

Chapter 57

1985 REPLACEMENT PART

Private Corporations Generally

SHORT TITLE AND DEFINITIONS	
57.002	Short title
57.004	Definitions
SUBSTANTIVE PROVISIONS	
57.025	Purposes for which corporations may be organized
57.030	General powers
57.035	Right of corporation to acquire and dispose of its own shares
57.040	Assertion of ultra vires
57.045	Corporate name requirements
57.050	Reservation of corporate name
57.055	Registration of corporate name
57.060	Renewal of registration
57.065	Registered office and registered agent
57.070	Change of registered office or registered agent
57.075	Service of process on corporation
57.080	Authorized shares
57.085	Issuance of shares of preferred or special classes in series
57.088	Issuance of rights or options to purchase shares
57.090	Subscriptions for shares
57.100	Consideration for shares
57.106	Payment for shares
57.111	Determination of amount of stated capital
57.116	Expenses of organization, reorganization and financing
57.121	Certificates representing shares
57.126	Issuance of fractional shares or scrip
57.131	Liability of subscribers and shareholders
57.137	Shareholders' pre-emptive right
57.141	Bylaws
57.145	Meetings of shareholders
57.150	Notice of shareholders' meetings
57.155	Closing transfer books and fixing record date
57.160	Voting record
57.165	Quorum of shareholders
57.170	Voting of shares
57.175	Voting trust
57.180	Board of directors
57.185	Number and selection of directors
57.190	Classification of directors
57.193	Removal of directors
57.195	Vacancies in board of directors
57.200	Quorum of directors
57.206	Executive committee
57.211	Place and notice of board meetings
57.213	Board meeting by telephone or similar communications equipment permissible
57.216	Dividends
57.221	Distributions in partial liquidation
57.226	Loans
57.228	Standard of performance of duty of director; liability; reliance on information
57.231	Liability of directors in certain cases
57.236	Officers
57.241	Removal of officers
57.246	Books and records
57.255	Indemnification of director, officer, employe or agent against certain expenses, judgments, fines or settlements; conditions
57.260	Method of indemnification; not exclusive; insurance against liability of director, officer, employe or agent
57.265	Void or voidable nature of transactions between corporation and its directors
FORMATION OF CORPORATIONS	
57.306	Incorporators
57.311	Articles of incorporation
57.316	Filing of articles
57.321	Effect of issuance of certificate of incorporation
57.331	Organization meeting of directors
AMENDMENT OF ARTICLES AND CHANGE IN SHARES	
57.355	Right to amend articles of incorporation
57.360	Procedure to amend articles of incorporation
57.365	Class voting on amendments
57.370	Articles of amendment
57.375	Filing of articles of amendment
57.377	Amendment of articles following reorganization
57.380	Effect of articles of amendment
57.385	Restated articles of incorporation
57.390	Restriction on redemption or purchase of redeemable shares
57.395	Cancellation of redeemable shares by redemption or purchase
57.400	Cancellation of other reacquired shares
57.406	Reduction of stated capital in certain cases

CORPORATIONS AND PARTNERSHIPS

- 57.411 Special provisions relating to surplus and reserves
- MERGER, CONSOLIDATION AND EXCHANGE**
- 57.455 Procedure for merger
- 57.460 Procedure for consolidation
- 57.462 Procedure for exchange
- 57.465 Approval by shareholders
- 57.470 Articles of merger, consolidation or exchange
- 57.475 Effective date
- 57.480 Effect of merger or consolidation; effect of merger, consolidation or exchange on shares
- 57.485 Merger, consolidation or exchange of domestic and foreign corporations
- 57.495 Merger procedure for corporation owning at least 90 percent of other corporation
- 57.500 Merger of foreign corporations
- SALE OR MORTGAGE OF ASSETS**
- 57.506 Sale or mortgage of assets in regular course of business
- 57.511 Sale or mortgage of assets other than in regular course of business
- DISSOLUTION**
- 57.526 Voluntary dissolution by incorporators
- 57.531 Voluntary dissolution by consent of shareholders
- 57.536 Voluntary dissolution by act of corporation
- 57.546 Effect of consent or resolution to dissolve
- 57.551 Procedure after execution of consent or resolution to dissolve
- 57.556 Revocation of voluntary dissolution proceedings by shareholders
- 57.560 Revocation of voluntary dissolution proceedings by corporation
- 57.570 Effect of revocation of voluntary dissolution proceedings
- 57.575 Articles of dissolution
- 57.580 Filing of articles of dissolution
- 57.585 Involuntary dissolution; reinstatement
- 57.590 Venue and process
- 57.595 Jurisdiction of court to liquidate assets and business of corporation
- 57.600 Procedure in liquidation of corporation by court
- 57.606 Filing of claims in liquidation proceedings
- 57.611 Discontinuance of liquidation proceedings
- 57.616 Decree of involuntary dissolution
- 57.620 Filing of decree of dissolution
- 57.625 Deposit with Division of State Lands of amount due certain shareholders
- 57.630 Survival of remedy after dissolution
- FOREIGN CORPORATIONS**
- 57.655 Admission of foreign corporation
- 57.665 Corporate name of foreign corporation
- 57.675 Application for certificate of authority
- 57.680 Filing of application
- 57.685 Effect of certificate
- 57.690 Registered office and registered agent of foreign corporation
- 57.695 Change of registered office or registered agent of foreign corporation
- 57.700 Service of process on foreign corporation
- 57.716 Amended certificate of authority
- 57.721 Withdrawal of foreign corporation
- 57.726 Filing of application to withdraw
- 57.731 Cause for revocation of certificate of authority
- 57.735 Procedure for revoking certificate of authority
- 57.740 Application to corporations authorized to transact business in this state on December 31, 1953
- 57.745 Transacting business without certificate of authority
- ANNUAL REPORTS**
- 57.755 Annual statement of domestic and foreign corporations
- FEEES AND CHARGES**
- 57.761 Filing fees
- 57.766 Miscellaneous charges
- 57.767 License fees payable by domestic corporations
- 57.769 License fees payable by foreign corporations
- 57.772 Exemption of governmental units and instrumentalities from certain fees
- MISCELLANEOUS PROVISIONS**
- 57.776 Powers of Corporation Commissioner
- 57.778 Appeal from Corporation Commissioner
- 57.781 Certificates and certified copies to be received in evidence
- 57.783 Forms to be furnished by Corporation Commissioner
- 57.786 Greater voting requirements
- 57.788 Waiver of notice
- 57.791 Action by shareholders or directors without a meeting
- 57.793 Liability for unauthorized assumption of corporate powers
- 57.796 Application to corporations existing on December 31, 1953
- 57.797 Corporations incorporated prior to December 31, 1953, under special Acts may incorporate under Oregon Business Corporation Act
- 57.798 Effect of amendment or repeal of Oregon Business Corporation Act
- 57.799 Effect of repeal of prior Acts
- 57.805 Issuance of one certificate to certain owners of capital stock

PRIVATE CORPORATIONS GENERALLY

- 57.811 Certain de facto corporations made legal corporations Interest, legal rate, 82.010
Investment securities, Ch. 78
- 57.815 Foreign utilities, powers of; leasing of railroads by foreign corporations Joint operating agencies for electrical power, Ch. 262
- 57.818 "Foreign savings and loan association" defined for ORS 57.820 to 57.824 Professional corporations, Ch. 58
Residence of corporation, 14.080
- 57.820 Activities of certain foreign corporations concerning notes secured by realty State or political subdivision not to be a stockholder, Const. Art. XI, §§6, 9
- 57.822 Prerequisites to engaging in activities authorized by ORS 57.820 Stockholder may represent small business corporation before Department of Revenue proceeding, 305.230
- 57.824 Taxation of foreign corporations by reason of activities authorized by ORS 57.820 Stockholder may represent small business corporation before Oregon Tax Court proceeding, 305.510
- 57.830 Regulation of trust business by corporations formed prior to Bank Act; regulation of other business Taxation.
Corporate excise tax, Ch. 317
Corporate income tax, Ch. 318
- 57.850 Certain tax information available to Corporation Commissioner; disclosure prohibited Unclaimed dividends and distributions, disposition, 98.302 to 98.436
- 57.860 When chairman of board may execute or verify documents **57.030**
Power of corporation to exchange insurance contracts, 731.458
- RIGHTS OF DISSENTING SHAREHOLDER** **57.040**
- 57.865 Definitions for ORS 57.865 to 57.890 Right of policyholder or Insurance Commissioner with respect to insurer, 732.210
- 57.870 When shareholder may dissent **57.055**
- 57.875 Notice of meeting at which dissent may be exercised; notice of intent; notice when corporate action taken; when payment for shares to be made "Cooperative," unauthorized use of term by certain corporations, 62.850
- 57.880 Return of certificates; release of shares; effect of corporate action on dissenters **57.075**
- 57.885 Procedures when demands for payment deficient or unsettled; jurisdiction and power of court; parties; assessment of costs Service of process on savings association agents, 722.102
- 57.890 Withholding of remittance **57.131**
Liability of shareholders, Const. Art. XI, §3
- PENALTIES** **57.190**
- 57.992 Penalty for exercising power of a dissolved corporation Domestic insurer with cumulative voting may not classify directors, 732.310
- 57.993 Penalty for exercising power of foreign corporation after revocation of authority **57.231**
- 57.994 Penalty for doing business for unlicensed foreign corporation Prohibited acts of Supervisor of Savings and Loan, Credit Union and Consumer Finance Section and savings association directors, 722.338, 722.342
- CROSS REFERENCES** **57.255**
- Actions for usurpation of corporate office or franchise and to annul corporate existence and to prevent person acting as corporation without being incorporated, 30.510, 30.570, 30.580, 30.640 Indemnification of savings association directors, officers and employes, 722.112
- Applicability of corporation law to savings association, 722.016, 722.512 Indemnification under franchise transactions, 650.020
- Application to architects, landscape architects, professional engineers, 671.041 **57.306**
- Business trusts, 128.560 Banks and trust companies, incorporators required, 707.070, 707.110
- Conversion of corporation into cooperative, 62.635 Church corporations, formation, 61.055
- Criminal liability of corporations, generally, 161.170 District improvement companies, formation, 554.010
- Custodian of gift to minor, consent to corporate acts, 126.846 Insurance companies, organization, 732.015 to 732.175
- Domestic insurers, application of law, 732.005 **57.355**
- Fines for criminal offenses, 161.655 District improvement companies, amendment of articles, 554.520, 554.600
- Insurer, investment of excess funds, 733.650 **57.455 to 57.500**
- Insured, investment of excess funds, 733.650 Merger, consolidation, sale of assets of savings association to foreign corporation, 722.072

CORPORATIONS AND PARTNERSHIPS

57.506

Merger, consolidation, sale of assets of savings association to foreign corporation, 722.072

57.546

Dissolution of savings associations, 722.074

57.585

Action by Governor to annul corporate existence, 30.570
Action to annul corporate existence on leave of court, 30.580
Liquidation of insurer, Ch. 734

57.625

Property of business association unclaimed upon dissolution, 98.326

Penalty for violation of ORS 57.625, 98.991

57.655

Compliance with Insurance Code by foreign or alien insurer, effect, 731.378

57.797

Corporations to be formed under general laws not special, Const. Art. XI, §2

57.815

Condemnation by private corporation, Ch. 772
Railroad regulation, Ch. 760

SHORT TITLE AND DEFINITIONS

57.002 Short title. ORS 57.002 to 57.085, 57.090 to 57.190, 57.195 to 57.211, 57.216 to 57.246, 57.265 to 57.375, 57.380 to 57.411, 57.455 to 57.485, 57.506 to 57.769, 57.776 to 57.799, 57.830 and 57.992 to 57.994 shall be known and may be cited as the "Oregon Business Corporation Act." [1953 c.549 §1]

57.004 Definitions. As used in the Oregon Business Corporation Act, unless the context otherwise requires, the term:

(1) "Anniversary" means that day each year exactly one or more years after:

(a) The date on the certificate of incorporation issued under ORS 57.316, in the case of a domestic corporation.

(b) The date on the certificate of authority to transact business in this state issued under ORS 57.680, in the case of a foreign corporation.

(2) "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto and includes articles of merger or consolidation.

(3) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(4) "Capital surplus" means the entire surplus of a corporation other than its earned surplus, including amounts arising from reduction of par or stated capital of shares after issuance and amounts of surplus arising from revaluation of or unrealized appreciation in assets.

(5) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(6) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include amounts received as a share dividend from another corporation, domestic or foreign, if a majority of the shares entitled to vote for the election of directors of such corporation is held, directly or indirectly, by the recipient corporation, to the extent of the pro rata share of the recipient corporation in the

earned surplus of such other corporation transferred to capital surplus or stated capital on account of such share dividend. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(7) "Foreign corporation" means a corporation for profit or a cooperative association organized under laws other than the laws of this state except any corporation organized under the laws of the United States, any national banking association and any corporation which is an agency of the United States.

(8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

(9) "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation. A determination of a corporation's net assets may be based on financial statements prepared on the basis of accounting principles that are reasonable under the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(10) "Shareholder" means one who is a holder of record of shares in a corporation.

(11) "Shares" means the units into which the proprietary interests in a corporation are divided.

(12) "Stated capital" means, at any particular time, the sum of:

(a) The par value of all shares of the corporation having a par value that have been issued;

(b) The amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and

(c) Such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

(13) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(14) "Surplus" means the excess of the net assets of a corporation over its stated capital.

(15) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.

(16) "Employee" includes officers, but not directors. A director may accept duties which make the director also an employee. [1953 c.549 §2, 1959 c.244 §1, 1963 c.479 §1, 1965 c.349 §1; 1967 c.269 §7; 1973 c.367 §1; 1975 c.490 §1; 1981 c.633 §3; 1983 c.611 §1]

57.005 [Repealed by 1953 c 549 §138]

57.010 [Repealed by 1953 c.549 §138]

57.015 [Renumbered 57.811]

57.020 [Repealed by 1953 c 549 §138]

SUBSTANTIVE PROVISIONS

57.025 Purposes for which corporations may be organized. Corporations may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance. [1953 c.549 §3]

57.030 General powers. Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money and use its credit to assist its employes and directors.

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental

district or municipality or of any instrumentality thereof.

(8) To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter within or without this state.

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(13) To make donations for the public welfare or for charitable, scientific or educational purposes.

(14) To transact any lawful business which the board of directors shall find will be in the aid of governmental policy.

(15) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans and other incentive plans for any or all of its directors, officers or employes.

(16) To cease its corporate activities and surrender its corporate franchise.

(17) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise.

(18) To have and exercise all powers necessary or convenient to effect any of or all the purposes for which the corporation is organized. [1953 c.549 §4; 1963 c 479 §2; 1969 c.364 §11; 1975 c.490 §2]

57.035 Right of corporation to acquire and dispose of its own shares. (1) A corporation shall have the right to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles of incorporation so permit, or with the affirmative vote of the holders of at least a majority of all shares entitled

to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor.

(2) To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and, upon the disposition or cancellation of any such shares, the restriction shall be removed pro tanto.

(3) Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

(a) Eliminating fractional shares.

(b) Collecting or compromising indebtedness to the corporation.

(c) Paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter.

(d) Effecting, subject to the other provisions of this chapter, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

(e) Redeeming or purchasing from its shareholders its own shares, if so provided in its articles of incorporation, in the case of a corporation which is organized for the purpose of, or substantially all of the business of which consists of, holding, investing or reinvesting of stock or securities.

(4) The consideration given for redeeming or purchasing shares of shareholders pursuant to paragraph (e) of subsection (3) of this section shall not exceed:

(a) The proportionate interests of the shareholders in the net assets of the corporation; or

(b) The cash equivalent of such proportionate interest.

