

Senate Bill 185

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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 **as introduced**.

Permits nonprofit corporation organized under laws of other jurisdiction to become nonprofit corporation organized under laws of this state. Specifies procedures for domestication of foreign nonprofit corporation.

Specifies circumstances under which members of nonprofit corporation and board of directors of nonprofit corporation may discuss issues or take action by electronic means without meeting.

Specifies circumstances under which majority of directors may approve dissolution if number of directors in office at time at which directors consider dissolution is less than required by laws of this state or by articles of incorporation or bylaws of nonprofit corporation.

A BILL FOR AN ACT

1
2 Relating to the governance of nonprofit corporations; creating new provisions; and amending ORS
3 65.001, 65.038, 65.144, 65.212, 65.354, 65.387, 65.624 and 65.637.

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

5 **SECTION 1. Sections 2 to 4 of this 2021 Act are added to and made a part of ORS chapter**
6 **65.**

7 **SECTION 2. (1) A nonprofit corporation organized under this chapter may become a**
8 **nonprofit corporation organized under the laws of another jurisdiction if the laws of the**
9 **other jurisdiction permit the nonprofit corporation to do so and the nonprofit corporation:**

10 (a) **Complies with the requirements set forth in the laws of the other jurisdiction;**

11 (b) **Approves a plan to organize under the laws of the other jurisdiction; and**

12 (c) **Files the plan to organize under the laws of the other jurisdiction with the Secretary**
13 **of State, along with a notification as to whether the nonprofit corporation intends to con-**
14 **tinue to transact business in this state.**

15 (2) **A nonprofit corporation organized under the laws of another jurisdiction may become**
16 **a nonprofit corporation organized under this chapter if the laws of the other jurisdiction**
17 **permit the nonprofit corporation to do so and the nonprofit corporation:**

18 (a) **Complies with the laws of the other jurisdiction that apply to domestications outside**
19 **the other jurisdiction;**

20 (b) **Approves a plan of domestication;**

21 (c) **Files with the Secretary of State articles of domestication; and**

22 (d) **Applies in accordance with ORS 65.707 for authority to transact business in this state,**
23 **unless the nonprofit corporation does not intend to transact business in this state.**

24 (3)(a) **Articles of domestication must set forth:**

25 (A) **The name of the nonprofit corporation before domestication;**

26 (B) **The name of the nonprofit corporation after domestication;**

27 (C) **All proposed amendments to the nonprofit corporation's articles of organization and**

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 bylaws; and

2 (D) A statement of the manner in which and the basis on which the nonprofit corpo-
3 ration, after domestication, will cancel or reclassify memberships of the nonprofit corpo-
4 ration into memberships, obligations, rights to acquire membership, cash, property or any
5 combination of memberships, obligations, rights to acquire membership, cash or property.

6 (b)(A) Except as provided in subparagraph (B) of this paragraph, articles of domestication
7 may also provide that the nonprofit corporation may amend the articles before filing with
8 the Secretary of State.

9 (B) After the nonprofit corporation approves the articles of domestication, the nonprofit
10 corporation may not amend the articles of incorporation without the approval of the mem-
11 bers if the amendment would change:

12 (i) The amount or kind of memberships, obligations, rights to acquire memberships, cash
13 or property that members would receive under the articles of domestication;

14 (ii) The nonprofit corporation's articles of incorporation or bylaws other than as proposed
15 under paragraph (a)(C) of this subsection; or

16 (iii) Any other of the terms and conditions of the articles of domestication that would
17 adversely affect the members in any material respect.

18 (c) In addition to the provisions described in paragraphs (a) and (b) of this subsection,
19 the articles of domestication may set forth other provisions related to the domestication.

20 (4) A nonprofit corporation shall approve articles of domestication in the manner pro-
21 vided for approving mergers under ORS 65.487.

22 **SECTION 3.** A public benefit corporation or religious corporation organized under this
23 chapter must notify the Attorney General in writing at least 30 days before the public benefit
24 corporation or religious corporation files articles of domestication in another jurisdiction
25 unless the Attorney General waives this requirement in writing. The notice must include the
26 public benefit corporation's or religious corporation's plan of domestication, must describe
27 any restricted assets the public benefit corporation or religious corporation holds and any
28 activities the public benefit corporation or religious corporation expects to continue in this
29 state.

