

(To Resolve Conflicts)

A-Engrossed Senate Bill 359

Ordered by the House May 8
Including House Amendments dated May 8 to resolve conflicts

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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.

Provides structure and procedures by which business corporation and nonprofit corporation may ratify and approve defective corporate actions. Permits certain persons to challenge ratification and approval of defective corporate actions.

A BILL FOR AN ACT

1
2 Relating to procedures for correcting defective corporate actions; creating new provisions; and
3 amending ORS 60.011, 60.084, 60.207, 65.011, 65.084 and 65.207.

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

5 **SECTION 1. Sections 2 to 9 of this 2019 Act are added to and made a part of ORS chapter**
6 **60.**

7 **SECTION 2. As used in sections 2 to 9 of this 2019 Act:**

8 (1) **"Corporate action" means an action that a corporation takes or an action that an**
9 **incorporator, the board of directors, a committee, an officer, an agent or another person**
10 **takes on the corporation's behalf.**

11 (2) **"Corrected corporate action" means a corporate action that a corporation ratifies in**
12 **accordance with sections 2 to 9 of this 2019 Act.**

13 (3) **"Date of the defective corporate action" means the date, or the approximate date, on**
14 **which a corporation took a defective corporate action.**

15 (4) **"Defective corporate action" means:**

16 (a) **An action that, but for a failure of authorization, is within the corporation's power**
17 **to take and would have been within the corporation's power to take at the time the corpo-**
18 **ration took the action; and**

19 (b) **An overissue.**

20 (5) **"Effective date of validation" means, irrespective of a filing or the pendency of a ju-**
21 **dicial proceeding under section 9 of this 2019 Act and unless a court orders otherwise, the**
22 **later of the time at which:**

23 (a) **The shareholders of the corporation approve a ratification of a defective corporate**
24 **action or, if the ratification does not require shareholder approval, the date on which the**
25 **notice described in section 6 of this 2019 Act becomes effective in accordance with ORS**

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 **60.034; or**

2 (b) Articles of validation filed in accordance with section 8 of this 2019 Act become ef-
3 fective.

4 (6) "Failure of authorization" means a failure to authorize, approve or otherwise effect
5 a corporate action in compliance with this chapter, the corporation's articles of incorpo-
6 ration or bylaws, a resolution or any plan or agreement to which the corporation is a party
7 if, and to the extent that, the failure renders the corporate action void or voidable.

8 (7) "Overissue" means an issuance of shares of a class or series of the corporation that:

9 (a) Exceeds the number of shares of a class or series that the corporation has the power
10 to issue under ORS 60.131 at the time the corporation issued the shares; or

11 (b) The corporation's articles of incorporation do not authorize.

12 (8) "Putative share" means a share of any class or series of the corporation that the
13 corporation created or issued as a result of a defective corporate action, including a share
14 the corporation issued upon an exercise of rights, warrants or other securities that are
15 convertible into shares of the corporation or interests with respect to shares of the corpo-
16 ration, and that:

17 (a) Would be a valid share, but for the defective corporate action; or

18 (b) The board of directors cannot determine to be a valid share.

19 (9) "Valid share" means a share of any class or series of the corporation that the cor-
20 poration duly authorizes and validly issues in accordance with this chapter, including an
21 authorization and issuance that is a result of a ratification or validation under sections 2 to
22 9 of this 2019 Act.

23 **SECTION 3.** (1) A defective corporate action is not void or voidable if the corporation
24 ratifies the defective corporate action in accordance with section 4 of this 2019 Act or vali-
25 dates the defective corporate action in accordance with section 8 of this 2019 Act.

26 (2) Ratification under section 4 of this 2019 Act or validation under section 8 of this 2019
27 Act is not the exclusive means of ratifying or validating a defective corporate action. An
28 absence or failure to ratify or validate a corporate action in accordance with sections 2 to 9
29 of this 2019 Act does not:

30 (a) Affect the validity or effectiveness of a corporate action that is properly ratified un-
31 der common law or otherwise; or

32 (b) Create a presumption that the corporate action is or was a defective corporate action
33 or is or was void or voidable.

34 (3)(a) A putative share becomes a valid share as of the date on which a corporation:

35 (A) Effectively amends the corporation's articles of incorporation under this chapter to
36 create, designate or authorize the share; or

37 (B) Takes another action under sections 2 to 9 of this 2019 Act to ratify or validate a
38 creation, designation or authorization of the share.

39 (b) The effective date of a putative share that becomes a valid share in accordance with
40 paragraph (a) of this subsection is the date on which the corporation originally or
41 purportedly issued the putative share.

42 **SECTION 4.** (1) Except as provided in section 3 (2) of this 2019 Act, a corporation's board
43 of directors may ratify a defective corporate action only in accordance with this section. In
44 a notice of a proposal to ratify the defective corporate action, the corporation shall:

45 (a) Identify the defective corporate action the proposal seeks to ratify and, if the defec-

1 tive corporate action involved an issuance of putative shares, the number and type of puta-
2 tive shares the corporation purportedly issued;

3 (b) State the date on which the defective corporate action occurred;

4 (c) Describe the nature of the failure of authorization or overissue that resulted in the
5 corporate action becoming a defective corporate action; and

6 (d) State that the board of directors intends to ratify the defective corporate action.

