

**Testimony of Oregon State Bar in Support of SB 359
Before the House Judiciary Committee**

April 22, 2019

Representative Williamson, members of the Committee:

My name is David Ludwig and I am an attorney with the firm Farleigh Wada Witt in Portland. I am the past chair of the Oregon State Bar Business Law Section which has over 1,000 members representing small and large businesses throughout the urban and rural parts of Oregon. I am here today representing the Business Law Section in support of Senate Bill 359.

Oregon currently has no statutory procedure for correcting defective corporate action. When an Oregon corporation's directors or shareholders take corporate action without proper authorization, or without strictly adhering to corporate formalities, that action may be invalid. For example, the issuance of stock in excess of the number of shares authorized in the corporation's articles of incorporation, the subsequent election of directors by the shareholders, and corporate action later approved by the defective board may all be invalid corporate actions. Upon realizing the potential invalidity of past corporate acts, a company's directors or shareholders may wish to fix the problem by ratifying the defective acts. However, Oregon law is unclear about what defective acts can be ratified after the fact.

While there is little legal precedent in Oregon law on this issue, case law in some jurisdictions has developed a distinction between corporate acts that are "void" and incapable of ratification and cure, and acts that are merely "voidable" and may be ratified and cured.

SB 359 would create a process for curing defective corporate acts. This process would include requiring the entity to clearly identify the potentially defective act and the board of directors' intention to cure the act. Only actions that would have been within the corporation's power to take at the time can be cured through the provisions of this bill. The bill does not authorize a corporation to take any action that it could not have legally taken at the time in question.

SB 359 provides much needed certainty for Oregon corporations by providing a mechanism to acknowledge and correct mistakes and move forward, without a permanent cloud hanging over their future decisions.

Thank you for your attention to this very important issue, and we would be happy to answer any questions you might have.