30 **SECTION 4.** (1) After the members approve a plan of domestication, the nonprofit cor-
31 poration shall file with the Secretary of State:

32 (a) The approved plan of domestication; or

33 (b) In lieu of the plan of domestication, a written declaration that:

34 (A) Identifies an address for an office of the domesticated entity where the plan of
35 domestication is on file; and

36 (B) States that the nonprofit corporation will provide any member with a copy of the plan
37 of domestication upon request and at no cost.

38 (2) The domestication takes effect at the date and time determined in accordance with
39 ORS 60.011.

40 **SECTION 5.** Section 6 of this 2021 Act is added to and made a part of ORS 65.337 to 65.351.

41 **SECTION 6.** (1) Unless a corporation's articles of incorporation or bylaws provide other-
42 wise, the corporation's board of directors may, without a meeting, use electronic mail or
43 other electronic means to take action that this chapter otherwise requires or permits the
44 board of directors to take at a board of directors' meeting if the corporation complies with
45 this section.

1 **(2)(a) Before taking an action under subsection (1) of this section, a corporation shall**
 2 **send to the electronic mail address that each director provided to the corporation for re-**
 3 **ceiving communications from the corporation an electronic mail announcement that states**
 4 **that the board of directors will take the action.**

5 **(b) The electronic mail announcement the corporation sends under paragraph (a) of this**
 6 **subsection must include a description of the matter on which the board of directors will take**
 7 **action. The electronic mail announcement must specify a deadline of not less than 48 hours**
 8 **after the time the corporation sends the announcement in which a director may record the**
 9 **director's vote.**

10 **(c) The corporation shall include the electronic mail announcement described in this**
 11 **subsection and a record of the directors' votes in the minutes for the directors' meeting or**
 12 **shall file the announcement and record of the directors' votes in documents that reflect the**
 13 **action that the board took.**

14 **(3) Notwithstanding subsection (1) of this section, a corporation's board of directors may**
 15 **not use electronic mail or other electronic means to take action if the corporation does not**
 16 **have a record of an electronic mail address for a director.**

17 **(4) A director may change the director's vote at any time before the deadline set forth**
 18 **in the electronic mail announcement described in subsection (2) of this section.**

19 **(5) An affirmative vote of the majority of the directors who hold office at the time the**
 20 **board of directors takes an action by means of electronic mail or by other electronic means**
 21 **is an act of the board, unless a corporation's articles of incorporation or bylaws require an**
 22 **affirmative vote of a greater number of directors. The board's action under this subsection**
 23 **has the effect of a meeting vote and the corporation may describe the action as a meeting**
 24 **vote in any document.**

25 **(6) The board of directors' action under subsection (5) of this section is effective on the**
 26 **deadline specified in the electronic mail announcement described in subsection (2) of this**
 27 **section, unless the announcement specifies a different effective date or time.**

28 **(7) The board of directors may, without complying with all of the requirements of this**
 29 **section, use electronic mail to discuss, but not take action on, an issue that comes before**
 30 **the board.**

31 **SECTION 7.** ORS 65.001 is amended to read:

32 65.001. As used in this chapter:

33 **(1)(a) "Anniversary" means, except as provided in paragraph (b) of this subsection, the day each**
 34 **year that is exactly one or more years after the date on which the Secretary of State files:**

35 **(A) The articles of incorporation for a domestic corporation; or**

36 **(B) An application for authority to transact business for a foreign corporation.**

37 **(b) "Anniversary" means February 28 if an event occurs that would otherwise cause an anni-**
 38 **versary to fall on February 29.**

39 **(2) "Appointed director" means a director who is appointed by a person other than the board**
 40 **of directors.**

41 **(3) "Approved by the members" or "approval by the members" means approved or ratified by**
 42 **members entitled to vote on an issue through either:**

43 **(a) The affirmative vote of a majority of the votes of the members represented and voting at a**
 44 **duly held meeting at which a quorum is present or the affirmative vote of a greater proportion in-**
 45 **cluding the votes of any required proportion of the members of any class as the articles of incor-**

1 poration, bylaws or this chapter may provide for specified types of member action; or

2 (b) A written ballot or written consent in conformity with this chapter.

3 **(4) “Articles of domestication” means the articles of domestication described in section**
 4 **2 of this 2021 Act and corrected, amended and restated articles of domestication.**

5 [(4)] (5) “Articles of incorporation” means the articles of incorporation described in ORS 65.047
 6 and corrected, amended and restated articles of incorporation.