7 (2) If the board of directors proposes to ratify a defective corporate action that relates
8 to the election under ORS 60.057 of the initial board of directors, a majority of the individuals
9 who are exercising the powers of the corporation's directors, in a notice of the proposal to
10 ratify the defective corporate action, shall:

11 (a) Identify the person or persons who first took action in the name of the corporation
12 as the initial board of directors;

13 (b) State the date on which, as appropriate, the person or persons:

14 (A) First took the action; or

15 (B) Were purportedly elected as the initial board of directors;

16 (c) Describe the nature of the failure of authorization that resulted in the corporate
17 action becoming a defective corporate action; and

18 (d) State that the board of directors intends to ratify the defective corporate action.

19 (3) If the board of directors takes action to ratify a defective corporate action, the board
20 shall submit the ratification to the shareholders for approval in accordance with section 5
21 of this 2019 Act if a provision of this chapter, the corporation's articles of incorporation or
22 bylaws, a resolution or any plan or agreement to which the corporation is a party requires
23 shareholder approval of the ratification or would have required shareholder approval of the
24 defective corporate action on the date of the defective corporate action.

25 (4) Unless the proposal for ratification under subsection (1) of this section provides oth-
26 erwise, after the board of directors ratifies the defective corporate action and the share-
27 holders, if required, approve the ratification, the board of directors may abandon the
28 ratification at any time before the effective date of validation without further action from
29 the shareholders.

30 **SECTION 5. (1) Quorum and voting requirements that applied to the board of directors**
31 **at the time a corporation took a defective corporate action apply also to the board of direc-**
32 **tors in taking an action to ratify the defective corporate action.**

33 (2)(a) Except as provided in paragraph (b) of this subsection, if the shareholders of a
34 corporation must, under section 4 (3) of this 2019 Act, approve a ratification of a defective
35 corporate action at a meeting, the corporation shall send notice of the meeting to each per-
36 son, whether or not the person may vote, that holds valid and putative shares of the corpo-
37 ration on:

38 (A) The record date for notice of the meeting; and

39 (B) The date of the defective corporate action.

40 (b) A corporation need not send notice to a person that holds valid or putative shares if
41 the corporation cannot determine from the corporation's records the person's identity or
42 contact information for notice.

43 (3) A notice under subsection (2) of this section must:

44 (a) State that the purpose, or one of the purposes, of the meeting is to consider an ap-
45 proval of the ratification of a defective corporate action.

1 (b) Include a copy of the action the board of directors took in accordance with, or in-
2 formation required under, section 4 of this 2019 Act.

3 (c)(A) Except as provided in subparagraph (B) of this paragraph, state conspicuously the
4 calendar date by which a person that wishes to challenge the ratification must bring an
5 action in a court of this state under section 9 of this 2019 Act. The calendar date must be
6 within 120 days after the later of the effective date of validation or the date of the notice.

7 (B) If at the time that the corporation sends notice under this section the corporation
8 cannot state the calendar date by which a person must bring an action in a court of this
9 state under section 9 of this 2019 Act, the notice must:

10 (i) State the date on which the corporation anticipates that a person must bring an
11 action; or

12 (ii) State that a person may contact the corporation to determine the exact date by which
13 the person must bring the action and provide the information necessary to contact the cor-
14 poration.

15 (4)(a) Except as provided in paragraph (b) of this subsection, if a board of directors' rat-
16 ification of a defective corporate action under section 4 of this 2019 Act requires shareholder
17 approval, the quorum and voting requirements that applied to shareholders at the time the
18 shareholders approved the defective corporate action apply also to the shareholders' approval
19 of the ratification of the defective corporate action.

20 (b) Shareholder approval of a ratification of an election of a director requires that at a
21 meeting at which a quorum is present the number of votes that shareholders cast that favor
22 the ratification exceeds the number of votes that shareholders cast that oppose the ratifi-
23 cation.

24 (5)(a) Except as provided in paragraph (b) of this subsection, putative shares that exist
25 on the record date for determining the shareholders who may vote to approve a ratification
26 of a defective corporate action, including putative shares that might become valid shares as
27 a result of ratifying the defective corporate action, may not vote or be counted for the pur-
28 pose of determining a quorum in a vote to approve the ratification of the defective corporate
29 action.

30 (b) If a corporation has only putative shares outstanding and no valid shares outstanding,
31 all putative shares may vote and be counted for the purpose of determining a quorum in a
32 vote to approve the ratification of a defective corporate action.

33 (6) If approving an issue of putative shares would result in an overissue, in addition to
34 obtaining the ratification required under section 4 of this 2019 Act and, if necessary, the
35 approval required under subsections (4) and (5) of this section, the corporation shall amend
36 the corporation's articles of incorporation in accordance with this chapter to increase the
37 number of shares of an authorized class or series, or authorize the creation of a class or
38 series of shares, that is sufficient to prevent the overissue.