(5) No purchase of its own shares shall be made at a time when the corporation is insolvent or when such purchase would make it insolvent.

(6) For the purposes of subsections (1) and (5) of this section, the effect of a corporation's purchase of its own shares shall be measured as of the date money or other property is transferred or debt is incurred by the corporation or as of the date the shareholder ceases to be a shareholder of the corporation with respect to such shares, whichever is earlier.

(7) Indebtedness of a corporation incurred or issued to a shareholder in exchange for the shares of the corporation in accordance with this section shall be on a parity with the indebtedness of the corporation to its general unsecured creditors except to the extent such indebtedness is

expressly secured or subordinated by agreement. [1953 c.549 §5; 1963 c.479 §3; 1967 c.362 §1; 1975 c.490 §3; 1983 c.611 §2]

57.040 Assertion of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(3) In a proceeding by the Attorney General, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business. [1953 c.549 §6]

57.045 Corporate name requirements.

(1) The corporate name shall contain one or more of the words "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of those words.

(2) The corporate name shall not contain the word "cooperative," unless the corporation is organized under ORS chapter 62 or qualifies under ORS 62.755.

(3) The corporate name shall be written in the alphabet used to write the English language, and may include numerals and incidental punctuation.

(4)(a) The corporate name shall be distinguishable on the records of the Corporation Division from any other corporate or limited partnership name, including any reserved name, registered corporate name or assumed business name, of active record with the division.

(b) Paragraph (a) of this subsection shall not apply if the applicant submits to the division a certified copy of a final decree of a court of competent jurisdiction that finds that the applicant has a prior or concurrent right to use the corporate name in this state.

(5) Nothing in this section shall preclude a corporation from transacting business under an assumed business name.

(6) Nothing in this section shall abrogate or limit the law as to unfair competition or unfair trade practices or derogate from the common law, the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and to protect trade names. [1953 c.549 §7; 1963 c.492 §1; 1963 c.551 §22; 1969 c.140 §1; 1971 c.318 §10, 1975 c.490 §4; 1985 c.728 §6]

57.050 Reservation of corporate name.

(1) A corporate name that conforms to ORS 57.045 may be reserved by:

(a) Any person who intends to organize a corporation under this chapter.

(b) Any domestic corporation, if the board of directors of the corporation has authorized its officers to make the reservation.

(c) Any foreign corporation, if the board of directors of the corporation has authorized its officers to apply for a certificate of authority to transact business in this state.

(d) Any foreign corporation authorized to transact business in this state, if the board of directors of the corporation has authorized its officers to make the reservation.

(e) Any person who intends to organize a foreign corporation and intends to have the corporation apply for a certificate of authority to transact business in this state.

(2) The person who desires to reserve a corporate name shall submit to the Corporation Division a signed application that specifies the corporate name and states the name and address of the person for whom the name is reserved. If the Corporation Commissioner finds that the corporate name conforms to ORS 57.045, the Corporation Commissioner shall reserve the corporate name for the applicant for a period of 120 days.

(3) The reservation of a specified corporate name may be transferred to any other person or

corporation by filing with the Corporation Division a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. [1953 c.549 §8; 1985 c.728 §7]

57.055 Registration of corporate name.

(1) Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name, provided its corporate name conforms to ORS 57.045.

(2) To register its corporate name, a corporation shall submit to the Corporation Division:

(a) An application signed for the corporation by an officer that sets forth the corporate name of the corporation, the state or territory under the laws of which the corporation was incorporated, the date of incorporation, a statement that the corporation is carrying on or doing business outside the State of Oregon, a brief description of the business in which it is engaged and a statement that the corporation is not carrying on or doing business in the State of Oregon.

(b) A certificate of existence, or a document of similar import, duly authenticated by the official having custody of corporate records in the state or country under whose law it is incorporated.

(3) The applicant corporation shall pay to the division a registration fee of \$200.

(4) The registration shall be effective for one year from the date that the application is filed. [1953 c.549 §9; 1963 c.492 §2; 1963 c.551 §23; 1969 c.140 §2; 1985 c.351 §3; 1985 c.728 §8a]

57.060 Renewal of registration. A corporation which has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of existence, or document of similar import, as required for the original registration and by paying a fee of \$200. [1953 c.549 §10; 1985 c.351 §4; 1985 c.728 §9]

57.065 Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its place of business.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in

this state, having a business office identical with such registered office. [1953 c.549 §11]

57.070 Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, upon submitting to the Corporation Division a statement setting forth:

(a) The name of the corporation.

(b) If the address of its registered office be changed, the address to which the registered office is to be changed, including street and number.

(c) If its registered agent be changed, the name of its successor registered agent.

(d) That the address of its registered office and the address of the business office of its registered agent, as changed will be identical.

(e) That such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be signed by an officer of the corporation, and verified by the officer, and delivered to the Corporation Division. If a registered agent changes the business address of the registered agent to another place, the registered agent may change such address and the address of the registered office of any corporations of which the registered agent is the registered agent by filing a statement as required above except that it need be signed only by the registered agent, need not be responsive to paragraph (c) or (e) of subsection (1) of this section and must recite that a copy of the statement has been mailed to each such corporation. If the Corporation Commissioner finds that such statement conforms to the provisions of this chapter, the commissioner shall file the statement. The filing of the statement shall immediately terminate the existing registered office or agent, or both, and establish the newly appointed registered office or agent, or both, as that of the corporation.

(3) Any registered agent of a corporation may resign as agent upon submitting a signed statement with the Corporation Division. The resignation shall become effective 30 days after the filing of the signed statement, unless the corporation shall sooner appoint a successor registered agent, as provided in this section, thereby terminating the capacity of such agent. Upon the submission of the signed statement, the Corporation Commissioner shall forthwith notify the corporation that the statement has been filed and the effect thereof, which notice shall be addressed to the corporation at the corporation's mailing address as shown by the records of the Corpora-

tion Commissioner. [1953 c.549 §12; 1963 c.492 §3; 1965 c.631 §1; 1985 c.728 §10]

57.075 Service of process on corporation. (1) The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(2) The Corporation Commissioner shall be an agent of a corporation upon whom any such process, notice or demand may be served:

(a) Whenever the corporation fails to appoint or maintain a registered agent in this state, or

(b) Whenever the corporation's registered agent cannot with reasonable diligence be found at the registered office, or

(c) When the corporation has been dissolved and an action, suit or proceeding is instituted against or affecting it within five years after the issuance of a notice of dissolution or the filing of a decree of dissolution.

(3) Service shall be made on the Corporation Commissioner by:

(a) Service on the commissioner or a clerk on duty in any office of the Corporation Commissioner of a copy of the process, notice or demand, with any papers required by law to be delivered in connection with the service, or by mailing to the Corporation Division a copy of the process, notice or demand, by certified or registered mail and a \$2 fee for each document being served;

(b) Transmittal by the person instituting the proceedings of notice of the service on the Corporation Commissioner and a copy of the process, notice or demand and accompanying papers to the corporation being served by certified or registered mail:

(A) At the last-registered office of the corporation as shown by the records on file in the Corporation Division; and

(B) At such address, the use of which the person initiating the proceedings knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice; and

(c) Filing with the appropriate court or other body, as part of the return of service, of the return receipt of mailing and an affidavit of the person initiating the proceedings that this section has been complied with.

(4) The Corporation Commissioner shall keep a record of all processes, notices and demands served upon the commissioner under this section.

(5) After completion of initial service upon the Corporation Commissioner, no additional documents need be served upon the Corporation Commissioner to maintain jurisdiction in the same proceeding or to give notice of any motion or provisional process.

(6) Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law, or enlarge the purposes for which service on the Corporation Commissioner is permitted where such purposes are limited by other provisions of law. [1953 c.549 §13, 1959 c.568 §1; 1963 c.479 §4; 1967 c.297 §2; 1985 c.728 §11]

Note: See note under 56 120 regarding fee surcharge.

57.080 Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of the shares of any class to the extent not inconsistent with the provisions of this chapter.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(b) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

(c) Having preference over any other class or classes of shares as to the payment of dividends.

(d) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(e) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conver-

sion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted, or the amount of any such deficiency is transferred from surplus to stated capital. [1953 c.549 §14; 1975 c.490 §5]

57.085 Issuance of shares of preferred or special classes in series. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical, except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The rate of dividend.

(b) Whether shares can be redeemed and, if so, the redemption price and the terms and conditions of redemption.

(c) The amount payable upon shares in event of voluntary or involuntary liquidation.

(d) Sinking fund provisions, if any, for the redemption or purchase of shares.

(e) The terms and conditions, if any, on which shares may be converted.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the Corporation Commissioner a statement setting forth:

- (a) The name of the corporation.
- (b) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof.
- (c) The date of adoption of such resolution.
- (d) That such resolution was duly adopted by the board of directors.
- (5) Such statement shall be executed by the corporation, by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement. The statement and a true copy of the statement shall be delivered to the Corporation Commissioner. If the Corporation Commissioner finds that such statement conforms to law, the Corporation Commissioner shall, when all fees and charges have been paid as in this chapter prescribed:

- (a) Indorse on the original and on the true copy the word "Filed" and the month, day and year of the filing thereof.

- (b) File the original in the office of the Corporation Commissioner.

- (c) Return the true copy to the corporation or its representative.

- (6) Upon the filing of such statement by the Corporation Commissioner, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment to the articles of incorporation. [1953 c.549 §15, 1963 c.479 §5, 1981 c.633 §4]

57.088 Issuance of rights or options to purchase shares. Subject to any provisions in respect thereof set forth in its articles of incorporation, and subject to pre-emptive rights, if any, of existing shareholders, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the corporation on the exercise of any such right or option. No such rights or options shall be issued to a director, officer or employe of the corporation or of any subsidiary thereof unless the issuance is approved, at the annual meeting or a special meeting, by the holders of at least two-thirds of the outstanding shares entitled to vote thereon,

or unless such issuance is pursuant to a plan previously so approved. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares to be issued on the exercise of such rights or options, shall not be less than the par value thereof. [1961 c.534 §3; 1963 c.479 §6]

57.090 Subscriptions for shares. (1) A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

(2) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such instalments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any instalment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay instalments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope, addressed to the subscriber at the last post-office address of the subscriber known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to the legal representative of the delinquent subscriber. [1953 c.549 §16]

57.100 Consideration for shares. (1) Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

(2) Shares without par value may be issued for such consideration expressed in dollars as may

be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration expressed in dollars to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

(3) Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

(4) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as share dividend shall be deemed to be the consideration for the issuance of such shares.

(5) In the event of the issuance of shares upon the conversion or exchange of indebtedness or shares, the consideration for the shares so issued shall be:

(a) The principal sum of, and accrued interest on, the indebtedness so exchanged or converted, or the stated capital then represented by the shares so exchanged or converted;

(b) That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and

(c) Any additional consideration paid to the corporation upon the issuance of shares for the indebtedness or shares so exchanged or converted.

(6) Nothing contained in this section shall be taken or construed as in any wise impairing or restricting the powers or authority of the Corporation Commissioner under the provisions of the Oregon Securities Law, as amended. [1953 c.549 §17; 1975 c.490 §6, 1981 c.633 §5]

57.105 [Repealed by 1953 c.549 §138]

57.106 Payment for shares. (1) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

(2) Future services shall not constitute payment or part payment for the issuance of shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the

shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive. [1953 c.549 §18, 1975 c.490 §7]

57.110 [Repealed by 1953 c.549 §138]

57.111 Determination of amount of stated capital. (1) In case of the issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

(2) In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital, unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. The board of directors may allocate to capital surplus any portion of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation, except the amount, if any, of such consideration in excess of such preference.

(3) If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of directors of the issuing corporation, except that its aggregate earned surplus shall not exceed the sum of the earned surpluses of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

(4) The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares. [1953 c.549 §19; 1963 c.479 §7; 1967 c.269 §8, 1981 c.633 §6]

57.115 [Repealed by 1953 c.549 §138]

57.116 Expenses of organization, reorganization and financing. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or

underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid and nonassessable. [1953 c.549 §20]

57.120 [Repealed by 1953 c.549 §138]

57.121 Certificates representing shares. (1) The shares of a corporation may be represented by certificates or may be issued without certificates. If certificates are issued, each certificate shall be signed by the president or a vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar, other than the corporation itself or an employe of the corporation. In case any person who, as an officer, has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if the person were such officer at the date of its issue.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall state upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations and relative rights of the shares of each class authorized to be issued, and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(3) Each certificate representing shares shall also state upon the face thereof:

(a) That the corporation is organized under the laws of this state.

(b) The name of the person to whom issued.

(c) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(d) The par value of each share represented by such certificate, or a statement that the shares are without par value.

(4) No certificate shall be issued for any share until such share is fully paid.

(5) Upon request by a shareholder holding uncertificated shares, a corporation shall provide the shareholder a certificate representing the shares to which the shareholder is entitled, as provided in this section. [1953 c.549 §21; 1973 c.367 §2; 1981 c.633 §7]

57.125 [Repealed by 1953 c.549 §138]

57.126 Issuance of fractional shares or scrip. A corporation may:

(1) Issue fractions of a share;

(2) Arrange for the disposition of fractional interests by those entitled thereto;

(3) Pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(4) Issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable. [1953 c.549 §22; 1975 c.490 §8]

57.130 [Repealed by 1953 c.549 §138]

57.131 Liability of subscribers and shareholders. (1) A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

(2) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

(3) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors or receiver shall not be personally liable as a holder of or subscriber to shares of a corporation; but the estate and funds in the hands of the

executor, administrator, conservator, guardian, trustee or assignee shall be so liable.

(4) No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder. [1953 c.549 §23, 1963 c.479 §8]

57.135 [Repealed by 1953 c.549 §138]

57.136 [1953 c.549 §24; 1961 c.534 §1; 1963 c.479 §9, repealed by 1975 c.490 §9 (57.137 enacted in lieu of 57.136)]

57.137 Shareholders' pre-emptive right. (1) Except to the extent limited or denied by this section or by the articles of incorporation, shareholders shall have a pre-emptive right to acquire unissued or treasury shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

(2) Unless otherwise provided in the articles of incorporation, no pre-emptive right shall exist:

(a) To acquire any shares issued to directors, officers or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such a vote of shareholders; or

(b) To acquire any shares sold otherwise than for cash.

(3) Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any pre-emptive right.

(4) Holders of shares of common stock shall not be entitled to any pre-emptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

(5) Holders of common stock without voting power shall have no pre-emptive right to shares of common stock with voting power.

(6) The pre-emptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right. [1975 c.490 §10 (enacted in lieu of 57.136)]

57.140 [Repealed by 1953 c.549 §138]

57.141 Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws subject to repeal or change by action of the shareholders shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation or by bylaws existing on December 31, 1953. The bylaws may contain any provisions for the regula-

tion and management of the affairs of the corporation not inconsistent with law or the articles of incorporation. [1953 c.549 §25; 1963 c.479 §10; 1975 c.490 §11]

57.145 Meetings of shareholders. (1) Meetings of shareholders may be held either within or without this state. The bylaws may provide either the place at which, or the area within which, meetings shall be held or that the place of each meeting shall be determined by the board of directors. In the absence of any such provision, all meetings shall be held at the registered office of the corporation. If the bylaws specify the place or area of meeting no amendment changing the place or area of meeting or removing the provision specifying the place or area of meeting shall be effective unless approved by a majority vote of shareholders entitled to vote.