7 [(5)] (6) “Articles of merger” means the articles of merger described in ORS 65.491 and cor-
 8 rected, amended and restated articles of merger.

9 [(6)] (7) “Board of directors” means the individual or individuals who are vested with overall
 10 management of the affairs of a domestic corporation or foreign corporation, irrespective of the name
 11 that designates the individual or individuals.

12 [(7)] (8) “Bylaws” means a set of provisions for managing and regulating a corporation’s affairs
 13 that the corporation must adopt under ORS 65.061.

14 [(8)] (9) “Class” means a group of memberships that have the same rights, including rights that
 15 are determined by a formula that is applied uniformly, with respect to voting, dissolution, redemp-
 16 tion and transfer.

17 [(9)] (10) “Contact information” means a street address, a mailing address or an electronic ad-
 18 dress at which a member or director elects to receive notices and other messages from the corpo-
 19 ration.

20 [(10)] (11) “Corporation” means a domestic corporation or a foreign corporation.

21 [(11)] (12) “Delegate” means a person who is elected or appointed to vote in a representative
 22 assembly for electing a director or directors or on other matters.

23 [(12)] (13) “Deliver” means to transfer by any method of delivery used in conventional commer-
 24 cial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

25 [(13)] (14) “Designated director” means a director that the articles of incorporation or the by-
 26 laws designate as a director in a manner that identifies a specific individual or a group of individ-
 27 uals.

28 [(14)] (15) “Director” means an individual who acts as a member of the board of directors, who
 29 has a right to vote on questions concerning the management and regulation of a corporation’s affairs
 30 and who is:

31 (a) An appointed director;

32 (b) A designated director; or

33 (c) A director elected by the incorporators, directors or members.

34 [(15)] (16) “Distribution” means a payment to a person from the income or assets of a corpo-
 35 ration, other than a payment of reasonable value to a person for property received or services per-
 36 formed or a payment that furthers the corporation’s purposes.

37 [(16)] (17) “Document” means:

38 (a) A medium that embodies information in tangible form, including any writing or written in-
 39 strument; or

40 (b) An electronic medium that embodies information that a person may retain, retrieve and re-
 41 produce, in tangible form or otherwise.

42 [(17)] (18) “Domestic business corporation” means a for profit corporation that is incorporated
 43 under ORS chapter 60.

44 [(18)] (19) “Domestic corporation” means a nonprofit corporation that is not a foreign corpo-
 45 ration and that is incorporated under or subject to the provisions of this chapter.

1 [(19)] **(20)** “Domestic limited liability company” means an unincorporated association that has
2 one or more members and that is organized under ORS chapter 63.

3 [(20)] **(21)** “Domestic professional corporation” means a corporation that is organized under ORS
4 chapter 58 for the purpose of rendering professional services and for the purposes provided under
5 ORS chapter 58.

6 **(22) “Domestication” means the process described in sections 2, 3 and 4 of this 2021 Act**
7 **under which a nonprofit corporation organized under the laws of another jurisdiction be-**
8 **comes a nonprofit corporation organized under this chapter.**

9 [(21)] **(23)** “Employee” means an individual that a corporation employs, including an officer or
10 director whom the corporation employs with compensation for services beyond the services of board
11 membership.

12 [(22)] **(24)** “Entity” means a domestic corporation, foreign corporation, business corporation and
13 foreign business corporation, profit and nonprofit unincorporated association, corporation sole,
14 business trust, partnership, two or more persons that have a joint or common economic interest, any
15 state, the United States, a federally recognized Native American or American Indian tribal govern-
16 ment and any foreign government.

17 [(23)] **(25)** “Foreign business corporation” means a for profit corporation that is incorporated
18 under laws other than the laws of the state.

19 [(24)] **(26)** “Foreign corporation” means a corporation that is organized under laws other than
20 the laws of the state and that would be a nonprofit corporation if organized under the laws of the
21 state.

22 [(25)] **(27)** “Foreign limited liability company” means an unincorporated association that is or-
23 ganized under laws other than the laws of the state and under a statute that permits an entity to
24 organize and that affords to each of the entity’s members limited liability with respect to liabilities
25 of the entity.

26 [(26)] **(28)** “Foreign professional corporation” means a professional corporation that is organized
27 under laws other than the laws of the state.