39 **SECTION 6.** (1)(a) Except as provided in paragraph (b) of this subsection, unless the
40 shareholders of a corporation must approve a ratification of a defective corporate action
41 under section 4 (3) of this 2019 Act, the corporation shall send notice of the ratification to
42 each person, whether or not the person may vote, that holds valid and putative shares of the
43 corporation on:

44 (A) The later of the date on which the board of directors ratified the defective corporate
45 action or the shareholders approved the ratification; and

1 **(B) The date of the defective corporate action.**

2 **(b) A corporation need not send notice to a person that holds valid or putative shares if**
3 **the corporation cannot determine from the corporation's records the person's identity or**
4 **contact information for notice.**

5 **(2) A notice under subsection (1) of this section must:**

6 **(a) Provide a copy of the action the board of directors took and the information required**
7 **under section 4 of this 2019 Act.**

8 **(b)(A) Except as provided in subparagraph (B) of this paragraph, state conspicuously the**
9 **calendar date by which a person that wishes to challenge the ratification must bring an**
10 **action in a court of this state under section 9 of this 2019 Act. The calendar date must be**
11 **within 120 days after the later of the effective date of validation or the date of the notice.**

12 **(B) If at the time that the corporation sends notice under this section the corporation**
13 **cannot state the calendar date by which a person must bring an action in a court of this**
14 **state under section 9 of this 2019 Act, the notice must:**

15 **(i) State the date on which the corporation anticipates that a person must bring an**
16 **action; or**

17 **(ii) State that a person may contact the corporation to determine the exact date by which**
18 **the person must bring the action and provide the information necessary to contact the cor-**
19 **poration.**

20 **(3) A corporation need not send a notice under this section with respect to a ratification**
21 **that the corporation must submit to shareholders for approval if the corporation sends no-**
22 **tice in accordance with section 5 of this 2019 Act.**

23 **(4) A corporation may send a notice required under this section by any method permitted**
24 **under ORS 60.034 and, for any corporation that is subject to the reporting requirements of**
25 **section 13 or 15(d) of the Securities Exchange Act of 1934, as in effect on the effective date**
26 **of this 2019 Act, by filing notice with the United States Securities and Exchange Commission.**

27 **SECTION 7. (1) On and after the date on which a corporation ratifies a defective corpo-**
28 **rate action under section 4 of this 2019 Act or validates a defective corporate action under**
29 **section 8 of this 2019 Act, the defective corporate action becomes a corrected corporate**
30 **action and, notwithstanding the 120-day period provided in section 9 of this 2019 Act for**
31 **challenges to the ratification:**

32 **(a) A corrected corporate action is not void or voidable and is effective as of the date of**
33 **the defective corporate action.**

34 **(b) A putative share or a fraction of a putative share, the issuance of which a corrected**
35 **corporate action ratifies or validates, is not void or voidable and is a valid share or fraction**
36 **of a share that is effective as of the date of the putative share's issuance.**

37 **(c) A defective corporate action that results directly or indirectly from a previous de-**
38 **fective corporate action, or a corporate action that a corporation takes in reliance on the**
39 **previous defective corporate action, is valid and effective as of the date the corporation took**
40 **the corporate action or the defective corporate action if the corporation ratified the previous**
41 **defective corporate action under section 4 of this 2019 Act or validated the previous defective**
42 **corporate action under section 8 of this 2019 Act.**

43 **(2) A corporation's ratification, validation or other approval of a corporate action under**
44 **sections 2 to 9 of this 2019 Act and a determination, finding, order or judgment in a pro-**
45 **ceeding under section 9 of this 2019 Act does not affect a cause of action or remedy, other**

1 than a cause of action or remedy under section 9 of this 2019 Act, that relates to the cor-
2 porate action or the corporation's ratification, validation or other approval of the corporate
3 action under sections 2 to 9 of this 2019 Act.

4 **SECTION 8.** (1) If this chapter requires a corporation to file a ratification or approval
5 of a defective corporate action, or would have required the corporation to file the ratification
6 or approval at the time the corporation took the defective corporate action, the corporation
7 shall submit to the Secretary of State articles of validation for filing. The Secretary of
8 State's filing the articles of validation amends, supplements or replaces, as appropriate, any
9 previous filing with respect to the defective corporate action.

10 (2) Articles of validation must:

11 (a) Describe the defective corporate action that the articles of validation seek to amend,
12 supplement or replace;

13 (b) List the number, class and series of any putative shares the defective corporate
14 action purported to issue and the date or dates on which the corporation issued the putative
15 shares;

16 (c) Specify the date of the defective corporate action;

17 (d) Specify the nature of the failure of authorization or the overissue;

18 (e) State that the corporation's board of directors ratified the defective corporate action
19 and that, if necessary, the shareholders approved the ratification;

20 (f) List the dates of ratification and approval; and

21 (g) State the information provided in a notification under section 4 of this 2019 Act.

22 (3)(a) If a corporation previously filed a document related to a defective corporate action
23 but the articles of validation a corporation submits for filing under subsection (1) of this
24 section do not need to change any information in the previously filed document to give effect
25 to the corporation's ratification of the defective corporate action, the articles of validation
26 must have the information required under subsection (2) of this section and must:

27 (A) List the name and title or any other method by which the corporation identifies the
28 previously filed document and the filing date for the previously filed document; and

29 (B) Include a copy of the previously filed document.

30 (b) If a corporation previously filed a document related to a defective corporate action
31 and the articles of validation a corporation submits for filing under subsection (1) of this
32 section must change information in the previously filed document to give effect to the
33 corporation's ratification of the defective corporate action, the articles of validation must
34 have the information required under subsection (2) of this section and must:

35 (A) List the name and title or any other method by which the corporation identifies the
36 previously filed document and the filing date for the previously filed document; and

37 (B) Include a copy of the previously filed document together with a document that spec-
38 ifies the necessary corrections to the previously filed document.

39 (c) If a corporation did not previously file a document related to a defective corporate
40 action that a provision of this chapter would have required to be filed to give effect to the
41 defective corporate action, the articles of validation a corporation submits for filing under
42 subsection (1) of this section must have the information required under subsection (2) of this
43 section and must include the document the corporation should have filed previously.