(2) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation. If the annual meeting is not held at the designated time, the president or the board of directors may call the annual meeting at a time fixed by them not more than 60 days after such designated time by proper notice designating the meeting as the annual meeting. If the annual meeting is not held at the designated time or during the 60-day period thereafter, the annual meeting may be called by the holders of not less than one-tenth of all the shares entitled to vote at the meeting. In such event, notice shall be given not more than 15 days after the expiration of such 60-day period. Such notice shall fix the time of the meeting at the earliest date permissible under the applicable notice requirements.

(3) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws. [1953 c.549 §26; 1959 c.171 §1; 1963 c.479 §11; 1965 c.632 §1]

57.150 Notice of shareholders' meetings. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such

meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at the address of the shareholder as it appears on the stock transfer books of the corporation, with postage thereon prepaid. [1953 c.549 §27]

57.155 Closing transfer books and fixing record date. (1) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period, but not to exceed, in any case, 50 days. If the stock transfer books shall be closed for the purpose of determining the shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting.

(2) In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 50 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

(3) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof. [1953 c.549 §28; 1963 c.479 §12]

57.160 Voting record. (1) The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least 10 days before each meeting of shareholders, a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which record, for a period of 10 days prior to such meeting, shall be kept on file at the registered

office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such record shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such record or transfer books or to vote at any meeting of shareholders.

(2) Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

(3) An officer or agent having charge of the stock transfer books who shall fail to prepare the record of shareholders, or keep it on file for a period of 10 days, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage. [1953 c.549 §29, 1975 c.490 §12]

57.165 Quorum of shareholders. (1) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter, the articles of incorporation or bylaws.

(2) The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. [1953 c.549 §30; 1975 c.490 §13]

57.170 Voting of shares. (1) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share on any matter, every reference in this chapter to a majority or other proportion of shares shall mean a majority or other proportion of votes entitled to be cast.

(2) Neither treasury shares, nor shares of its own stock held by a corporation in a fiduciary capacity, nor shares held by another corporation if a majority of the shares entitled to vote for the

election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time, unless under the terms of a trust in which shares are held the manner in which such shares shall be voted may be determined by the trustee, by a donor or beneficiary of the trust or by some other person named in the trust and unless such shares are actually voted in the manner determined or directed by the trustee, donor, beneficiary or other person so authorized.

(3) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by the duly authorized attorney-in-fact of the shareholder. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

(4) At each election for directors, every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or, if the articles of incorporation specifically permit cumulative voting, to cumulate the shareholder's votes either by giving one candidate as many votes as the number of such directors multiplied by the number of the shareholder's shares shall equal or by distributing such votes on the same principle among any number of such candidates.

(5) Shares standing in the name of another domestic or foreign corporation may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

(6) An administrator, executor, guardian or conservator holding shares may vote the shares, either in person or by proxy, without a transfer of such shares into the name of the administrator, executor, guardian or conservator. Shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy; but no trustee shall be entitled to vote shares held by the trustee without a transfer of such shares into the trustee's name.

(7) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under control of a receiver may be voted by such receiver without the transfer thereof into the receiver's name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(8) A shareholder whose shares are pledged shall be entitled to vote such shares until the

shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(9) On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares. [1953 c.549 §31; 1963 c.479 §13; 1971 c.364 §1; 1981 c.633 §8]

57.175 Voting trust. (1) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued, and shall deposit a copy of such record with the corporation at its registered office. The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

(2) Agreements among shareholders regarding the voting of their shares shall be valid and enforceable in accordance with their terms. Such agreements shall not be subject to the provisions of this section regarding voting trusts. [1953 c.549 §32; 1975 c.490 §14]

57.180 Board of directors. The business and affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation. [1953 c.549 §33; 1975 c.490 §15]

57.185 Number and selection of directors. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a determination of the number of directors in the manner provided in the articles of incorporation or bylaws, and in the absence of a bylaw providing for the number of directors, the number shall be the same as that provided for in the articles of incorporation. The names and addresses of the members of the initial board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified, unless removed in accordance with the provisions of the bylaws. At the first annual meeting of shareholders, and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in the case of classification of directors as permitted by this chapter. Each director shall hold office for the term for which the director is elected and until a successor shall have been elected and qualified, unless removed in accordance with the provisions of the bylaws. [1953 c.549 §34; 1955 c.200 §1; 1965 c.632 §2; 1975 c.490 §16; 1979 c.441 §1]

57.190 Classification of directors. (1) Except as provided in subsection (2) of this section, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold

office until the second succeeding annual meeting, if there be two classes, or, until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

(2) If the corporation has cumulative voting:

(a) Classification of directors may be provided only if authorized by the articles of incorporation, and

(b) No class shall consist of fewer than three members. [1953 c.549 §35; 1963 c.479 §14]

57.193 Removal of directors. (1) Except as provided in subsections (2) and (3) of this section, all or any number of the directors may be removed, with or without cause, at a meeting called expressly for that purpose, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(2) If the corporation has cumulative voting and fewer than all the directors are removed, no one of the directors may be removed if the votes cast against the removal of the director would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at any election of the class of directors of which the director is a part.

(3) Only the members of a class entitled to elect a director may vote on the removal of a director elected by such class. [1963 c.479 §31]

57.195 Vacancies in board of directors.

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors, unless otherwise provided in the articles of incorporation. A director elected to fill a vacancy shall be elected for the unexpired term of the predecessor in office. Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose unless otherwise provided in the articles of incorporation. [1953 c.549 §36]

57.200 Quorum of directors. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws or unless a lesser number is specified by the articles of incorporation. The act of the majority of the directors present at a

meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws. [1953 c.549 §37]

57.205 [Repealed by 1953 c.549 §138]

57.206 Executive committee. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or, in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, may designate from among its members, an executive committee and one or more other committees, each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors in the management of the corporation, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation; adopting a plan of merger or consolidation; recommending to the shareholders the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business; recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof; or amending the bylaws of the corporation. The designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon the board of directors or member by law. [1953 c.549 §38; 1963 c.479 §15; 1981 c.633 §9]

57.210 [Repealed by 1953 c.549 §138]

57.211 Place and notice of board meetings. (1) Meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws. [1953 c 549 §39]

57.213 Board meeting by telephone or similar communications equipment permissible. Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors of any corporation, or any committee designated by the board, may hold a meeting of such board, or committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this section shall constitute presence in person at the meeting. [1979 c 208 §2]

57.215 [Repealed by 1953 c.549 §138]

57.216 Dividends. The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends on its outstanding shares in cash, property or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, subject to the following provisions:

(1) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this section.

(2) If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserves; and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(3) Dividends may be declared and paid in its own treasury shares.

(4) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions:

(a) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares issued as a dividend. If such shares are issued at more than par value, there shall be transferred from earned surplus to capital surplus an amount equal to the value, exceeding par value, for which such shares are issued.

(b) If a dividend is payable in its own shares without par value, such shares shall be issued at

such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared. The entire value so fixed shall be transferred to stated capital, unless the board of directors shall by resolution adopted at the time such dividend is declared, allocate a portion of such value to capital surplus, in which event the amount so allocated shall be transferred from earned surplus to capital surplus. In the case of shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation, the value fixed by the board of directors shall be not less than the amount of such preference, and no such allocation to capital surplus shall be made of any portion of such value, except the amount, if any, of such value in excess of such preference. The value per share so fixed in respect of a dividend payable in its own shares without par value and the amount thereof, if any, allocated to capital surplus shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(5) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

(6) A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section. [1953 c.549 §40, 1963 c.479 §16; 1969 c.364 §3; 1975 c.490 §17]

57.220 [Repealed by 1953 c.549 §138]

57.221 Distributions in partial liquidation. (1) The board of directors of a corporation may, from time to time, distribute to its shareholders in partial liquidation, out of stated capital or capital surplus of the corporation, a portion of its assets, in cash or property, subject to the following provisions:

(a) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

(b) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of at least a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation.

(c) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(d) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(e) Each such distribution, when made, shall be identified as a distribution in partial liquidation and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(2) The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus. [1953 c.549 §41; 1975 c.490 §18]

57.225 [Repealed by 1953 c.549 §138]

57.226 Loans. A corporation shall not lend money to or use its credit to assist a director of the corporation without authorization in the particular case by the affirmative vote of the holders of at least three-fourths of the shares entitled to vote. However, a corporation may lend money to and use its credit to assist an employe of the corporation or of a subsidiary, including an employe who is a director of the corporation, if the board of directors decides that the loan or assistance may benefit the corporation. [1953 c.549 §42; 1973 c.544 §1; 1975 c.490 §19]

57.228 Standard of performance of duty of director; liability; reliance on information. A director shall perform in good faith the duties of a director under this chapter, including the duties of a member of any committee of the board upon which the director may serve, in a manner the director reasonably believes to be in the best interests of the corporation and with the care an ordinarily prudent person in a like position would use under similar circumstances. A person who performs the duties of a director as provided in this section and ORS 57.231 shall not be liable to the corporation on the basis of being

or having been a director. In addition to ORS 57.231 (3), a director performing the duties of a director, may rely on information, opinions, reports or statements including financial statements and other financial data, prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Counsel, public accountants or other persons as to matters which the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board which is created under the articles of incorporation or bylaws, and upon which the director does not serve. However, the matters on which the director relies must be within the committee's designated authority. The director must reasonably believe that the committee merits confidence. The director does not act in good faith under this subsection if the director has knowledge concerning the matter in question that would cause the director's reliance to be unwarranted. [1981 c 633 §11]

57.230 [Repealed by 1953 c 549 §138]

57.231 Liability of directors in certain cases. (1) In addition to any liability imposed upon directors of a corporation under ORS 57.228 and otherwise by law:

(a) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this chapter shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this chapter.

(c) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liqui-

dation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

(d) The directors of a corporation who vote for or assent to the making of a loan to a director of the corporation, without first obtaining approval of the shareholders if required by ORS 57.226, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(2) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the dissent of the director is entered in the minutes of the meeting or unless the director files a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or forwards such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

(3) A director shall not be liable under paragraph (a), (b) or (c) of subsection (1) of this section if the director relied and acted in good faith upon financial statements of the corporation represented to the director to be prepared on the basis of accounting practices and principles that are reasonable under the circumstances by the president or the officer of such corporation having charge of its books of account, nor shall the director be so liable if in good faith in determining the amount available for any such dividend or distribution the director considered the assets to be of their book value, or the director relied on a fair valuation or other method that is reasonable under the circumstances.

(4) Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets knowing such dividend or distribution to have been made in violation of this section, in proportion to the amounts received by them respectively.

(5) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other direc-

tors who voted for or assented to the action upon which the claim is asserted. [1953 c 549 §43; 1963 c.479 §17, 1973 c 544 §2, 1975 c.490 §20; 1981 c.633 §12; 1983 c 611 §3]

57.235 [Repealed by 1953 c.549 §138]

57.236 Officers. (1) The officers of a corporation shall consist of a president and a secretary who shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person.

(2) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. [1953 c 549 §44; 1963 c 492 §4; 1979 c 208 §3]

57.240 [Repealed by 1953 c.549 §138]

57.241 Removal of officers. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. [1953 c 549 §45, 1975 c 490 §21]

57.245 [Repealed by 1953 c 549 §138]

57.246 Books and records. (1) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or register, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

(2) Any person who shall have been a holder of record of shares or of voting trust certificates therefor for at least six months immediately preceding the demand of the person or who is the holder of record either of shares or of voting trust certificates representing at least five percent of all

the outstanding shares of a corporation, shall have the right to examine its relevant books and records of account, minutes and record of shareholders and to make extracts therefrom. A person may make an examination under this subsection for any proper purpose, in person or by agent or attorney, at any reasonable time or times, and upon written demand stating the purpose of the examination.

(3) Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder, or holder of voting trust certificates, or an agent or attorney of the shareholder or holder of voting trust certificates, so to examine and make extracts from its relevant books and records of account, minutes and record of shareholders, for any proper purpose, shall be liable to such person in a penalty of 10 percent of the value of the shares owned by such shareholder, or in respect of which such voting trust certificates are issued, in addition to any other damages or remedy afforded by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making the demand.

(4) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder or holder of voting trust certificates of proper purpose, irrespective of the period of time during which such shareholder or holder of voting trust certificates shall have been a shareholder of record, and irrespective of the number of shares held by the shareholder, or represented by voting trust certificates held by the holder of voting trust certificates, to compel the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

(5) Upon the written request of any shareholder or holder of voting trust certificates for shares of a corporation, the corporation shall mail to such shareholder or holder of voting trust certificates its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations. [1953 c.549 §46, 1975 c.490 §22; 1981 c.633 §13]

57.250 [Repealed by 1953 c 549 §138]

57.255 Indemnification of director, officer, employe or agent against certain expenses, judgments, fines or settlements; conditions. (1) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct of the person was unlawful.

(2) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the per-

formance of duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to idemnity for such expenses which such court shall deem proper.

(3) To the extent that a director, officer, employe or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (1) and (2) of this section, or in defense of any claim, issue or matter therein, the director, officer, employe or agent shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by the director, officer, employe or agent in connection therewith. [1969 c.364 §10(1), (2), (3)]

57.260 Method of indemnification; not exclusive; insurance against liability of director, officer, employe or agent. (1) Any indemnification under ORS 57.255 (1) and (2), unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that the director, officer, employe or agent has met the applicable standard of conduct set forth in ORS 57.255 (1) and (2) and that indemnification is therefore proper in the circumstances. Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to an action, suit or proceeding under ORS 57.255 (1) or (2);

(b) If a quorum under paragraph (a) of this subsection is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion;

(c) By the shareholders; or

(d) By the court in which the action, suit or proceeding under ORS 57.255 (1) or (2) is or was pending upon application by the corporation or the agent, attorney or other person rendering services in connection with the defense, whether or not the corporation opposes the application by the attorney, agent or other person.

(2) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in subsection (1) of this section upon receipt of an undertaking by or on behalf of the director, officer, employe or agent to repay such amount unless it shall ultimately be

determined that the corporation may make indemnification as authorized in this section.

(3) The indemnification provided by this section and ORS 57.255 shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in the official capacity of the person indemnified and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employe or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(4) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against such liability under the provisions of this section and ORS 57.255. [1969 c.364 §10(4), (5), (6), (7); 1981 c.633 §14]

57.265 Void or voidable nature of transactions between corporation and its directors. (1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because the votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or

(b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable to the corporation.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes or ratifies such contract or transaction. [1975 c.490 §37]

57.305 [Repealed by 1953 c.549 §138]

FORMATION OF CORPORATIONS

57.306 Incorporators. One or more natural persons of the age of 18 years or more, a domestic or foreign corporation, a partnership or an association may act as incorporators of a corporation by signing and verifying articles of incorporation and delivering one original and one true copy of the articles for the corporation to the Corporation Commissioner. [1953 c.549 §47, 1955 c.200 §2; 1963 c.492 §5, 1973 c.367 §3, 1973 c.827 §11; 1981 c.633 §15]

57.310 [Repealed by 1953 c.549 §138]

57.311 Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) The name of the corporation.

(b) The purpose or purposes for which the corporation is organized. It shall be sufficient to state, either alone or with other purposes, that the purpose of the corporation is to engage in any lawful activity for which corporations may be organized under this chapter, and by such statement all lawful activities shall be within the purposes of the corporation, except for express limitations, if any.

(c) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

(d) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.

(e) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(f) Any provision limiting or denying to shareholders the pre-emptive right to acquire additional or treasury shares of the corporation.

(g) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares or which under this chapter is required or permitted to be set forth in the bylaws.

(h) The street address of the corporation's initial registered office and the name of its initial registered agent who shall be amenable to service of process at the address.

(i) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualified.

(j) A mailing address to which the Corporation Commissioner may mail notices as required by this chapter.

(k) The name and address of each incorporator.