28 [(27)] **(29)** “Gift instrument” means a record, including a record of a solicitation, under which
29 a corporation holds property or under which property is granted or transferred to the corporation.

30 [(28)] **(30)** “Governmental subdivision” means a unit of government, including an authority,
31 county, district and municipality.

32 [(29)] **(31)** “Individual” means a natural person, including the guardian of an incompetent indi-
33 vidual.

34 [(30)(a)] **(32)(a)** “Member” means a person that is entitled, under a domestic corporation’s or
35 foreign corporation’s articles of incorporation or bylaws, to exercise any of the rights described in
36 ORS 65.144 without regard to whether the articles of incorporation or bylaws identify the person
37 as a member or which other title or identity the domestic corporation or foreign corporation gives
38 to the person.

39 (b) “Member” does not include:

40 (A) A person that does not have the rights described in ORS 65.144 or that has only one or more
41 of the following rights:

42 (i) Rights granted to a delegate;

43 (ii) A right to designate or appoint a director or directors;

44 (iii) Rights that a director has;

45 (iv) A right to vote on only one occasion to elect a director or directors; or

1 (v) Rights that a person has as a consequence of holding evidence of indebtedness the corpo-
2 ration has issued or will issue.

3 (B) A person for which membership rights have been eliminated as provided in ORS 65.164 or
4 65.167.

5 [(31)] (33) "Membership" means the rights and obligations a member has under this chapter.

6 [(32)] (34) "Mutual benefit corporation" means a domestic corporation that is organized to serve
7 and operates primarily to serve the mutual interests of a group of persons, but is not a public benefit
8 corporation or religious corporation.

9 [(33)] (35) "Nonprofit corporation" means a mutual benefit corporation, a public benefit corpo-
10 ration or a religious corporation.

11 [(34)] (36) "Notice" means a notice described in ORS 65.034.

12 [(35)] (37) "Person" means an individual or an entity.

13 [(36)(a)] (38)(a) "Principal office" means the physical street address of the place, in or out of this
14 state, where the principal executive offices of a domestic corporation or foreign corporation are lo-
15 cated and that is designated as the principal office in the most recent annual report filed in ac-
16 cordance with ORS 65.787 or, if no annual report is on file, in the articles of incorporation or the
17 application for authority to transact business in this state.

18 (b) "Principal office" does not include a commercial mail receiving agency, a mail forwarding
19 business or a virtual office.

20 [(37)] (39) "Proceeding" means a civil, criminal, administrative or investigatory action.

21 [(38)] (40) "Public benefit corporation" means a domestic corporation that:

22 (a) Is formed as a public benefit corporation under ORS 65.044 to 65.067, is designated as a
23 public benefit corporation by a statute, is recognized as tax exempt under section 501(c)(3) of the
24 Internal Revenue Code or is otherwise organized for a public or charitable purpose;

25 (b) Is restricted so that on dissolution the corporation must distribute the corporation's assets
26 to an organization that is organized for a public or charitable purpose, a religious corporation, the
27 United States, a state or a person that is recognized as exempt under section 501(c)(3) of the Inter-
28 nal Revenue Code of 1986; and

29 (c) Is not a religious corporation.

30 [(39)] (41) "Record date" means the date established under ORS 65.131 to 65.177 or 65.201 to
31 65.254 on which a corporation determines the identity of the corporation's members and the
32 members' membership rights for the purposes of this chapter.

33 [(40)] (42) "Religious corporation" means a domestic corporation that is formed as a religious
34 corporation under ORS 65.044 to 65.067, is designated a religious corporation by a statute or is or-
35 ganized primarily or exclusively for religious purposes.

36 [(41)] (43) "Remote communication" means any method by which a person that is not physically
37 present at the location at which a meeting occurs may nevertheless hear or otherwise communicate
38 at substantially the same time with other persons at the meeting and have access to materials nec-
39 essary to participate or vote in the meeting to the extent of the person's authorization to participate
40 or vote.

41 [(42)] (44) "Secretary," when used in the context of a corporate official, means the corporate
42 officer to whom the board of directors has delegated responsibility under ORS 65.371 for preparing
43 the minutes of the board of directors' meetings and membership meetings and for authenticating the
44 records of the corporation.

45 [(43)] (45) "Shell entity" means an entity that has the characteristics described in ORS 65.661.