44 **SECTION 9.** (1)(a) Subject to subsection (2) of this section, a circuit court of this state
45 may:

1 (A) Determine the validity and effectiveness of a corporate action or a defective corpo-
2 rate action;

3 (B) Determine the validity and effectiveness of a ratification or approval of a defective
4 corporate action;

5 (C) Determine the validity of any putative shares;

6 (D) Order the corporation to conduct a meeting of shareholders for the purposes speci-
7 fied in sections 4 (3) and 5 of this 2019 Act; or

8 (E) Modify or waive any of the provisions specified in section 4 or 5 of this 2019 Act.

9 (b) In connection with an action under paragraph (a) of this subsection, a court may
10 make any findings or orders and consider any matters the court deems proper under the
11 circumstances.

12 (2)(a) The following persons may bring an action to have a court make a determination
13 or modification or allow a waiver under subsection (1) of this section:

14 (A) The corporation or a successor entity to the corporation;

15 (B) A director of the corporation;

16 (C) A shareholder or beneficial shareholder of the corporation;

17 (D) An unrestricted voting trust beneficial owner of the corporation; and

18 (E) Any other person that claims that a ratification of a defective corporate action sub-
19 stantially and adversely affects the person.

20 (b) For the purposes of paragraph (a) of this subsection, the persons with the status de-
21 scribed in paragraph (a)(C) and (D) of this subsection include persons that had the described
22 status on the date on which the corporation ratified the defective corporate action.

23 (3) A person may serve process on the corporation in an action under this section in
24 accordance with the manner appropriate for service of process specified under the laws of
25 this state. The court may proceed to adjudicate the action without joining another party, but
26 if the corporation brings the action, the court may require the corporation to provide notice
27 to other persons the court specifies and may permit other persons to intervene in the action.

28 (4)(a) A person must bring, within 120 days after the later of the effective date of vali-
29 dation or the date of the notice that a corporation gives under section 5 or 6 of this 2019 Act,
30 as applicable, any action that claims that a ratification of a defective corporate action is not
31 valid or effective or that putative shares a corporation issues are not valid or effective, or
32 that the defective corporate action or putative shares are valid or effective only under cer-
33 tain conditions.

34 (b) A person's failure to contact a corporation to determine the calendar date by which
35 the person must bring an action under this section does not eliminate or extend the 120-day
36 period specified in paragraph (a) of this subsection.

37 **SECTION 10.** Sections 11 to 18 of this 2019 Act are added to and made a part of ORS
38 chapter 65.

39 **SECTION 11.** As used in sections 11 to 18 of this 2019 Act:

40 (1) "Corporate action" means an action that a corporation takes or an action that an
41 incorporator, the board of directors, a committee, an officer, an agent or another person
42 takes on the corporation's behalf.

43 (2) "Corrected corporate action" means a corporate action that a corporation ratifies in
44 accordance with sections 11 to 18 of this 2019 Act.

45 (3) "Date of the defective corporate action" means the date, or the approximate date, on

1 which a corporation took a defective corporate action.

2 (4) “Defective corporate action” means an action that, but for a failure of authorization,
3 is within the corporation’s power to take and would have been within the corporation’s power
4 to take at the time the corporation took the action.

5 (5) “Effective date of validation” means, irrespective of a filing or the pendency of a ju-
6 dicial proceeding under section 18 of this 2019 Act and unless a court orders otherwise, the
7 later of the time at which:

8 (a) The members of the corporation approve a ratification of a defective corporate action
9 or, if the ratification does not require member approval, the date on which the notice de-
10 scribed in section 15 of this 2019 Act becomes effective in accordance with ORS 65.034; or

11 (b) Articles of validation filed in accordance with section 17 of this 2019 Act become ef-
12 fective.

13 (6) “Failure of authorization” means a failure to authorize, approve or otherwise effect
14 a corporate action in compliance with this chapter, the corporation’s articles of incorpo-
15 ration or bylaws, a resolution or any plan or agreement to which the corporation is a party
16 if, and to the extent that, the failure renders the corporate action void or voidable.

17 SECTION 12. (1) A defective corporate action is not void or voidable if the corporation
18 ratifies the defective corporate action in accordance with section 13 of this 2019 Act or vali-
19 dates the defective corporate action in accordance with section 17 of this 2019 Act.

20 (2) Ratification under section 13 of this 2019 Act or validation under section 17 of this
21 2019 Act is not the exclusive means of ratifying or validating a defective corporate action.
22 An absence or failure to ratify or validate a corporate action in accordance with sections 11
23 to 18 of this 2019 Act does not:

24 (a) Affect the validity or effectiveness of a corporate action that is properly ratified un-
25 der common law or otherwise; or

26 (b) Create a presumption that the corporate action is or was a defective corporate action
27 or is or was void or voidable.

28 SECTION 13. (1) Except as provided in section 12 (2) of this 2019 Act, a corporation’s
29 board of directors may ratify a defective corporate action only in accordance with this sec-
30 tion. In a notice of a proposal to ratify the defective corporate action, the corporation shall:

31 (a) Identify the defective corporate action the proposal seeks to ratify;

32 (b) State the date on which the defective corporate action occurred;

33 (c) Describe the nature of the failure of authorization that resulted in the corporate
34 action becoming a defective corporate action; and

35 (d) State that the board of directors intends to ratify the defective corporate action.