(2) Duration shall be perpetual unless the articles of incorporation expressly limit the period of duration.

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in the Oregon Business Corporation Act.

(4) The Corporation Commissioner may require by rule additional identifying information. [1953 c 549 §48; 1963 c 492 §6, 1983 c.717 §5; 1985 c 728 §12]

57.315 [Repealed by 1953 c 549 §138]

57.316 Filing of articles. (1) One original and one true copy of the articles of incorporation shall be submitted for filing to the Corporation Division. If the Corporation Commissioner finds that the articles of incorporation conform to this chapter, when all fees have been paid, the commissioner:

(a) Shall file the original; and

(b) Shall issue and return to the sender a certificate of incorporation and the copy of the articles marked "filed."

(2) Nothing in this section shall abrogate or limit the law as to unfair competition or unfair trade practices or derogate from the common law, the principles of equity or the statutes of this state or of the United States with respect to the

right to acquire and to protect trade names. [1953 c 549 §49; 1955 c.200 §3; 1981 c.633 §16; 1985 c.728 §13]

57.320 [Repealed by 1953 c.549 §138]

57.321 Effect of issuance of certificate of incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under the Oregon Business Corporation Act, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation. [1953 c.549 §50]

57.325 [Repealed by 1953 c.549 §138]

57.326 [1953 c 549 §51; repealed by 1975 c 490 §42]

57.330 [Repealed by 1953 c.549 §138]

57.331 Organization meeting of directors. After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting. [1953 c.549 §52]

57.335 [Repealed by 1953 c.549 §138]

57.340 [Repealed by 1953 c 549 §138]

57.345 [Repealed by 1953 c.549 §138]

57.350 [Repealed by 1953 c.549 §138]

AMENDMENT OF ARTICLES AND CHANGE IN SHARES

57.355 Right to amend articles of incorporation. (1) A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

(2) In particular, and without limitation upon such general power of amendment, a corpo-

ration may amend its articles of incorporation, from time to time, so as:

- (a) To change its corporate name.
- (b) To change its period of duration.
- (c) To change, enlarge or diminish its corporate purposes.
- (d) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.
- (e) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.
- (f) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.
- (g) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations and the relative rights in respect to all or any part of its shares, whether issued or unissued.
- (h) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.
- (i) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.
- (j) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.
- (k) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.
- (L) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.
- (m) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.
- (n) To authorize the board of directors to fix and determine the relative rights and preferences

of the authorized but unissued shares of series theretofore established in respect to which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(o) To revoke, diminish or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(p) To limit, deny or grant to shareholders of any class the pre-emptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized. [1953 c.549 §53]

57.360 Procedure to amend articles of incorporation. Amendments to the articles of incorporation shall be made in the following manner:

(1) If a corporation has issued shares of stock:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2)(a) If a corporation has not issued any shares of stock, the articles of incorporation may be amended by resolution adopted by a majority of the directors.

(b) If the provisions of the articles of incorporation relating to the duration, purposes, author-

ized capital, rights or preferences of shares, or internal affairs are amended by the directors prior to the issuance of stock, the directors shall immediately notify in writing each person who is a party to any agreement for the subscription of stock of the corporation. Such notice shall set forth the text of the amendment and state that the subscriber may, within 30 days after delivery or mailing of the notice of amendment, rescind the subscription by notice in writing delivered or mailed to the directors at an address specified. If a notice of rescission is not delivered or mailed within 30 days, the subscriber may not thereafter assert the fact of the amendment as the basis for avoiding the subscription agreement or asserting any claim against any person.

(3) Any number of amendments may be submitted to the shareholders or directors and voted upon by them at one meeting. [1953 c 549 §54; 1959 c.172 §1; 1963 c.492 §7]

57.365 Class voting on amendments.

(1) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of such class.

(b) Increase or decrease the par value of the shares of such class.

(c) Effect an exchange, reclassification or cancellation of all or part of the shares of such class.

(d) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(e) Change the designations, preferences, limitations or relative rights of the shares of such class.

(f) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

(g) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of such class.

(h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative

rights and preferences between the shares of such series or authorize the board of directors to do so.

(i) Limit or deny the existing pre-emptive rights of the shares of such class.

(j) Cancel or otherwise affect dividends on the shares of such class which had accrued but had not been declared.

(2) Different series of the same class of shares shall not constitute different classes of shares for the purpose of voting by classes upon a proposed amendment, except when a series will be adversely affected by an amendment in a manner different from other shares of the same class. [1953 c.549 §55; 1963 c.479 §18, 1981 c.633 §17]

57.370 Articles of amendment. The articles of amendment shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

(1) The name of the corporation.

(2) If the amendment alters or changes any provision of the original or amended articles of incorporation, an identification by reference or description of the affected provision and a statement of its text as it is amended to read. If the amendment strikes or deletes any provision of the original or amended articles of incorporation, an identification by reference or description of the provision so stricken or deleted and a statement that it is stricken out or deleted. If the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added.

(3) The date of the adoption of the amendment by the shareholders or by the board of directors where no shares have been issued.

(4) The number of shares outstanding, and the number of shares entitled to vote thereon, and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or if no shares have been issued, a statement to that effect.

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and, if the manner in which the same shall be effected is not set forth in the

amendment, then a statement of the manner in which the same shall be effected.

(7) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment. [1953 c.549 §56; 1963 c.479 §19, 1965 c.631 §2, 1975 c.490 §23, 1983 c 717 §6]

57.375 Filing of articles of amendment.

One original and one true copy of the articles of amendment shall be submitted for filing to the Corporation Division. If the Corporation Commissioner finds that the articles of amendment conform to this chapter, the Corporation Commissioner, when all fees and charges have been paid, shall file the articles of amendment and return the copy marked "filed" to the sender. [1953 c 549 §57, 1981 c 633 §18; 1985 c 728 §14]

57.377 Amendment of articles following reorganization. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) Change the corporate name, period of duration or corporate purposes of the corporation;

(b) Repeal, alter or amend the bylaws of the corporation;

(c) Change the aggregate number of shares, or shares of any class, which the corporation has authority to issue;

(d) Change the preferences, limitations and relative rights in respect to all or any part of the shares of the corporation, and classify, reclassify or cancel all or any part thereof, whether issued or unissued;

(e) Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any

class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be signed and verified by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) The original and one true copy of the articles of amendment shall be submitted for filing to the Corporation Division. If the Corporation Commissioner finds that the articles of amendment conform to this chapter, the Corporation Commissioner, when all fees and charges have been paid, shall file the articles of amendment and return the copy marked "filed" to the sender.

(4) When the Corporation Commissioner has filed the articles, the amendment shall become effective, and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as though the amendments had been adopted by unanimous action of the directors and shareholders of the corporation. [1963 c.479 §29; 1981 c 633 §19; 1985 c 728 §15]

57.380 Effect of articles of amendment.

(1) When the Corporation Commissioner has filed the articles of amendment, the articles of amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(2) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of

persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. [1953 c.549 §58, 1985 c.728 §16]

57.385 Restated articles of incorporation. (1) A corporation may by action taken in the same manner as required for amendment of articles of incorporation adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by the Oregon Business Corporation Act to be included in original articles of incorporation except that:

(a) The restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation; and

(b) No statement shall be made with respect to the number, names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators or the initial or present registered office or agent.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in the Oregon Business Corporation Act for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto. The Corporation Commissioner shall upon request certify a copy of the articles of incorporation, or the articles of incorporation as restated, or any amendments to either thereof.

(3) The restated articles of incorporation, when filed, shall be accompanied by a statement and a true copy of the statement, as provided in this subsection. The statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, and shall set forth the following:

(a) The name of the corporation.

(b) The date of the adoption of the restated articles of incorporation by the shareholders.

(c) The number of shares outstanding, and the number of shares entitled to vote thereon, and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(d) The number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively.

(e) If the restated articles of incorporation provide for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected.

(f) If the restated articles of incorporation effect a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by the restated articles of incorporation. [1953 c.549 §59; 1961 c.166 §1; 1963 c.492 §8; 1967 c.269 §3; 1975 c.490 §23a; 1981 c.633 §20]

57.390 Restriction on redemption or purchase of redeemable shares. No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution. [1953 c.549 §60]

57.395 Cancellation of redeemable shares by redemption or purchase. (1) When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

(2) The statement of cancellation shall be signed by the corporation by its president or a

vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(a) The name of the corporation.

(b) The number of redeemable shares canceled through redemption or purchase, itemized by classes and series.

(c) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

(d) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

(e) If the articles of incorporation provide that the canceled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

(3) One original and one true copy of such statement shall be submitted for filing to the Corporation Division. If the Corporation Commissioner finds that such statement conforms to this chapter, the Corporation Commissioner, when all fees and charges have been paid, shall file the statement of cancellation and return the copy marked "filed" to the sender.

(4) Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

(5) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter.

(6) Any corporation which is organized for the purpose of, or substantially all of the business of which consists of, holding, investing or reinvesting in stock or securities is exempt from the filing of the statement of cancellation of shares required by this section, and shares of its own stock redeemed or purchased by a corporation shall be deemed canceled and shall be restored to the status of authorized but unissued shares if the articles of incorporation so provide. [1953 c.549 §61; 1967 c.362 §2; 1981 c.633 §21; 1985 c.728 §17]

57.400 Cancellation of other reacquired shares. (1) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be filed as provided in this section.

(2) The statement of cancellation shall be signed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(a) The name of the corporation.

(b) The number of reacquired shares canceled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption.

(c) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

(d) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

(3) One original and one true copy of such statement shall be submitted for filing to the Corporation Division. If the Corporation Commissioner finds that such statement conforms to this chapter, the Corporation Commissioner, when all fees and charges have been paid, shall file the statement of cancellation and return the copy marked "filed" to the sender.

(4) When the Corporation Commissioner has filed the statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled, and the shares so canceled shall be restored to the status of authorized but unissued shares.

(5) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter. [1953 c.549 §62, 1981 c.633 §22, 1985 c.728 §18]

57.405 [Repealed by 1953 c.549 §138]

57.406 Reduction of stated capital in certain cases. (1) A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice, stating that the purpose or one of the purposes of such meeting is

to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least a majority of the shares entitled to vote thereon.

(2) When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be signed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(a) The name of the corporation.

(b) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.

(c) The number of shares outstanding, and the number of shares entitled to vote thereon.

(d) The number of shares voted for and against such reduction, respectively.

(e) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

(3) One original and one true copy of such statement shall be submitted for filing to the Corporation Division. If the Corporation Commissioner finds that such statement conforms to this chapter, the Corporation Commissioner, when all fees and charges have been paid, shall file the statement and return the copy marked "filed" to the sender.

(4) When the Corporation Commissioner has filed the statement, the stated capital of the corporation shall be reduced as therein set forth.

(5) No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation. [1953 c 549 §63; 1981 c 633 §23; 1985 c 728 §19]

57.410 [Repealed by 1953 c.549 §138]

57.411 Special provisions relating to surplus and reserves. (1) The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus.

(2) The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

(3) A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

(4) A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this chapter. [1953 c.549 §64]

57.415 [Repealed by 1953 c.549 §138]

57.420 [Repealed by 1953 c.549 §138]

57.425 [Repealed by 1953 c 549 §138]

57.430 [Repealed by 1953 c.549 §138]

57.432 [1963 c.479 §27; repealed by 1981 c 633 §83]

57.435 [Repealed by 1953 c.549 §138]

57.437 [1963 c.479 §28 (1), repealed by 1981 c.633 §83]

57.440 [Repealed by 1953 c 549 §138]

57.442 [1963 c.479 §28 (2), repealed by 1981 c.633 §83]

57.445 [1963 c 479 §28 (3), (4), (5), (6); 1977 c.580 §1, repealed by 1981 c.633 §83]

57.450 [1963 c.479 §28 (7), (8); repealed by 1981 c.633 §83]

MERGER, CONSOLIDATION AND EXCHANGE

57.455 Procedure for merger. (1) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) The manner and basis of converting the shares of each merging corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(d) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [1953 c 549 §65, 1973 c.367 §4]

57.460 Procedure for consolidation.

(1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the new corporation or of any other corporation or, in whole or in part, into cash or other property.

(d) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

(e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [1953 c.549 §66; 1973 c 367 §5]

57.462 Procedure for exchange. (1) All the issued or all the outstanding shares of one or more classes of any domestic corporation may be acquired through the exchange of all such shares of such class or classes by another domestic or foreign corporation pursuant to a plan of

exchange approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by resolution adopted by each board, approve a plan of exchange setting forth:

(a) The name of the corporation the shares of which are proposed to be acquired by exchange and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation.

(b) The terms and conditions of the proposed exchange.

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations or other securities of the acquiring corporation or any other corporation, or, in whole or in part, for cash or other property.

(d) Any other provisions with respect to the proposed exchange that the board of directors of each corporation considers necessary or desirable.

(3) Nothing in this section limits the power of a corporation to acquire all or part of the shares of any class or classes of a corporation through a voluntary exchange or otherwise, by agreement with the shareholders. [1981 c.633 §31]

57.465 Approval by shareholders. (1) The board of directors of each corporation described in subsection (2) of this section, upon approving a plan of merger, consolidation or exchange, shall direct by resolution that the plan be submitted to a vote at a meeting of shareholders. The meeting may be either an annual or a special meeting. Written or printed notice shall be given to each shareholder of record, whether or not the shareholder is entitled to vote at such meeting, not less than 20 days before such meeting, in the manner provided in this chapter for giving notice of meetings of shareholders. The notice shall state whether the meeting be an annual or a special meeting and shall state that the purpose or one of the purposes is to consider the proposed plan of merger, consolidation or exchange. A copy or a summary of the plan of merger, consolidation or exchange, as the case may be, shall be included in or inclosed with such notice.

(2) The requirement of a vote by the shareholders on a plan under this section applies to each corporation participating in a merger or consolidation. In the case of an exchange, the requirement applies to the corporation the shares of which are being acquired under ORS 57.462.

(3) At the meeting called under subsection (1) of this section, a vote of the shareholders shall be

taken on the proposed plan of merger, consolidation or exchange. Each outstanding share of each such corporation shall be entitled to vote on the proposed plan, whether or not such share has voting rights under the provisions of the articles of incorporation of such corporation. The plan shall be approved upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares of each such corporation that are entitled to vote on the plan unless any class of shares of any such corporation is entitled to vote as a class thereon, in which event, as to such corporation, the plan shall be approved upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares of each class of shares entitled to vote as a class thereon and of the total outstanding shares. Any class of shares of any such corporation shall be entitled to vote as a class if the plan contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class, and, in the case of an exchange, if the class is included in the exchange.

(4) After approval of the plan by a vote of the shareholders of each corporation as provided in subsection (2) of this section, and at any time prior to the filing of the articles of merger, consolidation or exchange, the merger, consolidation or exchange may be abandoned pursuant to provisions therefor, if any, set forth in the plan. [1953 c.549 §67, 1975 c.490 §24; 1981 c.633 §32]

57.470 Articles of merger, consolidation or exchange. (1) Upon approval of the plan of merger, consolidation or exchange by each corporation under ORS 57.465, articles of merger, consolidation or exchange shall be signed by each corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles, and shall set forth:

(a) The plan of merger, consolidation or exchange.

(b) As to each corporation required under ORS 57.465 to submit a plan of merger, consolidation or exchange to its shareholders for a vote, the number of shares outstanding, and, if the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each such class.

(c) As to each corporation required under ORS 57.465 to submit a plan of merger, consolidation or exchange to its shareholders for a vote, the number of shares voted for and against such plan, respectively, and, if the shares of any class were entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(d) As to the acquiring corporation in a plan of exchange under ORS 57.462, a statement that its board of directors approved the adoption of the plan and performance of its terms, and took any other action required by the corporation's bylaws or articles of incorporation necessary to put the plan in effect.