1 [(44)] (46) "Sign" means to indicate a present intent to authenticate or adopt a document by:

2 (a) Affixing a symbol to the document;

3 (b) Inscribing or affixing a manual, facsimile or conformed signature on the document; or

4 (c) Attaching to, or logically associating with, an electronic transmission any electronic sound,
5 symbol or process, including an electronic signature.

6 [(45)] (47) "State," when referring to a part of the United States, means a state, commonwealth,
7 territory or insular possession of the United States and the agencies and governmental subdivisions
8 of the state, commonwealth, territory or insular possession.

9 [(46)] (48) "Uncompensated officer" means an individual who serves in an office without com-
10 pensation other than payment solely for actual expenses the individual incurs in performing duties
11 of the individual's office or payment for the average expenses the individual incurs over the course
12 of a year.

13 [(47)] (49) "United States" means the federal government or a district, authority, bureau, com-
14 mission, department or any other agency of the United States.

15 [(48)] (50) "Vote" means an authorization by written ballot or written consent, where permitted,
16 or by another method that a corporation specifies as an authorization.

17 [(49)] (51) "Voting power" means the total number of votes entitled to be cast on an issue at the
18 time the determination of voting power is made, excluding a vote that is contingent upon a condition
19 or event occurring that has not occurred at the time.

20 [(50)] (52) "Written" means embodied as a document.

21 **SECTION 8.** ORS 65.038 is amended to read:

22 65.038. (1)(a) If a corporation asserts that calling or conducting a meeting of the corporation's
23 members, delegates or directors or otherwise obtaining consent from the members, delegates or di-
24 rectors in accordance with the corporation's articles of incorporation or bylaws or in accordance
25 with this chapter is impractical or impossible, or if the corporation cannot identify the corporation's
26 members or directors, a director, an officer, a delegate, a member or the Attorney General may pe-
27 tition for an order to call or conduct a meeting or an order to identify the corporation's members
28 or directors. The director, officer, delegate, member or the Attorney General shall submit the peti-
29 tion to the circuit court for the county in this state that the corporation's last filed annual report,
30 the articles of incorporation or an application for authority to transact business in this state iden-
31 tifies as the location of the corporation's principal office. If the annual report, the articles of in-
32 corporation or the application does not identify the county in which the principal office is located,
33 the director, officer, delegate, member or the Attorney General may petition for an order from the
34 circuit court of Marion County or Multnomah County.

35 (b) In an order under paragraph (a) of this subsection, the court may:

36 (A) Direct the corporation to call a meeting and provide a written ballot or other form of ob-
37 taining the vote of members, delegates or directors in any manner that the court finds is fair and
38 equitable under the circumstances; or

39 (B) Determine who the members or directors of the corporation are or amend the articles of
40 incorporation to state that the corporation does not have members.

41 (2) The court shall, in an order issued under this section, provide for a method of notice rea-
42 sonably designed to give actual notice to all persons who would be entitled to notice of a meeting
43 held pursuant to the articles of incorporation, bylaws and this chapter, whether or not the method
44 results in actual notice to all such persons or conforms to the notice requirements that would oth-
45 erwise apply.

1 (3) An order that a court issues in accordance with this section may for good cause shown dis-
 2 pense with any requirement to hold a meeting or to obtain votes, including any requirement that the
 3 articles of incorporation, bylaws or this chapter might otherwise impose as to quorum or as to the
 4 number or percentage of votes needed to approve an act.

5 (4) Whenever practical, a court in any order issued under this section shall limit the subject
 6 matter of meetings or other forms of consent judicially authorized to those items, including amend-
 7 ments to the articles of incorporation or bylaws, the resolution of which will or may enable the
 8 corporation to continue managing the corporation's affairs without further resort to this section.
 9 An order issued under this section may also authorize the obtaining of whatever votes and approvals
 10 are necessary for *[the]* a dissolution, merger, **domestication** or sale of assets.

11 (5) Any meeting or other method of obtaining the vote of members, delegates or directors con-
 12 ducted pursuant to an order issued under this section, and which complies with all the provisions
 13 of the order, is for all purposes a valid meeting or vote, as the case may be, and has the same force
 14 and effect as if the meeting or method of obtaining the vote complied with every requirement im-
 15 posed by the articles of incorporation, bylaws and this chapter.