36 (2) If the board of directors proposes to ratify a defective corporate action that relates
37 to the election under ORS 65.057 of an initial board of directors, a majority of the individuals
38 who are exercising the powers of the corporation’s directors, in a notice of the proposal to
39 ratify the defective corporate action, shall:

40 (a) Identify the person or persons who first took action in the name of the corporation
41 as the initial board of directors;

42 (b) State the date on which, as appropriate, the person or persons:

43 (A) First took the action; or

44 (B) Were purportedly elected as the initial board of directors;

45 (c) Describe the nature of the failure of authorization that resulted in the corporate

1 action becoming a defective corporate action; and

2 (d) State that the board of directors intends to ratify the defective corporate action.

3 (3) If the board of directors takes action to ratify a defective corporate action, the board
4 shall submit the ratification to the members of the corporation, if any, for approval in ac-
5 cordance with section 14 of this 2019 Act if a provision of this chapter, the corporation's
6 articles of incorporation or bylaws, a resolution or any plan or agreement to which the cor-
7 poration is a party requires member approval of the ratification or would have required
8 member approval of the defective corporate action on the date of the defective corporate
9 action.

10 (4) Unless the proposal for ratification under subsection (1) of this section provides oth-
11 erwise, after the board of directors ratifies the defective corporate action and the members,
12 if required, approve the ratification, the board of directors may abandon the ratification at
13 any time before the effective date of validation without further action from the members.

14 **SECTION 14. (1) Quorum and voting requirements that applied to the board of directors**
15 **at the time a corporation took a defective corporate action apply also to the board of direc-**
16 **tors in taking an action to ratify the defective corporate action.**

17 (2)(a) Except as provided in paragraph (b) of this subsection, if the members of a corpo-
18 ration must, under section 13 (3) of this 2019 Act, approve a ratification of a defective cor-
19 porate action at a meeting, the corporation shall send notice of the meeting to each person,
20 whether or not the person may vote, that is a member of the corporation on:

21 (A) The record date for notice of the meeting; and

22 (B) The date of the defective corporate action.

23 (b) A corporation need not send notice to a person that is a member if the corporation
24 cannot determine from the corporation's records the person's identity or contact informa-
25 tion for notice.

26 (3) A notice under subsection (2) of this section must:

27 (a) State that the purpose, or one of the purposes, of the meeting is to consider an ap-
28 proval of the ratification of a defective corporate action.

29 (b) Include a copy of the action the board of directors took in accordance with, or in-
30 formation required under, section 13 of this 2019 Act.

31 (c)(A) Except as provided in subparagraph (B) of this paragraph, state conspicuously the
32 calendar date by which a person that wishes to challenge the ratification must bring an
33 action in a court of this state under section 18 of this 2019 Act. The calendar date must be
34 within 120 days after the later of the effective date of validation or the date of the notice.

35 (B) If at the time that the corporation sends notice under this section the corporation
36 cannot state the calendar date by which a person must bring an action in a court of this
37 state under section 18 of this 2019 Act, the notice must:

38 (i) State the date on which the corporation anticipates that a person must bring an
39 action; or

40 (ii) State that a person may contact the corporation to determine the exact date by which
41 the person must bring the action and provide the information necessary to contact the cor-
42 poration.

43 (4)(a) Except as provided in paragraph (b) of this subsection, if a board of directors' rat-
44 ification of a defective corporate action under section 13 of this 2019 Act requires member
45 approval, the quorum and voting requirements that applied to members at the time the

1 members approved the defective corporate action apply also to the members' approval of the
2 ratification of the defective corporate action.

3 (b) Member approval of a ratification of an election of a director requires that at a
4 meeting at which a quorum is present the number of votes that members cast that favor the
5 ratification exceeds the number of votes that members cast that oppose the ratification.

6 **SECTION 15.** (1)(a) Except as provided in paragraph (b) of this subsection, unless the
7 members of a corporation must approve a ratification of a defective corporate action under
8 section 13 (3) of this 2019 Act, the corporation shall send notice of the ratification to each
9 person, whether or not the person may vote, that is a member of the corporation on:

10 (A) The later of the date on which the board of directors ratified the defective corporate
11 action or the members approved the ratification; and

12 (B) The date of the defective corporate action.

13 (b) A corporation need not send notice to a person that is a member of the corporation
14 if the corporation cannot determine from the corporation's records the person's identity or
15 contact information for notice.

16 (2) A notice under subsection (1) of this section must:

17 (a) Provide a copy of the action the board of directors took and the information required
18 under section 13 of this 2019 Act.

19 (b)(A) Except as provided in subparagraph (B) of this paragraph, state conspicuously the
20 calendar date by which a person that wishes to challenge the ratification must bring an
21 action in a court of this state under section 18 of this 2019 Act. The calendar date must be
22 within 120 days after the later of the effective date of validation or the date of the notice.

23 (B) If at the time that the corporation sends notice under this section the corporation
24 cannot state the calendar date by which a person must bring an action in a court of this
25 state under section 18 of this 2019 Act, the notice must:

26 (i) State the date on which the corporation anticipates that a person must bring an
27 action; or

28 (ii) State that a person may contact the corporation to determine the exact date by which
29 the person must bring the action and provide the information necessary to contact the cor-
30 poration.

31 (3) A corporation need not send a notice under this section with respect to a ratification
32 that the corporation must submit to members for approval if the corporation sends notice
33 in accordance with section 14 of this 2019 Act.

