

Enrolled
Senate Bill 359

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CHAPTER

AN ACT

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

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

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

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

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

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

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

(4) "Defective corporate action" means:

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

(b) An overissue.

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

(a) The shareholders of the corporation approve a ratification of a defective corporate action or, if the ratification does not require shareholder approval, the date on which the notice described in section 6 of this 2019 Act becomes effective in accordance with ORS 60.034; or

(b) Articles of validation filed in accordance with section 8 of this 2019 Act become effective.

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

(7) "Overissue" means an issuance of shares of a class or series of the corporation that:
(a) Exceeds the number of shares of a class or series that the corporation has the power to issue under ORS 60.131 at the time the corporation issued the shares; or

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

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

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

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

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

SECTION 3. (1) A defective corporate action is not void or voidable if the corporation ratifies the defective corporate action in accordance with section 4 of this 2019 Act or validates the defective corporate action in accordance with section 8 of this 2019 Act.

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

(a) Affect the validity or effectiveness of a corporate action that is properly ratified under common law or otherwise; or

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

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

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

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

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

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

(a) Identify the defective corporate action the proposal seeks to ratify and, if the defective corporate action involved an issuance of putative shares, the number and type of putative shares the corporation purportedly issued;

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

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

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

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

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

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

(A) First took the action; or

(B) Were purportedly elected as the initial board of directors;
(c) Describe the nature of the failure of authorization that resulted in the corporate action becoming a defective corporate action; and

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

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

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

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

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

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

(B) The date of the defective corporate action.

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

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

(a) State that the purpose, or one of the purposes, of the meeting is to consider an approval of the ratification of a defective corporate action.

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

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

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

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

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

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

(b) Shareholder approval of a ratification of an election of a director requires that at a meeting at which a quorum is present the number of votes that shareholders cast that favor

the ratification exceeds the number of votes that shareholders cast that oppose the ratification.

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

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

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

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

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

(B) The date of the defective corporate action.

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

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

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

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

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

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

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

(3) A corporation need not send a notice under this section with respect to a ratification that the corporation must submit to shareholders for approval if the corporation sends notice in accordance with section 5 of this 2019 Act.

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

SECTION 7. (1) On and after the date on which a corporation ratifies a defective corporate action under section 4 of this 2019 Act or validates a defective corporate action under

section 8 of this 2019 Act, the defective corporate action becomes a corrected corporate action and, notwithstanding the 120-day period provided in section 9 of this 2019 Act for challenges to the ratification:

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

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

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

(2) A corporation's ratification, validation or other approval of a corporate action under sections 2 to 9 of this 2019 Act and a determination, finding, order or judgment in a proceeding under section 9 of this 2019 Act does not affect a cause of action or remedy, other than a cause of action or remedy under section 9 of this 2019 Act, that relates to the corporate action or the corporation's ratification, validation or other approval of the corporate action under sections 2 to 9 of this 2019 Act.

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

(2) Articles of validation must:

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

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

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

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

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

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

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

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

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

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

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

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

(B) Include a copy of the previously filed document together with a document that specifies the necessary corrections to the previously filed document.

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

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

(A) Determine the validity and effectiveness of a corporate action or a defective corporate action;

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

(C) Determine the validity of any putative shares;

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

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

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

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

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

(B) A director of the corporation;

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

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

(E) Any other person that claims that a ratification of a defective corporate action substantially and adversely affects the person.

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

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

(4)(a) A person must bring, within 120 days after the later of the effective date of validation or the date of the notice that a corporation gives under section 5 or 6 of this 2019 Act, as applicable, any action that claims that a ratification of a defective corporate action is not valid or effective or that putative shares a corporation issues are not valid or effective, or that the defective corporate action or putative shares are valid or effective only under certain conditions.

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

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

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

(1) “Corporate action” means an action that a corporation takes or an action that an incorporator, the board of directors, a committee, an officer, an agent or another person takes on the corporation’s behalf.

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

(3) “Date of the defective corporate action” means the date, or the approximate date, on which a corporation took a defective corporate action.

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

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

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

(b) Articles of validation filed in accordance with section 17 of this 2019 Act become effective.

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

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

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

(a) Affect the validity or effectiveness of a corporate action that is properly ratified under common law or otherwise; or

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

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

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

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

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

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

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

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

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

(A) First took the action; or

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

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

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

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

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

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

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

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

(B) The date of the defective corporate action.

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

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

(a) State that the purpose, or one of the purposes, of the meeting is to consider an approval of the ratification of a defective corporate action.

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

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

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

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

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

(4)(a) Except as provided in paragraph (b) of this subsection, if a board of directors' ratification of a defective corporate action under section 13 of this 2019 Act requires member approval, the quorum and voting requirements that applied to members at the time the members approved the defective corporate action apply also to the members' approval of the ratification of the defective corporate action.

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

SECTION 15. (1)(a) Except as provided in paragraph (b) of this subsection, unless the members of a corporation must approve a ratification of a defective corporate action under

section 13 (3) of this 2019 Act, the corporation shall send notice of the ratification to each person, whether or not the person may vote, that is a member of the corporation on:

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

(B) The date of the defective corporate action.

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

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

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

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

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

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

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

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

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

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

(2) A defective corporate action that results directly or indirectly from a previous defective corporate action, or a corporate action that a corporation takes in reliance on the previous defective corporate action, is valid and effective as of the date the corporation took the corporate action or the defective corporate action if the corporation ratified the previous defective corporate action under section 13 of this 2019 Act or validated the previous defective corporate action under section 17 of this 2019 Act.

(3) A corporation's ratification, validation or other approval of a corporate action under sections 11 to 18 of this 2019 Act and a determination, finding, order or judgment in a proceeding under section 18 of this 2019 Act does not affect a cause of action or remedy, other than a cause of action or remedy under section 18 of this 2019 Act, that relates to the corporate action or the corporation's ratification, validation or other approval of the corporate action under sections 11 to 18 of this 2019 Act.

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

(2) Articles of validation must:

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

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

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

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

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

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

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

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

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

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

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

(B) Include a copy of the previously filed document together with a document that specifies the necessary corrections to the previously filed document.

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

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

(A) Determine the validity and effectiveness of a corporate action or a defective corporate action;

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

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

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

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

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

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

(B) A director of the corporation;

(C) A member of the corporation; and

(D) Any other person that claims that a ratification of a defective corporate action substantially and adversely affects the person.

(b) For the purposes of paragraph (a) of this subsection, a member of the corporation includes a person that was a member on the date on which the corporation ratified the defective corporate action.

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

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

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

SECTION 19. ORS 60.011 is amended to read:

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

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

SECTION 20. ORS 60.084 is amended to read:

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

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

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

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

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

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

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

SECTION 21. ORS 60.207 is amended to read:

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

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

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

(c) In accordance with section 9 of this 2019 Act for the purpose of approving a ratification of a defective corporate action, as defined in section 2 of this 2019 Act.

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

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

SECTION 22. ORS 65.011 is amended to read:

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

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

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

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

SECTION 23. ORS 65.084 is amended to read:

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

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

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

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

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

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

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

SECTION 24. ORS 65.207 is amended to read:

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

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

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

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

(d) In accordance with section 18 of this 2019 Act for the purpose of approving a ratification of a defective corporate action, as defined in section 11 of this 2019 Act.

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

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

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

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

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

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

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

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

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

(d) In accordance with section 18 of this 2019 Act for the purpose of approving a ratification of a defective corporate action, as defined in section 11 of this 2019 Act.

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

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

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

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

Passed by Senate February 19, 2019

Repassed by Senate June 3, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 23, 2019

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State