(2) One original and one true copy of the articles of merger, consolidation or exchange shall be submitted for filing to the Corporation Division. If the Corporation Commissioner finds that such articles conform to this chapter, when all fees and charges have been paid, the Corporation Commissioner shall file the articles of merger, consolidation or exchange and return the copy marked "filed" to the sender. [1953 c.549 §68, 1981 c.633 §33; 1983 c.717 §7; 1985 c.728 §20]

57.475 Effective date. A merger, consolidation or exchange is effective upon the later of:

(1) The date the Corporation Commissioner filed the articles of merger, consolidation or exchange; or

(2) A date specified in the articles of merger, consolidation or exchange filed by the Corporation Commissioner, if the date is not later than 30 days following the date the articles of merger, consolidation or exchange are filed by the Corporation Commissioner. [1953 c.549 §69; 1981 c.633 §34; 1985 c.728 §21]

57.480 Effect of merger or consolidation; effect of merger, consolidation or exchange on shares. (1) When a merger or consolidation becomes effective, the effect on the corporations parties to the merger or consolidation is as follows:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the

merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

(2) Subject to any shareholder rights under ORS 57.870, when a merger, consolidation or exchange becomes effective, the effect on the shares to be converted or exchanged under the plan of merger, consolidation or exchange is as follows:

(a) In the case of a corporation that has ceased to exist because of a merger or consolidation, the shares of that corporation which are to be converted under the plan of merger or consolidation are void.

(b) In the case of a corporation the shares of which were acquired by another corporation under an exchange, the acquired shares shall be considered automatically exchanged according to the plan of exchange.

(3) As of the date on which a merger, consolidation or exchange becomes effective, the holders of converted or exchanged shares are entitled only to the shares, obligations, other securities,

cash or other property into which the shares have been converted or for which the shares have been exchanged in accordance with the plan of merger, consolidation or exchange. [1953 c.549 §70, 1967 c.269 §9; 1981 c.633 §35]

57.485 Merger, consolidation or exchange of domestic and foreign corporations. (1) One or more foreign corporations and one or more domestic corporations may participate in a merger, consolidation or exchange in the following manner, if such merger, consolidation or exchange is permitted by the laws of the jurisdiction under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger, consolidation or exchange, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

(b) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any jurisdiction other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this state, and, in every case, it shall submit for filing to the Corporation Division:

(A) An acknowledgment that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation, and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(B) An irrevocable appointment of the Corporation Commissioner as its agent to accept service of process in any such proceeding; and

(C) An acknowledgment that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

(2) The effect of such merger, consolidation or exchange shall be the same as in the case of a merger, consolidation or exchange involving domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than this state, the effect of such merger, consolidation or exchange shall be the same as in the

case of a merger, consolidation or exchange involving domestic corporations except insofar as the laws of such other jurisdiction provide otherwise. [1953 c.549 §71, 1963 c.479 §20, 1977 c.78 §1, 1981 c.633 §36, 1985 c.728 §22]

57.490 [1953 c.549 §72, repealed by 1963 c.479 §24]

57.495 Merger procedure for corporation owning at least 90 percent of other corporation. (1) Any corporation owning at least 90 percent of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) The name of the subsidiary corporation and the name of the corporation owning at least 90 percent of its shares, which is designated as the surviving corporation.

(b) The manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be signed by the surviving corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such articles, and shall set forth:

(a) The plan of merger;

(b) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation, or upon the waiver thereof by the holders of all outstanding shares, one original and one true copy of the articles of merger shall be submitted for filing to the Corporation Division. If the Corporation Commissioner finds that such articles conform to this chapter, the Corporation Commissioner, when all fees and charges have been paid, shall file the articles of merger and return the copy marked "filed" to the sender. [1963 c.479 §30, 1973 c.367 §6; 1981 c.633 §37, 1985 c.728 §23]

57.500 Merger of foreign corporations.

(1) Whenever a foreign corporation authorized

to transact business in this state ceases to exist because of a statutory merger or consolidation with any other foreign corporation, it shall, within 60 days after the effective date of such merger or consolidation, file with the Corporation Commissioner a certificate of the appropriate public officer of the state, territory or country under the laws of which it is organized, to the effect that such corporation has merged or consolidated and has thereby ceased to exist.

(2) There shall be no charge for filing the certificate. [1963 c.492 §23]

57.505 [Repealed by 1953 c.549 §138]

SALE OR MORTGAGE OF ASSETS

57.506 Sale or mortgage of assets in regular course of business. The sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in such case no authorization or consent of the shareholders shall be required. [1953 c.549 §73]

57.510 [Repealed by 1953 c.549 §138]

57.511 Sale or mortgage of assets other than in regular course of business. A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of such

meeting is to consider the proposed sale, lease, exchange, mortgage, pledge or other disposition.

(3) At such meeting the shareholders may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not entitled to vote thereon by the provisions of the articles of incorporation. Such authorization shall require the affirmative vote of the holders of at least a majority of the outstanding shares of the corporation, unless any class of shares is entitled to vote as a class thereon, in which event such authorization shall require the affirmative vote of the holders of at least a majority of the outstanding shares of each class of shares entitled to vote as a class thereon and of the total outstanding shares.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders. [1953 c 549 §74; 1975 c.490 §25]

57.515 [Repealed by 1953 c.549 §138]

57.516 [1953 c.549 §75; repealed by 1963 c.479 §25]

57.520 [Repealed by 1953 c.549 §138]

57.525 [Repealed by 1953 c.549 §138]

DISSOLUTION

57.526 Voluntary dissolution by incorporators. (1) A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time in the following manner:

(a) Articles of dissolution shall be signed by a majority of the incorporators, and verified by them, and shall set forth:

(A) The name of the corporation.

(B) The date of issuance of its certificate of incorporation.

(C) That none of its shares has been issued.

(D) That the corporation has not commenced business.

(E) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(F) That no debts of the corporation remain unpaid.

(G) That a majority of the incorporators elect that the corporation be dissolved.

(b) One original and one true copy of the articles of dissolution shall be submitted for filing to the Corporation Division. If the Corporation Commissioner finds that the articles of dissolution conform to this chapter, the Corporation Commissioner, when all fees and charges have been paid, shall file the articles of dissolution and return the copy marked "filed" to the sender.

(2) Upon the filing of the articles of dissolution by the Corporation Commissioner, the existence of the corporation shall cease. [1953 c.549 §76; 1963 c.492 §9; 1965 c.631 §3; 1975 c.490 §26; 1981 c 633 §38; 1985 c.728 §24]

57.530 [Amended by 1953 c.567 §1; repealed by 1953 c.549 §138]

57.531 Voluntary dissolution by consent of shareholders. A corporation may be voluntarily dissolved by the written consent of all of its shareholders. [1953 c.549 §77; 1965 c.631 §4]

57.535 [Repealed by 1953 c.549 §138]

57.536 Voluntary dissolution by act of corporation. A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote as a class thereon, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon,

and of the total shares entitled to vote thereon. [1953 c 549 §78, 1965 c.631 §5; 1975 c 490 §27]

57.540 [Renumbered 57.805]

57.541 [1953 c.549 §79, repealed by 1965 c 631 §27]

57.545 [Renumbered 57.807]

57.546 Effect of consent or resolution to dissolve. Upon signing a written consent to dissolve by all of the shareholders or upon adoption by the shareholders of a resolution to dissolve, the corporation shall cease to carry on its business, except as otherwise authorized by the board of directors to effect an orderly liquidation thereof, but its corporate existence shall continue until the Corporation Commissioner has filed the articles of dissolution or until a decree dissolving the corporation has been issued by the Corporation Commissioner or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this chapter provided. [1953 c 549 §80, 1963 c 492 §10; 1965 c.631 §6; 1985 c 728 §25]

57.550 [Repealed by 1953 c.549 §138]

57.551 Procedure after execution of consent or resolution to dissolve. After the execution of a written consent to dissolve by all of the shareholders or upon adoption by the shareholders of a resolution to dissolve:

(1) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(2) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the state and judicial subdivision in which the registered office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court as provided in this chapter. [1953 c.549 §81; 1965 c 631 §7]

57.555 [Repealed by 1953 c.549 §138]

57.556 Revocation of voluntary dissolution proceedings by shareholders. By the written consent of all of its shareholders, placed in the minutes of the corporation, a corporation may, at any time prior to the time the Corporation Commissioner has filed the articles

of dissolution, revoke voluntary dissolution proceedings. [1953 c.549 §82; 1965 c.631 §8; 1985 c.728 §26]

57.560 Revocation of voluntary dissolution proceedings by corporation. By the act of the corporation, a corporation may, at any time prior to the time the Corporation Commissioner files the articles of dissolution, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

(1) The board of directors shall adopt a resolution directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(2) Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the outstanding shares. [1953 c.549 §83; 1965 c.631 §9; 1985 c 728 §27]

57.565 [1953 c 549 §84; repealed by 1965 c.631 §27]

57.570 Effect of revocation of voluntary dissolution proceedings. Upon the revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the corporation may again carry on its business. [1953 c.549 §85; 1965 c.631 §10]

57.575 Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged or adequate provision has been made therefor, or all of the assets of the corporation have been distributed to its creditors for application to the outstanding debts, obligations and liabilities of the corporation to the fullest extent possible, and all of the remaining property and assets of the corporation, if any, have been distributed to its shareholders, articles of dissolution shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) That all debts, obligations and liabilities of the corporation have been paid and discharged

or that adequate provision has been made therefor, or all of the assets of the corporation have been distributed to its creditors for application to the outstanding debts, obligations and liabilities of the corporation to the fullest extent possible.

(3) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests or that no property remained for that purpose.

(4) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

(5) The names and respective street addresses of its officers.

(6) The names and respective street addresses of its directors.

(7) A copy of the written consent signed by all shareholders of the corporation or a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation and a statement of the date of such signing or adoption.

(8) If the dissolution is by act of the corporation, the number of shares outstanding, the number of shares entitled to vote, the number of shares voted for and against the resolution, by classes, if the shares are entitled to vote by class. [1953 c.549 §86; 1965 c.631 §11, 1981 c.633 §39]

57.580 Filing of articles of dissolution.

(1) One original and one true copy of such articles of dissolution shall be submitted for filing to the Corporation Division. If the Corporation Commissioner finds that such articles of dissolution conform to this chapter, the Corporation Commissioner, when all fees and charges have been paid, shall file the articles of dissolution and return the copy marked "filed" to the sender.

(2) When the Corporation Commissioner has filed articles of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this chapter. [1953 c.549 §87; 1981 c.633 §40; 1985 c.728 §28]

57.585 Involuntary dissolution; reinstatement. (1) The Corporation Commissioner may dissolve a corporation when:

(a) The corporation has not filed its annual report or a corrected annual report within the time prescribed by ORS 57.755 or has not paid any license fee when due.

(b) The corporation has failed to appoint or to maintain a registered agent in this state.

(c) The corporation has changed its registered office or registered agent and has failed to submit to the Corporation Division a statement of the change.

(2) A corporation dissolved under this section or any prior law may be reinstated when it is established to the satisfaction of the Corporation Commissioner that the neglect, omission or delinquency resulting in dissolution has been corrected. An application for reinstatement may be obtained from the Corporation Commissioner and shall be submitted for filing to the Corporation Division. The application shall be accompanied by payment of:

(a) All license fees which accrued before the dissolution.

(b) An amount equal to the total license fees from the date of dissolution to the date of reinstatement which would have been payable had the corporation not been dissolved.

(c) A reinstatement filing fee of \$25.

(3) If during the period of dissolution a person has filed, reserved or registered another corporate name, or a limited partnership name or assumed business name, that is of active record and is not distinguishable on the records of the division from the corporate name of the corporation to be reinstated, the corporation shall amend its articles of incorporation to change its name to one that is distinguishable on the record unless the corporation complies with ORS 57.045 (4)(b).

(4) Reinstatement under this section relates back to and takes effect as of the effective date of the dissolution, so that the existence of the corporation is deemed to have continued without interruption from that date.

(5) Nothing in this section shall relieve a reinstated corporation from penalty of forfeiture of its powers as a body corporate in case of failure to pay subsequently accruing licenses and taxes imposed by any law of this state.

(6) Nothing in this section shall be construed to affect any suits now pending by or against any corporation which has been dissolved under this section, or any suit now pending or hereafter brought for any liability against the stockholders or officers thereof, or to revive any charter or corporations previously dissolved or annulled, or to make valid any defective organization of any corporation.

(7) Suits and actions upon choses in action arising out of contracts sold or assigned by any corporation dissolved pursuant to this section may be brought or prosecuted in the name of the purchaser or assignee. The fact of sale or assign-

ment and of purchase by the plaintiff shall be set forth in the writ or other process. The defendant may rely on any matter of defense on which the defendant might have relied in a suit upon the claim by the corporation, had it not been dissolved pursuant to this section.

(8) In addition to any other remedies provided by law a corporation may be dissolved by a decree of the circuit court in an action filed by the Attorney General when it is established that:

(a) The franchise of the corporation was procured through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law. [1953 c.549 §88; 1963 c.492 §11; 1963 c.551 §24; 1965 c.631 §12; 1979 c.208 §4; 1981 c.633 §41, 1983 c.717 §8; 1985 c.351 §5; 1985 c.728 §29]

57.590 Venue and process. Any action by the Attorney General for the involuntary dissolution of a corporation shall be commenced either in the circuit court of the county in which the registered office of the corporation is situated, or in the Circuit Court of Marion County. Summons shall issue and be served as in other civil actions. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The Attorney General may include in one notice the names of any number of corporations against which actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office within 10 days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than 30 days after the first publication of such notice. [1953 c.549 §89]

57.595 Jurisdiction of court to liquidate assets and business of corporation. (1) The circuit courts shall have full power to liquidate the assets and business of a corporation:

(a) In an action by a shareholder when it is established:

(A) That the directors are deadlocked in the management of the corporate affairs and the

shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(B) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(C) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(D) That the corporate assets are being misapplied or wasted.

(b) In an action by a creditor:

(A) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(B) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation which has commenced voluntary dissolution proceedings as provided in this chapter, to have its liquidation continued under the supervision of the court.

(d) When an action has been filed by the Attorney General to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

(2) Proceedings under paragraph (a), (b) or (c) hereof shall be brought in the county in which the registered office or the principal office of the corporation is situated.

(3) It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally. [1953 c.549 §90; 1965 c.631 §13]

57.600 Procedure in liquidation of corporation by court. (1) In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(3) The court shall have power to allow from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(4) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in the name of the receiver as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter, have exclusive jurisdiction of the corporation and its property, wherever situated. [1953 c 549 §91]

57.605 [Amended by 1953 c 549 §138, renumbered 57.809]

57.606 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors

and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. [1953 c.549 §92]

57.610 [Repealed by 1953 c 549 §138]

57.611 Discontinuance of liquidation proceedings. The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. [1953 c 549 §93]

57.615 [Repealed by 1953 c 549 §138]

57.616 Decree of involuntary dissolution. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. [1953 c.549 §94]

57.620 Filing of decree of dissolution.

In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Corporation Commissioner. No fee shall be charged by the Corporation Commissioner for the filing thereof. [1953 c.549 §95]

57.625 Deposit with Division of State Lands of amount due certain shareholders.

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash, and within six months after the final dividend in such liquidation or winding up is payable, deposited with the Division of State Lands. The receiver or other liquidating agent shall prepare in duplicate and under oath a statement containing the names and last-known addresses of the persons entitled to such funds. One of such statements shall be filed with the Division of State Lands and another with the Corporation Commissioner. Said funds shall thereupon escheat to and become the property of

the State of Oregon and shall become a part of the Common School Fund of the state. The owner, the heirs or personal representatives of the owner, may reclaim any funds so deposited in the manner provided for estates which have escheated to the state. [1953 c.549 §96, 1957 c.670 §29; 1973 c.367 §7]

57.630 Survival of remedy after dissolution. (1) The dissolution of a corporation shall not take away or impair any remedy available to or against such corporation, its directors, officers or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution, if action or other proceeding thereon is commenced within five years after the date of issuance of a certificate of dissolution or filing of a decree of dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of five years so as to extend its period of duration.