34 (4) A corporation may send a notice required under this section by any method permitted
35 under ORS 65.034.

36 **SECTION 16.** (1) On and after the date on which a corporation ratifies a defective cor-
37 porate action under section 13 of this 2019 Act or validates a defective corporate action under
38 section 17 of this 2019 Act, the defective corporate action becomes a corrected corporate
39 action and, notwithstanding the 120-day period provided in section 18 of this 2019 Act for
40 challenges to the ratification, a corrected corporate action is not void or voidable and is ef-
41 fective as of the date of the defective corporate action.

42 (2) A defective corporate action that results directly or indirectly from a previous de-
43 fective corporate action, or a corporate action that a corporation takes in reliance on the
44 previous defective corporate action, is valid and effective as of the date the corporation took
45 the corporate action or the defective corporate action if the corporation ratified the previous

1 defective corporate action under section 13 of this 2019 Act or validated the previous defec-
2 tive corporate action under section 17 of this 2019 Act.

3 (3) A corporation's ratification, validation or other approval of a corporate action under
4 sections 11 to 18 of this 2019 Act and a determination, finding, order or judgment in a pro-
5 ceeding under section 18 of this 2019 Act does not affect a cause of action or remedy, other
6 than a cause of action or remedy under section 18 of this 2019 Act, that relates to the cor-
7 porate action or the corporation's ratification, validation or other approval of the corporate
8 action under sections 11 to 18 of this 2019 Act.

9 **SECTION 17.** (1) If this chapter requires a corporation to file a ratification or approval
10 of a defective corporate action, or would have required the corporation to file the ratification
11 or approval at the time the corporation took the defective corporate action, the corporation
12 shall submit to the Secretary of State articles of validation for filing. The Secretary of
13 State's filing the articles of validation amends, supplements or replaces, as appropriate, any
14 previous filing with respect to the defective corporate action.

15 (2) Articles of validation must:

16 (a) Describe the defective corporate action that the articles of validation seek to amend,
17 supplement or replace;

18 (b) Specify the date of the defective corporate action;

19 (c) Specify the nature of the failure of authorization;

20 (d) State that the corporation's board of directors ratified the defective corporate action
21 and that, if necessary, the members approved the ratification;

22 (e) List the dates of ratification and approval; and

23 (f) State the information provided in a notification under section 13 of this 2019 Act.

24 (3)(a) If a corporation previously filed a document related to a defective corporate action
25 but the articles of validation a corporation submits for filing under subsection (1) of this
26 section do not need to change any information in the previously filed document to give effect
27 to the corporation's ratification of the defective corporate action, the articles of validation
28 must have the information required under subsection (2) of this section and must:

29 (A) List the name and title or any other method by which the corporation identifies the
30 previously filed document and the filing date for the previously filed document; and

31 (B) Include a copy of the previously filed document.

32 (b) If a corporation previously filed a document related to a defective corporate action
33 and the articles of validation a corporation submits for filing under subsection (1) of this
34 section must change information in the previously filed document to give effect to the
35 corporation's ratification of the defective corporate action, the articles of validation must
36 have the information required under subsection (2) of this section and must:

37 (A) List the name and title or any other method by which the corporation identifies the
38 previously filed document and the filing date for the previously filed document; and

39 (B) Include a copy of the previously filed document together with a document that spec-
40 ifies the necessary corrections to the previously filed document.

41 (c) If a corporation did not previously file a document related to a defective corporate
42 action that a provision of this chapter would have required to be filed to give effect to the
43 defective corporate action, the articles of validation a corporation submits for filing under
44 subsection (1) of this section must have the information required under subsection (2) of this
45 section and must include the document the corporation should have filed previously.

1 **SECTION 18.** (1)(a) Subject to subsection (2) of this section, a circuit court of this state
2 may:

3 **(A) Determine the validity and effectiveness of a corporate action or a defective corpo-**
4 **rate action;**

5 **(B) Determine the validity and effectiveness of a ratification or approval of a defective**
6 **corporate action;**

7 **(C) Order the corporation to conduct a meeting of members for the purposes specified**
8 **in sections 13 (3) and 14 of this 2019 Act; or**

9 **(D) Modify or waive any of the provisions specified in section 13 or 14 of this 2019 Act.**

10 **(b) In connection with an action under paragraph (a) of this subsection, a court may**
11 **make any findings or orders and consider any matters the court deems proper under the**
12 **circumstances.**

13 **(2)(a) The following persons may bring an action to have a court make a determination**
14 **or modification or allow a waiver under subsection (1) of this section:**

15 **(A) The corporation or a successor entity to the corporation;**

16 **(B) A director of the corporation;**

17 **(C) A member of the corporation; and**

18 **(D) Any other person that claims that a ratification of a defective corporate action sub-**
19 **stantially and adversely affects the person.**

20 **(b) For the purposes of paragraph (a) of this subsection, a member of the corporation**
21 **includes a person that was a member on the date on which the corporation ratified the de-**
22 **fective corporate action.**

23 **(3) A person may serve process on the corporation in an action under this section in**
24 **accordance with the manner appropriate for service of process specified under the laws of**
25 **this state. The court may proceed to adjudicate the action without joining another party, but**
26 **if the corporation brings the action, the court may require the corporation to provide notice**
27 **to other persons the court specifies and may permit other persons to intervene in the action.**