16 **SECTION 9.** ORS 65.144 is amended to read:

17 65.144. (1) Unless a corporation's articles of incorporation or bylaws provide otherwise, members
 18 of the corporation have the same rights and obligations. The articles of incorporation or bylaws may
 19 establish classes of membership with different rights or obligations. Rights that members have, un-
 20 less the corporation's articles of incorporation or bylaws provide otherwise, include rights to:

21 (a) Elect directors, as provided in ORS 65.311;

22 (b) Remove directors, as provided in ORS 65.324;

23 (c) Vote on any change to the number of directors, including a change to a fixed number of di-
 24 rectors, a change to a variable range in the number of possible directors or a change from a fixed
 25 number of directors to a variable range in the number of possible directors, as provided in ORS
 26 65.307;

27 (d) Vote to sell, transfer, lease, exchange, option, convey or otherwise dispose of the
 28 corporation's assets or to merge the corporation's assets with the assets of another entity, as pro-
 29 vided in ORS 65.803;

30 (e) Vote to dissolve the corporation, as provided in ORS 65.624; *[and]*

31 **(f) Approve a plan of domestication; and**

32 *[(f)]* **(g)** Approve a conflict of interest transaction, as provided in ORS 65.361, if the member is
 33 a voting member of a mutual benefit corporation.

34 (2) Notwithstanding a provision in a corporation's articles of incorporation or bylaws, a member
 35 has a right to:

36 (a) Vote on an action or an amendment to the articles of incorporation if the action or amend-
 37 ment would reduce or eliminate the member's right to vote; and

38 (b) Inspect and copy the corporation's records, as provided in ORS 65.774.

39 **SECTION 10.** ORS 65.212 is amended to read:

40 65.212. (1) Unless a corporation's articles of incorporation or bylaws provide otherwise,[:]

41 *[(a)]* the corporation's *[board of directors]* **members** may, without a meeting, use electronic mail
 42 or other electronic means to take action that this chapter otherwise requires or permits the *[board*
 43 *of directors]* **members** to take at a *[board of directors']* meeting if the corporation complies with this
 44 section.

45 *[(b) The board of directors may, without complying with all of the requirements of this section, use*

1 *electronic mail to discuss, but not take action on, an issue that comes before the board.]*

2 (2)(a) Before taking an action under subsection (1) of this section, a corporation shall send to
3 the electronic mail address that each [*director*] **member** provided to the corporation for receiving
4 communications from the corporation an electronic mail announcement that states that the [*board*
5 *of directors*] **members** will take the action.

6 (b) The electronic mail announcement the corporation sends under paragraph (a) of this sub-
7 section must include a description of the matter on which the [*board of directors*] **members** will take
8 action. The electronic mail announcement must specify a deadline of not less than 48 hours after the
9 time the corporation sends the announcement in which a [*director*] **member** may record the
10 [*director's*] **member's** vote.

11 (c) The corporation shall include the electronic mail announcement described in this subsection
12 and a record of the [*directors'*] **members'** votes in the minutes for the [*directors'*] meeting or shall
13 file the announcement and record of the [*directors'*] **members'** votes in documents that reflect the
14 action that the [*board*] **members** took.

15 (3) Notwithstanding subsection (1) of this section, a corporation's [*board of directors*] **members**
16 may not use electronic mail or other electronic means to take action if the corporation does not
17 have a record of an electronic mail address for a [*director*] **member**.

18 (4) A [*director*] **member** may change the [*director's*] **member's** vote at any time before the
19 deadline set forth in the electronic mail announcement described in subsection (2) of this section.

20 (5) An affirmative vote of the majority of the [*directors who hold office*] **members** at the time
21 the [*board of directors takes*] **members take** an action by means of electronic mail or by other
22 electronic means is an act of the [*board*] **members**, unless a corporation's articles of incorporation
23 or bylaws require an affirmative vote of a greater number of [*directors*] **members**. The [*board's*]
24 **members'** action under this subsection has the effect of a meeting vote and the corporation may
25 describe the action as a meeting vote in any document.

26 (6) The [*board of directors'*] **members'** action under subsection (5) of this section is effective on
27 the deadline specified in the electronic mail announcement described in subsection (2) of this sec-
28 tion, unless the announcement specifies a different effective date or time.