(2) Whenever any such corporation is the owner of real or personal property, or claims any interest or lien whatsoever in any real or personal property, such corporation shall continue to exist during such five-year period for the purpose of conveying, transferring and releasing such real or personal property or interest or lien therein, and such corporation shall continue after the expiration of such five-year period to exist as a body corporate for the purpose of being made a party to, and being sued in any action, suit or proceeding against it involving the title to any such real or personal property or any interest therein, and not otherwise; and any such action, suit or proceeding may be instituted and maintained against any such corporation as might have been had prior to the expiration of said five-year period. This section shall not be construed as affecting or suspending any statute of limitations applicable to any suit, action or proceeding instituted hereunder.

(3) For the purpose of service of any process, notice or demand within the prescribed time following such dissolution, the Corporation Commissioner shall be an agent of the dissolved corporation upon whom service may be made in the manner prescribed in ORS 57.075. [1953 c.549 §97; 1963 c.479 §21]

FOREIGN CORPORATIONS

57.655 Admission of foreign corporation. (1) No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Corporation Commissioner. No foreign corporation shall be entitled to procure a certificate of authority under the Oregon Business Corporation Act to transact in this state any business which a corporation organized under such Act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

(2) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(b) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(e) Effecting sales through independent contractors.

(f) Soliciting or procuring orders, whether by mail or through employes or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(g) Creating evidences of debt, mortgages or liens on real or personal property.

(h) Securing or collecting debts due to it or enforcing any rights in property securing the same.

(i) Transacting any business in interstate commerce.

(j) Conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature. [1953 c.549 §98]

57.660 [1953 c 549 §99, 1967 c.269 §1; 1975 c 490 §28; repealed by 1985 c 728 §110]

57.665 Corporate name of foreign corporation. (1) The Corporation Commissioner shall not issue a certificate of authority to a foreign corporation if the corporate name of the corporation does not conform to ORS 57.045, except as provided in subsections (2) and (3) of this section.

(2) The name of the corporation must contain a word or abbreviation that ORS 57.045 (1) requires unless the corporate name contains a word, phrase or abbreviation that the laws of the place of incorporation require to denote a person of limited liability.

(3) If a corporate or limited partnership name or assumed business name, including any reserved name or registered corporate name of active record with the division, is not distinguishable on the records of the division from the corporate name of the applicant foreign corporation, the Corporation Commissioner shall not issue a certificate of authority to the applicant unless the foreign corporation states the corporate name on the application for a certificate of authority under ORS 57.675 (1)(a) as (name under which incorporated), a corporation of (place of incorporation), the entirety of which shall be the "real and true name" of the corporation under ORS chapter 648. [1953 c.549 §100, 1963 c.492 §12; 1963 c.551 §25, 1967 c.269 §6, 1969 c 140 §3; 1975 c.490 §29; 1985 c 728 §30]

57.670 [1953 c 549 §101, repealed by 1985 c.728 §110]

57.675 Application for certificate of authority. (1) To procure a certificate of authority to transact business in this state, a foreign corporation shall apply to the Corporation Division. The application shall state:

(a) The corporate name as designated under ORS 57.665.

(b) The state or country under the laws of which the corporation was incorporated.

(c) The date of incorporation.

(d) The period of duration of the corporation, if the duration of the corporation is not perpetual.

(e) A mailing address, to which the Corporation Commissioner may send notices as required by this chapter.

(f) The address of the principal office of the corporation in the state or country under the laws of which it was incorporated.

(g) The street address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent who

shall be amenable to service of process at the address.

(h) A brief statement of the character of business it proposes to conduct in this state.

(i) The names and respective addresses of the president and secretary of the corporation.

(j) Any additional information which the Corporation Commissioner by rule may require.

(2) The Corporation Commissioner shall prescribe and furnish forms for the application. The president or a vice president and secretary or an assistant secretary of the corporation shall verify and sign the application. [1953 c.549 §102; 1961 c 180 §1; 1963 c.492 §13; 1967 c.269 §2; 1971 c.184 §2; 1975 c.490 §30; 1981 c.633 §42; 1983 c.717 §9; 1985 c.728 §31]

57.680 Filing of application. (1) The foreign corporation shall submit for filing to the Corporation Division one original and one true copy of the application of the corporation for a certificate of authority. The foreign corporation shall deliver with the completed application a certificate of existence or a document of similar import, duly authenticated by the official having custody of corporate records in the state or country under whose law it is incorporated.

(2) If the Corporation Commissioner finds that such application conforms to this chapter, the Corporation Commissioner, when all fees and charges have been paid, shall issue and return to the sender a certificate of authority to transact business in this state with the copy of the filed application. [1953 c.549 §103, 1961 c.180 §2; 1975 c 490 §31, 1981 c.633 §43; 1985 c.728 §32]

57.685 Effect of certificate. (1) Upon the issuance of a certificate of authority by the Corporation Commissioner, the corporation shall be authorized to transact business in this state of the character that it stated in its application, subject, however, to the right of this state to suspend or to revoke the authority as provided in ORS 57.731.

(2) Until the Corporation Commissioner has deemed the certificate of authority revoked or withdrawn, a foreign corporation that has received a certificate of authority under ORS 57.680 shall enjoy the same rights and privileges as, but no greater rights and privileges than, a domestic corporation organized for the same purposes or conducting the character of business that the foreign corporation states in its application for a certificate of authority that it proposes to conduct in this state. Except as otherwise specifically provided in this chapter, the foreign corporation shall be subject to the same duties, restrictions, penalties and liabilities now or here-

after imposed upon a domestic corporation of like character.

(3) The corporate name designated under ORS 57.665 shall be accorded the same legal effect under ORS 57.045 and ORS chapters 647 and 648 as the corporate name of a domestic corporation. Issuance of the certificate of authority shall not abrogate or limit the law as to unfair competition or unfair trade practices or derogate from the common law, the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and to protect trade names. [1953 c.549 §104, 1985 c.728 §33]

57.690 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its place of business in this state.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office. [1953 c.549 §105]

57.695 Change of registered office or registered agent of foreign corporation.

(1) A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the Corporation Commissioner a statement setting forth:

(a) The name of the corporation.

(b) Any change of address of its registered office, including street and number, if any.

(c) If its registered agent be changed, the name of its successor registered agent.

(d) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(e) That such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed by an officer of the corporation, and verified by the officer, and delivered to the Corporation Commissioner. If a registered agent changes the business address of the registered agent to another place, the registered agent may change such address and the address of the registered office of any corporations of which the registered agent is the registered agent by filing a statement as

required above except that it need be signed only by the registered agent, need not be responsive to paragraph (c) or (e) of subsection (1) of this section and must recite that a copy of the statement has been mailed to each such corporation. If the Corporation Commissioner finds that such statement conforms to the provisions of this chapter, the commissioner shall file such statement in the office of the commissioner. The filing of such statement shall immediately terminate the existing registered office or agent, or both, as the case may be, and establish the newly appointed registered office or agent, or both, as the case may be, of the corporation.

(3) Any registered agent of a foreign corporation may resign as agent upon filing a signed statement with the Corporation Commissioner. The resignation shall become effective 30 days after the filing of the signed statement, unless the corporation shall sooner appoint a successor registered agent as provided in this section, thereby terminating the capacity of such agent. Upon the filing of the signed statement, the Corporation Commissioner shall forthwith notify the corporation of the filing of such statement and the effect thereof, which notice shall be addressed to the corporation at its principal office as shown by the records of the Corporation Commissioner. [1953 c.549 §106; 1963 c.492 §14; 1965 c.631 §14; 1975 c.490 §32; 1977 c.78 §2]

57.700 Service of process on foreign corporation.

(1) The registered agent so appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(2) The Corporation Commissioner shall be an agent of a foreign corporation upon whom any process, notice or demand may be served, if:

(a) The corporation is authorized to transact business in this state, and

(A) It fails to appoint or maintain a registered agent in this state, or

(B) Its registered agent cannot with reasonable diligence be found at the registered office, or

(C) The corporation's certificate of authority has been suspended or revoked;

(b) The corporation is transacting business in this state without being authorized as provided in this chapter;

(c) The corporation has been authorized to transact business in this state and has withdrawn and consented to service on the Corporation Commissioner as prescribed in this chapter;

(d) The corporation has transacted business in this state without being authorized to do so, has ceased to transact business and has become subject to service on the Corporation Commissioner as prescribed in this chapter; or

(e) The corporation is the surviving or new corporation following a merger or consolidation with a domestic corporation and, in connection therewith, has appointed the Corporation Commissioner its agent for service as prescribed in this chapter.

(3) Service on the Corporation Commissioner of any such process, notice or demand shall be made in the same manner as provided in ORS 57.075 (3), except that when the corporation served is not authorized to transact business in this state and was not authorized to transact business in this state at the time the transaction, event or occurrence upon which the suit or proceeding is based occurred, the copy of the process, notice or demand shall be sent forthwith by registered or certified mail by the plaintiff or the attorney of the plaintiff to the principal office or place of business of the corporation, instead of the last-registered office of the corporation.

(4) The Corporation Commissioner shall keep a record of all processes, notices and demands served upon the Corporation Commissioner under this section.

(5) Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law, or enlarge the purposes for which service on the Corporation Commissioner is permitted where such purposes are limited by other provisions of law. [1953 c.549 §107; 1963 c.479 §22; 1967 c.297 §3]

57.705 [Repealed by 1953 c.549 §138]

57.706 [1953 c 549 §108; repealed by 1961 c.180 §10]

57.710 [Repealed by 1953 c 549 §138]

57.711 [1953 c.549 §109; repealed by 1961 c.180 §10]

57.715 [Repealed by 1953 c.549 §138]

57.716 Amended certificate of authority. (1) If a foreign corporation authorized to transact business in this state changes its corporate name or its duration, it shall apply to the Corporation Division to amend its certificate of authority.

(2) The requirements in respect to the form and contents of the application, the manner of its signing and the submission of the original application and a true copy of the application with the Corporation Division shall be the same

as in the case of an original application for a certificate of authority. The filing of the application for the amended certificate of authority by the Corporation Commissioner shall have the same legal effect as the filing of the original certificate of authority. [1953 c.549 §110; 1963 c.492 §15; 1969 c.364 §4; 1981 c.633 §44; 1985 c.728 §34]

57.720 [Repealed by 1953 c.549 §138]

57.721 Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state by applying to the Corporation Division to withdraw. An application to withdraw shall set forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) A statement that the corporation is not transacting business in this state.

(c) A statement that the corporation surrenders its authority to transact business in this state.

(d) A statement that the corporation revokes the authority of its registered agent in this state to accept service of process, notice or demand, and consents that service of process, notice or demand, in any action, suit or proceeding based upon any transaction, event or occurrence which took place in this state prior to the filing of the application to withdraw may thereafter be made on such corporation by service thereof on the Corporation Commissioner.

(e) A mailing address to which the person initiating any proceedings may mail a copy of any process, notice or demand to the corporation, which has been served on the Corporation Commissioner.

(f) Such additional information as may be necessary or appropriate to enable the Corporation Commissioner to determine and assess any unpaid fees or charges payable by such foreign corporation as in this chapter prescribed.

(2) The application for withdrawal shall be made on forms prescribed and furnished by the Corporation Commissioner and shall be signed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be signed on behalf of the corporation by such receiver or trustee and verified by the receiver or trustee.

(3) A foreign corporation which transacted business in this state without being authorized to do so as provided in this chapter will be subject to

service after it has ceased to transact business in this state in the same manner as though it had been authorized to transact business, had later withdrawn, and, in connection with such withdrawal, had filed a consent to service in the manner required by paragraph (d) of subsection (1) of this section. [1953 c 549 §111; 1963 c 479 §23; 1969 c 364 §5, 1985 c.728 §35]

57.725 [Repealed by 1953 c.549 §138]

57.726 Filing of application to withdraw. (1) One original and one true copy of such application to withdraw shall be delivered to the Corporation Division. If the Corporation Commissioner finds that such application conforms to the provisions of this chapter, the Corporation Commissioner, when all fees and charges have been paid, shall file the application to withdraw and return the copy marked "filed" to the sender.

(2) Upon the filing of the application to withdraw, the authority of the corporation to transact business in this state shall cease. [1953 c.549 §112; 1981 c.633 §45; 1985 c 728 §36]

57.730 [Repealed by 1953 c.549 §138]

57.731 Cause for revocation of certificate of authority. The certificate of authority of a foreign corporation to transact business in this state may be revoked when:

(1) The corporation has not filed its annual report or corrected annual report within the time prescribed by ORS 57.755 or has not paid any fees prescribed by this chapter when due;

(2) The corporation has failed to appoint or to maintain a registered agent in this state as required by ORS 57.690;

(3) The corporation has changed its registered office or registered agent and has failed to submit to the Corporation Division a statement of the change as required by this chapter;

(4) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by such corporation pursuant to this chapter;

(5) The corporation has failed to submit for filing an application to amend its certificate of authority as required by ORS 57.716; or

(6) The corporation has failed to submit for filing a certificate of merger or consolidation when required by ORS 57.500. [1953 c.549 §113; 1961 c.180 §3; 1963 c 492 §16; 1981 c 633 §46; 1983 c.717 §10; 1985 c.351 §6, 1985 c 728 §37]

57.735 Procedure for revoking certificate of authority. (1) Whenever a corporation has given cause for revocation of its certificate of authority as provided in ORS 57.731 and has

failed to correct the neglect, omission, misrepresentation or delinquency, the Corporation Commissioner may revoke the right of the corporation to transact business in this state. The Corporation Commissioner shall mail a notice of the revocation to the mailing address shown for the corporation in the current records of the Corporation Division or to the corporation at its registered office in this state or its principal office in its home state. The procedures provided in ORS 57.778 apply to this subsection.

(2) After the Corporation Commissioner revokes the certificate of authority, all powers that this state conferred upon the foreign corporation shall cease, and thereafter no person shall exercise or attempt to exercise in this state any power under the revoked certificate of authority.

(3) Whenever it is established to the satisfaction of the Corporation Commissioner that any foreign corporation, the certificate of authority of which has been revoked under subsection (1) of this section or by proclamation of the Governor under any prior law, or by operation of any prior law has corrected the cause for revocation, the Corporation Commissioner shall restore the corporation to all its former rights and privileges in the same manner as the Corporation Commissioner revoked the authority of the corporation.

(4) Any foreign corporation previously authorized to transact business in this state that has had its certificate of authority revoked, and that has corrected the cause for revocation under subsection (1) of this section, may apply for reinstatement of its certificate of authority. The foreign corporation shall pay all fees which accrued before the Corporation Commissioner revoked the certificate of authority and a reinstatement filing fee of \$100. The payment shall accompany the application for reinstatement. If the Corporation Commissioner is satisfied that the cause for revocation has been corrected, the Corporation Commissioner shall file the application for reinstatement of the foreign corporation entitling it to resume its business and its franchises in this state. The Corporation Commissioner shall not file the application for reinstatement if the corporate name of the foreign corporation does not conform to ORS 57.045 (4), unless the foreign corporation being reinstated contemporaneously complies with ORS 57.665 (3).