28 **(4)(a) A person must bring, within 120 days after the later of the effective date of vali-**
29 **dation or the date of the notice that a corporation gives under section 14 or 15 of this 2019**
30 **Act, as applicable, any action that claims that a ratification of a defective corporate action**
31 **is not valid or effective or that the defective corporate action is valid or effective only under**
32 **certain conditions.**

33 **(b) A person's failure to contact a corporation to determine the calendar date by which**
34 **the person must bring an action under this section does not eliminate or extend the 120-day**
35 **period specified in paragraph (a) of this subsection.**

36 **SECTION 19.** ORS 60.011 is amended to read:

37 60.011. (1) Except as provided in subsection (2) of this section and ORS 60.014 (3) **and sections**
38 **3 (3) and 7 of this 2019 Act**, a document accepted for filing is effective on the date [*it is filed by*]
39 the Secretary of State **files the document** and at the time, if any, [*specified in*] the document
40 **specifies** as [*its*] **the document's** effective time or at 12:01 a.m. on that date if [*no*] **the document**
41 **does not specify an** effective time [*is specified*].

42 (2) If a document specifies a delayed effective time and date, the document becomes effective
43 at the time and date specified. If a document specifies a delayed effective date but no time, the
44 document becomes effective at 12:01 a.m. on that date. A delayed effective date for a document may
45 not be later than the 90th day after the date [*it*] **the document** is filed.

1 **SECTION 20.** ORS 60.084 is amended to read:

2 60.084. (1) Except as provided in subsection (2) of this section, the validity of corporate action
3 may not be challenged on the ground that the corporation lacks or lacked power to act.

4 (2) A corporation's power to act may be challenged:

5 (a) In a proceeding by a shareholder against the corporation to enjoin the act;

6 (b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee or
7 other legal representative against an incumbent or former director, officer, employee or agent of the
8 corporation; *[or]*

9 (c) In a proceeding by the Attorney General under ORS 60.661[.]; **or**

10 **(d) In an action under section 9 of this 2019 Act.**

11 (3) In a shareholder's proceeding under subsection (2)(a) of this section to enjoin an unauthor-
12 ized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons
13 are parties to the proceeding, and may award damages for loss other than anticipated profits suf-
14 fered by the corporation or another party because of enjoining the unauthorized act.

15 **SECTION 21.** ORS 60.207 is amended to read:

16 60.207. (1) The circuit court of the county where a corporation's principal office is located, or,
17 if the principal office is not in this state, where the registered office of the corporation is or was
18 last located, may summarily order a meeting to be held:

19 (a) On application of any shareholder of the corporation entitled to participate in an annual
20 meeting if an annual meeting was not held within the earlier of six months after the end of the
21 corporation's fiscal year or 15 months after *[its]* **the corporation's** last annual meeting; *[or]*

22 (b) On application of a shareholder who signed a demand for a special meeting valid under ORS
23 60.204 and notice of the special meeting was not given within 30 days after the date the demand
24 was delivered to the corporation's secretary or the special meeting was not held in accordance with
25 the notice[.]; **or**

26 **(c) In accordance with section 9 of this 2019 Act for the purpose of approving a ratifica-**
27 **tion of a defective corporate action, as defined in section 2 of this 2019 Act.**

28 (2) The court may fix the time and place of the meeting, determine the shares entitled to par-
29 ticipate in the meeting, specify a record date for determining shareholders entitled to notice of and
30 to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required
31 for specific matters to be considered at the meeting or direct that the votes represented at the
32 meeting constitute a quorum for action on those matters and enter other orders necessary to ac-
33 complish the purpose or purposes of the meeting.

34 (3) The shareholders' request *[shall]* **must** be set for hearing at the earliest possible time and
35 *[shall]* **must** take precedence over all matters, except matters of the same character and hearings
36 on preliminary injunctions under ORCP 79 B(3). *[No]* **The court may not issue an** order *[shall be*
37 *issued by the court]* under this section without notice to the corporation at least five days in advance
38 of the time specified for the hearing unless **the court fixes** a different period *[is fixed by]* **in the**
39 order *[of the court]*.

40 **SECTION 22.** ORS 65.011 is amended to read:

41 65.011. (1) Except as provided in subsection (2) of this section[,] **and** ORS 56.080 and 65.014 **and**
42 **section 16 of this 2019 Act**, a document accepted for filing after review is effective:

43 (a) On the date *[it is filed by]* the Secretary of State **files the document;** and

44 (b) At the time, if any, *[specified in]* the document **specifies** as *[its]* **the document's** effective
45 time or at 12:01 a.m. on that date if *[no]* **the document does not specify an** effective time *[is*

1 *specified*].

2 (2) If a document specifies a delayed effective time and date, the document becomes effective
3 at the time and date specified. If a document specifies a delayed effective date but no time, the
4 document becomes effective at 12:01 a.m. on that date. A delayed effective date for a document may
5 not be later than the 90th day after the date *[it]* **the document** is filed.

6 **SECTION 23.** ORS 65.084 is amended to read:

7 65.084. (1) Except as provided in subsection (2) of this section, the validity of corporate action
8 may not be challenged on the ground that the corporation lacks or lacked power to act.