29 (7) **Unless a record date for determining members who may take an action without a**
30 **meeting under this section is set in accordance with ORS 65.207 or 65.221, the record date is**
31 **the date of the electronic mail announcement described in subsection (2)(a) of this section.**

32 (8) **Members may use electronic mail to discuss an issue that comes before the members.**

33 **SECTION 11.** ORS 65.354 is amended to read:

34 65.354. (1)(a) Unless the articles of incorporation or bylaws provide otherwise, a board of di-
35 rectors may create one or more committees that exercise the authority of the board. The board may
36 appoint directors to serve on a committee or designate the method of selecting committee members.
37 Each committee must consist of two or more directors, who serve at the pleasure of the board. Only
38 a director may serve as a voting member of a committee.

39 (b) The creation of a committee and appointment of directors to the committee or designation
40 of a method of selecting committee members under this subsection must be approved by the greater
41 of:

42 (A) A majority of all the directors in office when the action is taken; or

43 (B) The number of directors required by the articles of incorporation or bylaws to take action
44 under ORS 65.351.

45 (2)(a) The board of directors may create committees to advise the board or otherwise serve the

1 corporation. The board may appoint individuals to serve on a committee or specify a method for
2 selecting committee members. A member of a committee the board creates under this subsection may
3 be, but need not be, a director or a member of the corporation.

4 (b) A committee the board creates under this subsection may not exercise the authority of the
5 board of directors.

6 (3) ORS 65.337 to 65.351, governing meetings, action without meetings, notice and waiver of
7 notice, and quorum and voting requirements of the board of directors, also apply to committees and
8 committee members.

9 (4) Except as provided in subsections (2)(b) and (5) of this section, to the extent specified by the
10 board of directors or in the articles of incorporation or bylaws, each committee of the board may
11 exercise the authority of the board of directors.

12 (5) A committee the board creates under this section may not:

13 (a) Authorize distributions;

14 (b) Approve or recommend to members dissolution, merger, **domestication** or the sale, pledge
15 or transfer of all or substantially all of the corporation's assets;

16 (c) Elect, appoint or remove directors or fill vacancies on the board or on any of the board's
17 committees; or

18 (d) Adopt, amend or repeal the articles of incorporation or bylaws.

19 (6) The creation of, delegation of authority to, or action by a committee does not alone consti-
20 tute compliance by a director with the standards of conduct described in ORS 65.357.

21 **SECTION 12.** ORS 65.387 is amended to read:

22 65.387. As used in ORS 65.387 to 65.414:

23 (1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a
24 merger, **domestication** or other transaction in which the predecessor's existence ceased upon con-
25 summation of the transaction.

26 (2) "Director" means an individual who is or was a director of a corporation or an individual
27 who, while a director of a corporation, is or was serving at the corporation's request as a director,
28 officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit
29 corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. A director
30 is considered to be serving an employee benefit plan at the corporation's request if the director's
31 duties to the corporation also impose duties on, or otherwise involve services by, the director to the
32 plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context re-
33 quires otherwise, the estate or personal representative of a director.

34 (3) "Expenses" include attorney fees.

35 (4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an
36 excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually in-
37 curred with respect to a proceeding.

38 (5) "Officer" means an individual who is or was an officer of a corporation or an individual who,
39 while an officer of a corporation, is or was serving at the corporation's request as a director, officer,
40 partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint
41 venture, trust, employee benefit plan or other enterprise. An officer is considered to be serving an
42 employee benefit plan at the corporation's request if the officer's duties to the corporation also im-
43 pose duties on or include services by the officer to the employee benefit plan or to participants in
44 or beneficiaries of the plan. "Officer" includes, unless the context requires otherwise, the estate or
45 personal representative of an officer.

1 (6) "Party" includes an individual who was, is or is threatened to be made a named defendant
2 or respondent in a proceeding.

3 (7) "Proceeding" means any threatened, pending or completed action, suit or proceeding whether
4 civil, criminal, administrative or investigative and whether formal or informal.

5 **SECTION 13.** ORS 65.624 is amended to read:

6 65.624. (1) Unless a corporation's articles of incorporation, bylaws or the board of directors or
7 members, acting in accordance with subsection (3) of this section, require a greater vote or voting
8 by class, dissolution is authorized if the dissolution is approved:

9 (a) By the board of directors;

10 (b) By the members of a mutual benefit corporation entitled to vote on dissolution, if any, by
11 at least two-thirds of the votes cast or a majority of the voting power, whichever is less, or by a
12 majority of the votes cast, if the corporation is a public benefit corporation or religious corporation;
13 and

14 (c) In writing, by any person or persons whose approval is required for an amendment of the
15 articles of incorporation or bylaws, as authorized by ORS 65.467, or for dissolution.