(5) Reinstatement under this section relates back to and takes effect as of the effective date of the revocation of the certificate of authority, so that the existence of the foreign corporation is deemed to have continued without interruption from that date.

(6) The reinstated foreign corporation is not relieved by reason of the reinstatement from any penalty of forfeiture of its powers as a body corporate in case of its failure to pay subsequently accruing licenses and taxes imposed by any law of this state.

(7) Nothing contained in this section shall be construed to affect any suit brought for any liability against the stockholders or officers of any foreign corporation, or to revive any charter of foreign corporations previously dissolved or annulled, or to make valid any defective organization of any foreign corporations.

(8) Suits and actions upon choses in action arising out of contracts sold or assigned by any foreign corporation, the right of which to transact business in this state has been revoked under subsection (1) of this section, may be brought or prosecuted in the name of the purchaser or assignee. The fact of sale or assignment and of purchase by the plaintiff shall be set forth in the writ or other process. The defendant may rely on any matter of defense which the defendant might have relied on in a suit upon the claim by the foreign corporation, had its right to transact business in this state not been revoked. [1953 c.549 §114, 1963 c.492 §17; 1965 c.631 §15; 1981 c.633 §47; 1983 c.717 §11, 1985 c.351 §7; 1985 c.728 §38]

57.740 Application to corporations authorized to transact business in this state on December 31, 1953. Foreign corporations which are duly authorized to transact business in this state on December 31, 1953, for a purpose or purposes for which a corporation might secure such authority under this chapter, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this chapter, and from December 31, 1953, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this chapter. [1953 c.549 §115]

57.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim

or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

(3) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority in an amount equal to all fees and charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees and charges. The Attorney General shall bring proceedings to recover all amounts due this state under the provisions of this section. [1953 c.549 §116]

ANNUAL REPORTS

57.755 Annual statement of domestic and foreign corporations. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall submit for filing to the Corporation Division by its anniversary date an annual statement setting forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) The street address of the registered office of the corporation in this state, and the name of its registered agent in this state who shall be amenable to service of process at the address, and the address of its principal office or place of business.

(c) A mailing address to which the Corporation Commissioner may mail notices to the corporation.

(d) The names and respective addresses, of the chief executive officer or the president and secretary of the corporation.

(e) The category of the classification code established by rule of the commissioner most closely designating the primary business activity of the corporation.

(f) Additional identifying information that the Corporation Commissioner may require by rule.

(2) The annual statement shall be made on forms prescribed and furnished by the Corporation Commissioner, and the information therein contained shall be current as of 30 days before the anniversary of the corporation. It shall be signed by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, it shall be signed on behalf of the corporation by such receiver or trustee.

(3) The Corporation Commissioner shall mail the annual statement form to any address shown for the corporation in the current records of the Corporation Division. If the form is returned undeliverable, the commissioner may dissolve the corporation or revoke its certificate of authority.

(4) If the Corporation Commissioner finds that the statement conforms to the requirements of this chapter and all fees have been paid, the Corporation Commissioner shall file the statement. If the Corporation Commissioner finds that the statement does not so conform or the correct fees have not been paid, the Corporation Commissioner shall notify the corporation of its error. The corporation must correct the error within 45 days after the Corporation Commissioner gives it notice.

(5) If the corporation fails to return the annual statement and pay the fees by its anniversary date, or to return the corrected annual statement or pay the correct fees within the 45-day period, the Corporation Commissioner shall give the corporation notice of its delinquency or omission. If the corporation fails to correct the delinquency or omission within 30 days after the commissioner sends the notice, the commissioner shall dissolve the corporation or revoke its authority and so notify the corporation. [1953 c.549 §117; 1957 c.563 §1; 1959 c.244 §2, 1963 c.492 §18, 1971 c.184 §3, 1981 c.633 §48, 1983 c.717 §12; 1985 c.728 §39]

57.757 [1953 c.549 §118; 1955 c.195 §1; 1957 c.331 §1; 1959 c.244 §3; 1975 c.490 §34; 1981 c.633 §49; 1983 c.717 §13; repealed by 1985 c.728 §110]

57.760 [Repealed by 1953 c.549 §138]

FEEES AND CHARGES

57.761 Filing fees. (1) The Corporation Commissioner shall charge and collect for:

(a) Filing articles of incorporation, a filing fee of \$15. The corporation shall at the same time pay the annual license fee prescribed in ORS 57.767.

(b) Filing an application to reserve a corporate name, \$5.

(c) Filing an application of a foreign corporation for a certificate of authority to transact business and issuing a certificate of authority, \$200.

(2) The Corporation Commissioner shall not file any document relating to any corporation, domestic or foreign, organized under or subject to the provisions of this chapter, until all fees and charges required to be paid in connection therewith shall have been paid to the commissioner or while the corporation is in default in the payment of any fees or charges required by this chapter to be paid by or assessed against it. [1953 c.549 §119; 1959 c.244 §4; 1961 c.180 §4; 1967 c.269 §4; 1985 c.351 §8]

Note See note under 56.120 regarding fee surcharge.

57.765 [Repealed by 1953 c.549 §138]

57.766 Miscellaneous charges. The Corporation Commissioner shall charge and collect:

(1) For furnishing a copy of any document relating to a corporation, a fee as set by rule, and an additional \$2 for the certification of each such copy.

(2) At the time of any service of process on the commissioner as resident agent of a corporation, \$2, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action. [1953 c.549 §120; 1957 c.226 §1; 1967 c.297 §4; 1985 c.351 §9]

Note: See note under 56.120 regarding fee surcharge.

57.767 License fees payable by domestic corporations. Every domestic corporation shall pay an annual license fee of \$15. The annual license fee required by this section shall be paid by the anniversary date of the corporation, except as provided by ORS 57.761 (1). If the corporation submits for filing articles of dissolution before the date of involuntary dissolution, then the annual license fee for that year shall not be required. [1953 c.549 §121; 1957 c.344 §1; 1959 c.244 §5; 1971 c.200 §3; 1981 c.633 §50; 1985 c.728 §40a]

Note: See note under 56.120 regarding fee surcharge.

57.769 License fees payable by foreign corporations. Every foreign corporation, joint stock company or association doing business in this state pursuant to this chapter, shall pay in advance to the Corporation Commissioner an annual license fee of \$200 when its certificate of authority is issued under ORS 57.680, and annually thereafter by its anniversary date. However, nothing in this section shall be construed to

impose any annual license fee upon any corporation, all of the issued capital stock of which is beneficially owned by the United States, either directly or through the medium of another corporation, wholly owned by the United States. [1953 c.549 §122, 1959 c.244 §6, 1983 c.717 §15; 1985 c.351 §11; 1985 c.728 §41]

Note: See note under 56.120 regarding fee surcharge.

57.770 [Repealed by 1953 c.549 §138]

57.772 Exemption of governmental units and instrumentalities from certain fees. The Corporation Commissioner shall not be required to charge or collect any of the fees provided for under ORS 56.050 (2) or 57.766 from the State of Oregon, any political subdivision thereof, or any agency or other instrumentality of any of the foregoing. [1969 c.364 §9]

57.775 [Repealed by 1953 c.549 §138]

MISCELLANEOUS PROVISIONS

57.776 Powers of Corporation Commissioner. The Corporation Commissioner shall have the power and authority reasonably necessary to enable the commissioner to administer this chapter efficiently and to perform the duties therein imposed upon the commissioner. [1953 c.549 §125]

57.778 Appeal from Corporation Commissioner. (1) If the Corporation Commissioner shall fail to approve any articles of incorporation, amendment, merger, consolidation, exchange or dissolution, or any other document required by this chapter to be approved by the Corporation Commissioner before the same shall be filed in the office of the Corporation Commissioner, the commissioner shall, within 10 days after receiving the articles or document, give written notice of disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. Such person or corporation, in addition to any other legal remedy which may be available, shall have the right to appeal from such order pursuant to the provisions of ORS 183.480.

(2) The procedures set forth in subsection (1) of this section shall likewise be applicable if the Corporation Commissioner shall revoke the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of this chapter. [1953 c.549 §126; 1975 c.490 §35; 1981 c.633 §51]

57.779 [1953 c.549 §123, 1955 c.184 §1; repealed by 1981 c.633 §83]

57.780 [Repealed by 1953 c.549 §138]

57.781 Certificates and certified copies to be received in evidence. The provisions of ORS 56.110, relating to certificates and certified copies to be received in evidence, apply to corporations. [1953 c.549 §127, 1983 c.717 §15a]

57.783 Forms to be furnished by Corporation Commissioner. All reports required by this chapter to be filed in the office of the Corporation Commissioner shall be made on forms which shall be prescribed and furnished by the Corporation Commissioner. Forms for all other documents to be filed in the office of the Corporation Commissioner shall be furnished by the Corporation Commissioner on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory. [1953 c.549 §128]

57.785 [Repealed by 1953 c.549 §138]

57.786 Greater voting requirements. Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. [1953 c.549 §129]

57.788 Waiver of notice. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. [1953 c.549 §130]

57.790 [Repealed by 1953 c.549 §138]

57.791 Action by shareholders or directors without a meeting. Any action required by this chapter to be taken at a meeting of the shareholders or directors of a corporation, or any other action which may be taken at a meeting of the shareholders, directors, or of a committee, may be taken without a meeting if a consent, or consents, in writing setting forth the action so taken shall be signed by all of the shareholders, directors, or all of the members of the committee, entitled to vote with respect to the subject matter thereof. The action shall be effective on the date on which the last signature is placed on the consent or consents or at such earlier time as is set forth therein. The consent or consents shall have the same force and effect as a unanimous vote of such shareholders or directors, and may be stated as such in any articles or document filed

with the Corporation Commissioner under this chapter. [1953 c.549 §131; 1979 c.441 §2]

57.793 Liability for unauthorized assumption of corporate powers. (1) All persons who assume to act as a corporation without the authority of a certificate of incorporation issued by the Corporation Commissioner, shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

(2) All persons who act knowingly and wilfully and with intent to defraud, pretend to be a corporation, use the name of a corporation or exercise or attempt to exercise any powers, privileges or franchises of a corporation after it has been dissolved or its articles of incorporation canceled, shall be jointly and severally liable for all debts and liabilities made or incurred by them in the name of the corporation or pretended corporation. [1953 c.549 §132; 1981 c.633 §52]

57.795 [Repealed by 1953 c 549 §138]

57.796 Application to corporations existing on December 31, 1953. (1) The provisions of the Oregon Business Corporation Act shall apply to the fullest extent permitted by the laws and Constitution of the United States and of the State of Oregon, to all existing corporations organized under any general Act of this state.

(2) Nothing contained in the Oregon Business Corporation Act shall be construed to repeal or to amend the present statutes relating to banks and trust companies, insurance, casualty and surety companies, cooperative associations, industrial loan companies, credit unions, building and savings and loan associations, nonprofit corporations, and other corporations for which special regulation, different from the general private business corporation laws of this state, has existed prior to December 31, 1953. [1953 c 549 §133]

57.797 Corporations incorporated prior to December 31, 1953, under special Acts may incorporate under Oregon Business Corporation Act. The stockholders of any private incorporation heretofore incorporated by any special Act of the legislature may at any time hereafter, while such corporation exists, incorporate themselves under the Oregon Business Corporation Act, in the mode herein prescribed, for the purpose of carrying on the enterprise, business, pursuit or occupation for which they may have been specially incorporated; and the filing of the articles of incorporation shall be deemed a surrender of such special incorporation, but not of any vested right thereunder, and thereafter such corporation shall have the powers

and privileges, and be subject to the liabilities and limitations, provided by the Oregon Business Corporation Act, and not otherwise. [1953 c.549 §140]

57.798 Effect of amendment or repeal of Oregon Business Corporation Act. The Oregon Business Corporation Act may be amended, repealed or modified, but such amendment, repeal or modification shall not take away or impair any remedy for any liability which shall have been previously incurred. [1953 c 549 §134, 1961 c 142 §1]

57.799 Effect of repeal of prior Acts. The repeal of a prior Act by chapter 549, Oregon Laws 1953, shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such Act, prior to the repeal thereof. [1953 c.549 §135]

57.800 [Repealed by 1953 c.549 §138]

57.805 Issuance of one certificate to certain owners of capital stock. At the request of any holder of two or more certificates of the capital stock of any corporation organized under the laws of this state, such corporation shall, upon the surrender of the certificates, issue to the holder of such capital stock one certificate for all shares of stock of any one class in such corporation owned by the stockholder if the number of such shares owned by the stockholder in the particular class equals or exceeds 100. [Formerly 57.540]

57.807 [Formerly 57.545, repealed by 1955 c.200 §5]

57.809 [Formerly 57.605, repealed by 1955 c.200 §5]

57.811 Certain de facto corporations made legal corporations. Any corporation organized under the laws of this state prior to August 2, 1951, which has maintained its corporate existence, and is now a de facto corporation engaged in the pursuits for which it was organized, and which has filed and recorded its articles of incorporation with either the Corporation Commissioner or the clerk of the county of its organization, but not with both; or which has filed and recorded its articles as provided by law but has not had them properly acknowledged, hereby is declared to be a legal corporation having the same status as though it had complied with such requirements of law. [Formerly 57.015]

57.815 Foreign utilities, powers of; leasing of railroads by foreign corporations. (1) Any foreign corporation incorporated for the purpose of constructing, or constructing and operating, or for the purpose of or with the power of acquiring and operating, any railway, macadamized road, plank road, clay road, canal or

bridge, or for the purpose of conducting water, gas or other substance by means of pipes laid under the ground, shall, on compliance with the laws of this state for the regulation of foreign corporations transacting business therein, have the same rights, powers and privileges in the exercise of the rights of eminent domain, collection of tolls and other prerogative franchises, and in the control, management and disposition of their business franchises and property, as are possessed by corporations organized for similar purposes under the general incorporation laws of this state.

(2) However, in the case of the leasing of any line of railroad incorporated under the laws of this state by a foreign corporation, the State of Oregon reserves to itself, through its Legislative Assembly, and in such manner as it shall determine, the right, power and authority to prescribe the rate to be charged for the transportation of persons and property on such leased lines, and also to prescribe and make such police regulations for the government of such roads as it may from time to time determine. [Formerly 60.100]

57.818 "Foreign savings and loan association" defined for ORS 57.820 to 57.824. For the purposes of ORS 57.820 to 57.824, a foreign savings and loan association includes any savings and loan association incorporated under the laws of any other state or territory or any savings and loan association organized and existing under the laws of the United States, unless such savings and loan association has received a certificate of authority from the Supervisor of the Savings and Loan, Credit Union and Consumer Finance Section or maintains an office in the State of Oregon. [1979 c.863 §17; 1985 c.762 §170a]

57.820 Activities of certain foreign corporations concerning notes secured by realty. (1) Subject to ORS 57.822 (1), any foreign bank, foreign business trust, foreign trust company or foreign insurance company, interinsurance or reciprocal exchange or foreign savings and loan association, without being authorized to transact business in this state, may take, acquire, hold and enforce notes secured by real estate mortgages or trust deeds and make commitments to purchase such notes.

(2) Such foreign bank, foreign business trust, foreign trust company, foreign insurance company or interinsurance or reciprocal exchange or foreign savings and loan association shall have the right to foreclose said mortgages and trust deeds acquired pursuant to subsection (1) of this section in the courts of this state, to acquire the mortgaged property, to hold, own and operate said property for a period not exceeding five years and dispose of said property so acquired.

