authority, bureau, commission, department or any other agency of the United
28 States.

29 “[35] **(38)** ‘Voting group’ means all shares of one or more classes or se-
30 ries that under the articles of incorporation or this chapter are entitled to

1 vote and be counted together collectively on a matter at a meeting of
2 shareholders.

3 “(39) ‘Written’ means embodied as a document.”.

4 On page 8, after line 5, insert:

5 “**SECTION 9a. If House Bill 2610 becomes law, section 2, chapter 55,**
6 **Oregon Laws 2017 (Enrolled House Bill 2610) (amending ORS 60.004), is**
7 **repealed and ORS 60.004, as amended by section 9 of this 2017 Act, is**
8 **amended to read:**

9 “60.004. (1) For the Secretary of State to file a document under this
10 chapter, the document must satisfy the requirements set forth in this section
11 and any other requirements in this chapter that supplement or modify the
12 requirements set forth in this section.

13 “(2) The document must be a type of document that this chapter or an-
14 other law requires or permits a person to file with the Office of the Secretary
15 of State.

16 “(3) The document must contain the information required by this chapter
17 and may contain other information.

18 “(4) The document must be legible.

19 “(5) The document must be in the English language. The certificate of
20 existence required of foreign corporations need not be in English if accom-
21 panied by a reasonably authenticated English translation.

22 “(6) The document must be [*executed*] **signed** by:

23 “(a) The chair of the board of directors of a domestic or foreign corpo-
24 ration, the corporation’s president or another of the corporation’s officers;

25 “(b) An incorporator, if directors have not been selected or before the
26 organizational meeting;

27 “(c) A receiver, trustee or court-appointed fiduciary, if the corporation is
28 in the hands of a receiver, trustee or other court-appointed fiduciary; or

29 “(d) An agent of a person identified in this subsection, if the person au-
30 thorizes the agent to [*execute*] **sign** the document.

1 “(7) The person that [*executes*] **signs** the document shall:

2 “(a) Declare, above the person’s signature and under penalty of perjury,
3 that the document does not fraudulently conceal, fraudulently obscure,
4 fraudulently alter or otherwise misrepresent the identity of the person or any
5 of the officers, directors, employees or agents of the corporation on behalf
6 of which the person signs; and

7 “(b) State beneath or opposite the signature the person’s name and the
8 capacity in which the person signs.

9 “(8) The document may, but is not required to, contain:

10 “(a) The corporate seal;

11 “(b) An attestation by the secretary or an assistant secretary; or

12 “(c) An acknowledgment, verification or proof.

13 “(9) If the Secretary of State has prescribed a mandatory form for the
14 document under ORS 60.016, the document must be in or on the prescribed
15 form.

16 “(10) The document must be delivered to the [*Office of the Secretary of*
17 *State*] **office** and must be accompanied by the required fees.

18 “(11) Delivery of a document to the office is accomplished only when the
19 office actually receives the document.”.

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