16 (2)(a) If the corporation does not have members entitled to vote on dissolution, the board of
17 directors must approve the dissolution [*and may do so even if the board does not have a quorum*]. In
18 addition, the corporation shall provide notice of any meeting of the board of directors at which such
19 approval is to be considered in accordance with ORS 65.344 (2). The notice must also state that the
20 purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and must
21 contain or be accompanied by a copy or summary of the plan of dissolution.

22 **(b) Even if the number of directors in office at the time the board considers the proposed**
23 **dissolution is less than the minimum required under this chapter, under the articles of in-**
24 **corporation or under the corporation's bylaws, a majority of the directors in office at the**
25 **time the board considers the proposed dissolution may approve the dissolution.**

26 (3) The board of directors may condition the board's submission of the proposed dissolution to
27 a vote of members, and the members may condition the members' approval of the dissolution on re-
28 ceipt of a higher percentage of affirmative votes or on any other basis.

29 (4) If the board of directors seeks to have dissolution approved by the members at a membership
30 meeting, the corporation shall give all members, whether or not entitled to vote, notice of the pro-
31 posed meeting in accordance with ORS 65.214. The notice must also state that the purpose, or one
32 of the purposes, of the meeting is to consider dissolving the corporation and must contain or be
33 accompanied by a copy or summary of the plan of dissolution.

34 (5) If the board of directors seeks to have dissolution approved by the members by written
35 consent or written ballot, the material soliciting the approval must contain or be accompanied by
36 a copy or summary of the plan of dissolution.

37 (6) The plan of dissolution must indicate to whom the assets owned or held by the corporation
38 will be distributed after all creditors have been paid.

39 **SECTION 14.** ORS 65.637 is amended to read:

40 65.637. (1) A dissolved corporation continues the corporation's corporate existence but may not
41 carry on any activities except activities that are appropriate to wind up and liquidate the
42 corporation's affairs, including:

43 (a) Preserving and protecting the corporation's assets and minimizing the corporation's liabil-
44 ities;

45 (b) Discharging or providing for discharging the corporation's liabilities and obligations;

- 1 (c) Disposing of the corporation's properties that will not be distributed in kind;
- 2 (d) Returning, transferring or conveying assets in accordance with a condition under which the
- 3 corporation holds the assets subject to a requirement to return, transfer or convey the assets, if the
- 4 condition occurs by reason of the dissolution;
- 5 (e) Transferring, subject to any contractual or legal requirements, the corporation's assets as
- 6 provided in or authorized by the corporation's articles of incorporation or bylaws;
- 7 (f) If the corporation is a public benefit corporation or religious corporation, and the corporation
- 8 has not provided in the corporation's articles of incorporation or bylaws for distributing assets on
- 9 dissolution, transferring, subject to any contractual or legal requirement, the corporation's assets
- 10 to one or more persons described in ORS 65.001 [(38)(b)] **(40)(b)**;
- 11 (g) If the corporation is a mutual benefit corporation and the corporation has not provided in
- 12 the corporation's articles of incorporation or bylaws for distributing assets on dissolution, trans-
- 13 ferring, subject to any contractual or legal requirements, the corporation's assets to the
- 14 corporation's members or, if the corporation has no members, to those persons whom the corporation
- 15 purports to benefit or serve;
- 16 (h) Adopting a plan of merger; and
- 17 (i) Doing other acts necessary to liquidate the corporation's assets and wind up the
- 18 corporation's affairs.
- 19 (2) Dissolution of a corporation does not:
- 20 (a) Transfer title to the corporation's property;
- 21 (b) Subject the corporation's directors or officers to standards of conduct different from the
- 22 standards prescribed in ORS 65.301 to 65.414;
- 23 (c) Change quorum or voting requirements for the corporation's board of directors or members,
- 24 change provisions for selection, resignation or removal of the corporation's directors or officers, or
- 25 both, or change provisions for amending the corporation's bylaws;
- 26 (d) Prevent commencement of a proceeding by or against the corporation in the corporation's
- 27 corporate name;
- 28 (e) Abate or suspend a proceeding pending by or against the corporation on the effective date
- 29 of dissolution; or
- 30 (f) Terminate the authority of the registered agent of the corporation.

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