(3) The activities authorized by subsections (1) and (2) of this section by such bank, business trust, trust company, insurance company, interinsurance or reciprocal exchange or savings and loan association shall not constitute transacting business in this state for the purposes of this chapter. [1953 c.717 §1; 1963 c.492 §19; 1969 c.419 §1; 1971 c.491 §8]

57.822 Prerequisites to engaging in activities authorized by ORS 57.820. (1) Before any foreign bank, foreign business trust, foreign trust company, foreign insurance company, interinsurance or reciprocal exchange or foreign savings and loan association engages in any of the activities described in ORS 57.820, the bank, business trust, trust company or insurance company, interinsurance or reciprocal exchange or savings and loan association shall first file with the Corporation Division a statement signed by its president, secretary, treasurer or general manager that it constitutes the Corporation Commissioner its attorney for service of process, and shall pay an initial filing fee of \$200 and an annual license fee of \$200. The statement shall include the address of the principal place of business of such bank, business trust, trust company, insurance company, interinsurance or reciprocal exchange or savings and loan association. The Corporation Commissioner shall notify the Supervisor of the Savings and Loan, Credit Union and Consumer Finance Section when a statement is filed by a foreign savings and loan association under this section. The Corporation Commissioner shall notify the Supervisor of the Banking Section when any other person files a statement under this subsection.

(2) The Corporation Commissioner, upon receiving service of process, as authorized by subsection (1) of this section, immediately shall forward by registered mail all documents served upon the commissioner to the principal place of business of the bank, business trust, trust company, insurance company, interinsurance or reciprocal exchange or savings and loan association.

(3) This section is not applicable to a national banking association organized under laws of the United States, it being understood that such banking associations may, without the necessity of complying with subsection (1) of this section, take, acquire, hold and enforce notes secured by real estate mortgages or trust deeds, make commitments to purchase such notes and participate with other lenders authorized to do business in this state in the making of loans for which such notes are executed and delivered.

(4) A foreign bank, foreign business trust, foreign trust company, foreign insurance company, interinsurance or reciprocal exchange or foreign savings and loan association that indirectly engages in the activities described in ORS 57.820 because of its beneficial interest in a pool of notes secured by real estate mortgages or trust deeds need not comply with subsection (1) of this section. [1953 c.717 §2; 1965 c.349 §2; 1969 c.419 §2; 1971 c.491 §9, 1973 c.797 §423; 1975 c.582 §148; 1979 c.208 §5; 1985 c.351 §12; 1985 c.762 §171]

Note: See note under 56.120 regarding fee surcharge

57.824 Taxation of foreign corporations by reason of activities authorized by ORS 57.820. The engaging in the activities authorized by ORS 57.820 by any foreign bank, foreign business trust, foreign trust company or foreign insurance company, interinsurance or reciprocal exchange or foreign savings and loan association shall not subject such bank, business trust, trust company or insurance company, interinsurance or reciprocal exchange or foreign savings and loan association to any tax, license fee or charge, except as provided in ORS 57.822, for the privilege of doing business within the State of Oregon or to any tax measured by net or gross income. However, if any such foreign bank, foreign business trust, foreign trust company, foreign insurance company, interinsurance or reciprocal exchange or foreign savings and loan association acquires any property given as security for such a mortgage or trust deed, all income accruing to such foreign bank, foreign business trust, foreign trust company, foreign insurance company, interinsurance or reciprocal exchange or foreign savings and loan association solely from the ownership, sale or other disposal of such property is subject to taxation in the same manner and on the same basis as income of corporations doing business in this state. [1953 c.717 §3; 1969 c.419 §3; 1971 c.491 §10, 1975 c.582 §149]

57.830 Regulation of trust business by corporations formed prior to Bank Act; regulation of other business. (1) Trust business done by corporations created prior to the adoption of the Bank Act (General Laws 1925, chapter 207) shall be subject to regulation by the Supervisor of the Banking Section and such corporations engaged in trust business are subject to the provisions, including the filing and fee requirements, of ORS chapters 706 to 716.

(2) If a corporation subject to subsection (1) of this section also carries on business other than a trust business, the Corporation Commissioner may retain a copy of the articles of incorporation and other filings. As provided in ORS 57.796,

such corporations also shall continue to be subject to the provisions, including the filing and fee requirements, of ORS chapter 57. [1983 c.717 §14a; 1985 c.762 §172]

57.850 Certain tax information available to Corporation Commissioner; disclosure prohibited. The Department of Revenue shall furnish to the Corporation Commissioner the names and addresses of corporations filing corporation excise tax or income tax returns. The Corporation Commissioner, officers and employes, shall use the names and addresses solely in the enforcement of this chapter, and shall not otherwise divulge or make known such information. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS 314.991 (2). [1959 c.244 §12; 1979 c.690 §12]

57.860 When chairman of board may execute or verify documents. Wherever provision is made in this chapter for execution or verification of a document by the president of a corporation, the document may be signed or verified, or both, by the chairman of the board of directors. [1973 c.367 §19]

RIGHTS OF DISSENTING SHAREHOLDER

57.865 Definitions for ORS 57.865 to 57.890. As used in this section and ORS 57.870 to 57.890:

(1) "Dissenter" means a shareholder or beneficial owner who is entitled to assert dissenters' rights under ORS 57.870 and who has performed every act required up to the time involved for the assertion of the rights.

(2) "Fair value" of shares means their value immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless the exclusion would be inequitable.

(3) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans, or, if none, at a rate that is fair and equitable under all the circumstances.

(4) "Issuing corporation" means the issuer of the shares held by the dissenter before the corporate action, or the successor by merger or consolidation of that issuer. [1981 c.633 §24a]

Note: 57.865 to 57.890 were enacted into law by the Legislative Assembly and were added to and made a part of ORS chapter 57 but were not added to any series therein by

legislative action. See Preface to Oregon Revised Statutes for further explanation.

57.870 When shareholder may dissent.

(1) Any shareholder of a corporation may dissent from and obtain payment for the shareholder's shares, in the event of any one of the following corporate actions:

(a) Any plan of merger or consolidation to which the corporation is a party.

(b) Any sale, lease or exchange of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, including a sale in dissolution but not including a sale pursuant to an order of a court having jurisdiction of the matter or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale.

(c) Any plan of exchange to which the corporation is a party if the shares of the corporation are to be acquired under the plan of exchange.

(d) Any amendment of the articles of incorporation materially and adversely affecting the rights pertaining to the shares of the dissenting shareholder by:

(A) Altering or abolishing a preferential right of the shares;

(B) Creating, altering or abolishing a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(C) Altering or abolishing a preemptive right of the holder of the shares to acquire shares or other securities; or

(D) Excluding or limiting the right of the holder of the shares to vote on any matter, or to cumulate the holder's votes, except as that right may be limited by dilution through the issuance of shares or other securities with similar voting rights.

(e) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws or a resolution of the board of directors directs that dissenting shareholders may obtain payment for their shares.

(2) A record holder of shares may assert dissenters' rights as to less than all of the shares registered in the record holder's name only if the record holder dissents with respect to all the shares beneficially owned by any one person and discloses the name and address of the person on

whose behalf the record holder dissents. In that event, the record holder's rights shall be determined as if the shares as to which the record holder has dissented and the record holder's other shares were registered in the names of different shareholders.

(3) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on the beneficial owner's behalf if the beneficial owner submits to the corporation a written consent of the record holder not later than the date on which the beneficial owner asserts dissenters' rights.

(4) A shareholder of a corporation who has a right under this section to obtain payment for shares may not attack the validity of the corporate action giving rise to the right of the shareholder to obtain payment or have the action set aside or rescinded, except when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation.

(5) This section shall not apply to the shareholders of the surviving corporation in a merger if a vote of shareholders of the corporation is not necessary to authorize the merger. Nor shall this section apply to the holders of shares of any class or series if the shares of the class or series were registered on a national securities exchange on the date fixed to determine the shareholders entitled to vote at the meeting of shareholders at which the plan of merger, consolidation or exchange or the proposed sale or exchange of property and assets is to be acted upon unless the articles of incorporation of the corporation shall otherwise provide. [1981 c.633 §25]

Note: See note under 57.865.

57.875 Notice of meeting at which dissent may be exercised; notice of intent; notice when corporate action taken; when payment for shares to be made. (1) If a proposed corporate action described in ORS 57.870 is submitted to a vote at a meeting of shareholders, the notice of the meeting shall notify all shareholders of their right to dissent from the corporate action and obtain payment for their shares under this section, and shall be accompanied by a copy of ORS 57.870 to 57.880.

(2) If the proposed corporate action is submitted to a vote at a meeting of shareholders, any shareholder who wishes to dissent and obtain payment for the shareholder's shares must file with the corporation, before the vote, a written notice of intention to demand that the shareholder be paid fair value for the shareholder's shares if the proposed action is taken, and shall not vote the shareholder's shares in approval of

the action. A shareholder who fails in either respect shall not receive payment for the shares under this section or ORS 57.880.

(3) If the proposed corporate action is approved by the required vote at a meeting of shareholders, the corporation shall mail a further notice to all shareholders who gave due notice of intention to demand payment and who did not vote in favor of the proposed action. If the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send to all shareholders who are entitled to dissent and demand payment for their shares a notice of the adoption of the plan of corporate action. The notice shall:

(a) State where and when a demand for payment must be sent, and where and when certificates of certificated shares must be deposited in order to obtain payment;

(b) Inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received;

(c) Supply a form for demanding payment which includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares;

(d) Be accompanied by a copy of ORS 57.870 to 57.880; and

(e) State a time not less than 30 days from the mailing of the notice, in which the shareholder must return the shareholder's demand and deposit under this subsection.

(4) A shareholder who fails to demand payment or fails, in the case of certificated shares, to deposit certificates as required by the notice pursuant to subsection (3) of this section may not receive payment for the shares. If the shares are not represented by certificates, the corporation may restrict their transfer from the time of receipt of demand for payment until the proposed corporate action is taken or until restrictions are released under ORS 57.880. The dissenter shall retain all other rights of a shareholder until these rights are modified by completion of the proposed corporate action. [1981 c 633 §26]

Note: See note under 57.865

57.880 Return of certificates; release of shares; effect of corporate action on dissenters. (1) Within 60 days after the date set for demanding payment and depositing certificates as set forth in the notice provided under ORS 57.875 (3), if the corporation has not effected the proposed corporate action and remit-

ted payment for shares under subsection (3) of this section, it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment.

(2) After uncertificated shares have been released from transfer restrictions and deposited certificates have been returned, the corporation may send a new notice conforming to the requirements of ORS 57.875 (3) in order to reinstitute the corporate action.

(3) Immediately upon taking the proposed corporate action, or upon receipt of demand for payment if the corporate action has been taken already, the corporation shall remit to dissenters who have made demand and, if their shares are certificated, who have deposited their certificates the amount which the corporation estimates to be the fair value of the shares, with interest if any has accrued. The remittance shall be accompanied by:

(a) The corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the date of remittance, together with the latest available interim financial statements;

(b) A statement of the corporation's estimate of fair value of the shares; and

(c) A notice of the dissenter's right to demand supplemental payment, accompanied by a copy of ORS 57.880 to 57.890.

(4) If the corporation fails to remit as required by subsection (1) of this section, or if the dissenter believes that the amount remitted is less than the fair value of the dissenter's shares or that the interest is not correctly determined, the dissenter may send the corporation the dissenter's own estimate of the value of the shares or of the interest, and demand payment of the deficiency. If the dissenter does not file the estimate within 30 days after the corporation's mailing of its remittance, the dissenter shall be entitled to no more than the amount remitted.

[1981 c.633 §27]

Note: See note under 57.865.

57.885 Procedure when demands for payment deficient or unsettled; jurisdiction and power of court; parties; assessment of costs. (1) Within 60 days after receiving a demand for payment of a deficiency under ORS 57.880, if any demands for payment remain unsettled, the corporation shall file in an appropriate court a petition requesting that the fair value of the shares and interest thereon be determined by the court.

(2) An appropriate court under this section shall be a court of competent jurisdiction in the county of this state where the registered office or the corporation is located. In the case of a merger or consolidation of the corporation or in the case of an exchange of the corporation's shares, if the corporation is a foreign corporation without a registered office in this state, the petition shall be filed in the county where the registered office of the domestic corporation was last located.

(3) All dissenters whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the petition shall be served on each dissenter. If a dissenter is a nonresident, the copy may be served on the dissenter by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court shall be plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the power and authority specified in the order of their appointment or in any amendment of the order. The dissenters shall be entitled to discovery in the same manner as parties in other civil suits.

(5) All dissenters who are made parties shall be entitled to judgment for the amount by which the fair value of their shares is found to exceed the amount previously remitted, with interest.

(6) If the corporation fails to file a petition as provided in subsection (1) of this section, each dissenter who made a demand and who has not already settled the claim against the corporation shall be paid by the corporation the amount demanded by the dissenter, with interest, and may sue for the amount and the interest in an appropriate court.

(7) The court shall determine and assess costs and expenses of any proceeding under subsection (1) of this section as follows:

(a) The costs and expenses, including the reasonable compensation and expenses of appraisers appointed by the court, shall be assessed against the corporation. However, the court may apportion and assess any part of the costs and expenses as the court considers equitable against any dissenter who is a party to the proceeding, if the court finds the dissenter's action in demanding supplemental payment arbitrary, vexatious or not in good faith.

(b) Fees and expenses of counsel and of experts for the respective parties may be assessed as the court considers equitable against the corporation and in favor of any dissenter if the

corporation failed to comply substantially with the requirements of this section, and may be assessed against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith in respect to the rights provided by ORS 57.870 to 57.890. [1981 c.633 §28]

Note: See note under 57.865

57.890 Withholding of remittance.

Notwithstanding ORS 57.885, a corporation may withhold remittance as follows:

(1) The corporation may withhold the remittance required by ORS 57.885 (1) from any dissenter with respect to shares of which the dissenter, or the person on whose behalf the dissenter acts, was not the beneficial owner on the date of the first announcement of the proposed corporate action to news media or to shareholders. With respect to such shares, the corporation, upon taking the corporate action, shall state to each dissenter its estimate of the fair value of the shares, state the rate of interest to be used, explain the basis of the interest and offer to pay the resulting amounts on receiving the dissenter's agreement to accept them in full satisfaction.

(2) If the dissenter believes that the amount offered is less than the fair value of the shares and interest determined according to this section, the dissenter, within 30 days after the date on which the corporation mailed its offer, may mail the corporation the dissenter's own estimate of fair value and interest, and demand their payment. If the dissenter fails to do so, the dissenter shall receive no more than the corporation's offer.

(3) If the dissenter makes a demand as provided under subsection (2) of this section, ORS 57.885 applies to further proceedings on the dissenter's demand. [1981 c.633 §29]

Note: See note under 87.865

PENALTIES

57.990 [Repealed by 1953 c.549 §138]

57.991 [1953 c.549 §124; repealed by 1971 c.200 §12]

57.992 Penalty for exercising power of a dissolved corporation. Any person or persons who shall exercise or attempt to exercise any power of a dissolved corporation, except those specifically preserved by this chapter, shall be guilty of a misdemeanor and shall be punished, upon conviction, by imprisonment not exceeding one year, or a fine not exceeding \$1,000, or both. [1953 c.549 §88]

57.993 Penalty for exercising power of foreign corporation after revocation of authority. Violation of ORS 57.735 (2) is punishable, upon conviction, by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both. [1953 c.549 §114]

57.994 Penalty for doing business for unlicensed foreign corporation. Any person or agent who conducts and carries on business

within the limits of this state for or in the name of any foreign corporation not duly licensed or qualified to transact business within this state shall, upon conviction, be punished by a fine not exceeding \$200 or by imprisonment in the county jail for a term not exceeding three months, or both. [1953 c.549 §139]