9 (2) A corporation's power to act may be challenged:

10 (a) In a proceeding by a member or members, a director or the Attorney General against the
11 corporation to enjoin the act;

12 (b) In a proceeding by the corporation, directly, derivatively or through a receiver, a trustee or
13 other legal representative, including the Attorney General in the case of a public benefit corpo-
14 ration, against an incumbent or former director, officer, employee or agent of the corporation; *[or]*

15 (c) In a proceeding under ORS 65.664[.]; **or**

16 **(d) In an action under section 18 of this 2019 Act.**

17 (3) In a proceeding under subsection (2)(a) of this section to enjoin an unauthorized corporate
18 act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to
19 the proceeding, and may award damages for loss other than anticipated profits suffered by the cor-
20 poration or another party because of enjoining the unauthorized act.

21 **SECTION 24.** ORS 65.207 is amended to read:

22 65.207. (1) The circuit court of the county where a corporation's principal office is located, or,
23 if the principal office is not in this state, where the registered office of the corporation is or was
24 last located, may summarily order a meeting to be held:

25 (a) On application of any member or other person entitled to participate in an annual or regular
26 meeting or, in the case of a public benefit corporation, the Attorney General, if an annual meeting
27 was not held within the earlier of six months after the end of the corporation's fiscal year or 15
28 months after *[its]* **the corporation's** last annual meeting;

29 (b) On application of any member or other person entitled to participate in a regular meeting
30 or, in the case of a public benefit corporation, the Attorney General, if a regular meeting is not held
31 within 40 days after the date *[it]* **the regular meeting** was required to be held; *[or]*

32 (c) On application of a member who signed a demand for a special meeting valid under ORS
33 65.204, a person or persons entitled to call a special meeting or, in the case of a public benefit
34 corporation, the Attorney General, if notice of the special meeting was not given within 30 days
35 after the date the demand was delivered to the corporation's secretary or the special meeting was
36 not held in accordance with the notice[.]; **or**

37 **(d) In accordance with section 18 of this 2019 Act for the purpose of approving a ratifi-**
38 **cation of a defective corporate action, as defined in section 11 of this 2019 Act.**

39 (2) The court may fix the time and place of the meeting, determine the members entitled to
40 participate in the meeting, specify a record date for determining members entitled to notice of and
41 to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required
42 for specific matters to be considered at the meeting or direct that the votes represented at the
43 meeting constitute a quorum for action on those matters, and enter other orders necessary to ac-
44 complish the purpose or purposes of the meeting.

45 (3)(a) Except as provided in paragraph (b) of this subsection, the court may award reasonable

1 attorney fees to the prevailing party in an action under this section.

2 (b) The court may not award attorney fees to the state or a political subdivision of the state if
3 the state or political subdivision prevails in an action under this section.

4 (4) The request *[shall]* **must** be set for hearing at the earliest possible time and *[shall]* **must**
5 take precedence over all matters, except matters of the same character and hearings on preliminary
6 injunctions under ORCP 79 B(3). *[No]* **The court may not issue an** order *[shall be issued by the*
7 *court]* under this section without notice to the corporation at least five days in advance of the time
8 specified for the hearing unless **the court fixes** a different period *[is fixed by order of the court]* **in**
9 **the order.**

10 **SECTION 24a. If Senate Bill 360 becomes law, section 24 of this 2019 Act (amending ORS**
11 **65.207) is repealed and ORS 65.207, as amended by section 39, chapter __, Oregon Laws 2019**
12 **(Enrolled Senate Bill 360), is amended to read:**

13 65.207. (1) The circuit court of the county where a corporation's principal office is located, or,
14 if the principal office is not in this state, where the registered office of the corporation is or was
15 last located, may summarily order a meeting to be held:

16 (a) On application of any member or other person entitled to participate in an annual or regular
17 meeting or, if the corporation is a public benefit corporation, the Attorney General, if the corpo-
18 ration did not hold an annual meeting within the earlier of six months after the end of the
19 corporation's fiscal year or 15 months after the corporation's last annual meeting;

20 (b) On application of any member or other person entitled to participate in a regular meeting
21 or, if the corporation is a public benefit corporation, the Attorney General, if a regular meeting is
22 not held within 40 days after the date the regular meeting was required to be held; *[or]*

23 (c) On application of a member who signed a demand for a special meeting valid under ORS
24 65.204, a person or persons entitled to call a special meeting or, if the corporation is a public benefit
25 corporation, the Attorney General, if notice of the special meeting was not given within 30 days
26 after the date the demand was delivered to the corporation's secretary or the special meeting was
27 not held in accordance with the notice[.]; **or**

28 **(d) In accordance with section 18 of this 2019 Act for the purpose of approving a ratifi-**
29 **cation of a defective corporate action, as defined in section 11 of this 2019 Act.**

30 (2) The court may fix the time and place of the meeting, determine the members entitled to
31 participate in the meeting, specify a record date for determining members entitled to notice of and
32 to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required
33 for specific matters to be considered at the meeting or direct that the votes represented at the
34 meeting constitute a quorum for action on those matters, and enter other orders necessary to ac-
35 complish the purpose or purposes of the meeting.

36 (3)(a) Except as provided in paragraph (b) of this subsection, the court may award reasonable
37 attorney fees to the prevailing party in an action under this section.

38 (b) The court may not award attorney fees to the state or a political subdivision of the state if
39 the state or political subdivision prevails in an action under this section.

40 (4) The request must be set for hearing at the earliest possible time and must take precedence
41 over all matters, except matters of the same character and hearings on preliminary injunctions un-
42 der ORCP 79 B(3). A court may not issue an order under this section without notice to the corpo-
43 ration at least five days in advance of the time specified for the hearing unless **the court fixes** a
44 different period *[is fixed by order of the court]* **in the order.**