

TITLE 7

CORPORATIONS AND PARTNERSHIPS

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Chapter 56

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Duties of Secretary of State

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CROSS REFERENCES

Report of Director of the Department of Insurance and Finance to administrator, 722.416

56.018

Corporation Commissioner substituted for director when institution ceases banking or trust business, 711.250

56.050

Certificate as evidence, 59.325

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56.005 [1963 c.580 §10; repealed by 1987 c.414 §172]

56.006 "Office" defined. "Office," when used in this chapter to refer to the administrative unit directed by the Secretary of State, means the Office of Secretary of State. [1987 c.414 §53]

56.010 [Repealed by 1963 c.580 §103]

56.012 [1963 c.580 §§11, 12; repealed by 1987 c.414 §172]

56.014 Secretary of State as filing officer; duties. (1) The Secretary of State is the filing officer under ORS chapters 58, 60, 62, 65, 70, 128, 554, 647 and 648.

(2) The duties, powers and authority of the Secretary of State under this chapter apply to the Secretary of State's functions under ORS chapters 58, 60, 61 (1987 Replacement Part), 62, 70, 128, 554, 647 and 648. [1987 c.414 §55]

56.015 [1955 c.349 §1; 1957 c.80 §1; repealed by 1963 c.580 §103]

56.018 Power of Secretary of State in performing business registry functions. For purposes of performing business registry functions, the Secretary of State shall have the power:

(1) To organize and reorganize, as necessary, the Office of Secretary of State as the Secretary of State deems necessary to conduct and administer the business registry functions.

(2) To appoint all subordinate officers and employees of the Secretary of State's office and prescribe their duties and fix their compensation, subject to the applicable provisions of the State Personnel Relations Law. Subject to any other applicable law regulating travel expenses, the officers and employees of the office engaging in business registry functions shall be allowed such reasonable and necessary travel and other expenses as may be incurred in the performance of their duties.

(3) To require a fidelity bond of any officer or employee of the office engaging in business registry functions who has charge of, handles or has access to any state money or property, and who is not otherwise required by law to give a bond. The amount of the bond shall be fixed by the Secretary of State, except as otherwise provided by law, and the sureties shall be approved by the Secretary of State. The office shall pay the premium on the bonds. [1963 c.580 §13; 1987 c.414 §56]

56.020 [Amended by 1961 c.280 §4; repealed by 1963 c.580 §103]

56.022 Authority of Secretary of State to carry out business registry functions. The Secretary of State shall have the power and authority reasonably necessary to enable the Secretary of State to carry out business

registry functions and other duties imposed on the Secretary of State under ORS chapters 58, 60, 62, 65, 70, 128, 554, 647 and 648, including the authority to promulgate rules governing the procedure and form for submitting documents to be filed by the Secretary of State and the procedure and form for filing and retaining the documents and any other records required to be kept. [1985 c.728 §5; 1987 c.414 §57]

56.025 Designation of persons to sign papers. The Secretary of State may designate one or more of the clerks, deputies or assistants of the Secretary of State, in the name of the Secretary of State, to sign or countersign papers, documents, orders and certificates requiring the signature of the Secretary of State. Any paper, document, order or certificate signed in the name of the Secretary of State by the designated clerk, deputy or assistant shall have the same force and effect as if signed by the Secretary of State. [1959 c.173 §1]

56.030 [Amended by 1961 c.280 §5; repealed by 1963 c.580 §103]

56.035 Documents filed with Secretary of State; verification. Where a document is required by law to be verified before it may be filed with the Secretary of State, the document shall include or be accompanied by a written declaration, prepared under penalties of perjury by the person executing the document, to the effect that the person has examined the document and to the best of the knowledge and belief of the person it is true, correct and complete. An acknowledgment before a notary public or other officer is not required. [1971 c.200 §2]

56.040 [Repealed by 1961 c.280 §2]

56.041 Operating Account. ORS 56.041, as amended by section 1, chapter 132, Oregon Laws 1991 (Enrolled Senate Bill 454), is amended to read:

56.041. (1) The Operating Account is established in the General Fund of the State Treasury.

(2) The net amount accruing to the Secretary of State from all fees, charges, interest, fines, penalties and miscellaneous revenues from all sources relating to business registry functions shall, after deduction of refunds, be paid over to the State Treasurer and deposited at least monthly in the Operating Account.

(3) Moneys deposited to the credit of the Operating Account are continuously appropriated for the expenses of carrying out the functions and duties of the Secretary of State relating to business registry.

(4) Any amount deposited in the Operating Account as provided in subsection (2) of this section that at the end of each month is

determined by the Secretary of State to be in excess of the amount needed to administer business registry functions shall be transferred to the General Fund and shall become available for general governmental expenses.

(5) Any unexpended and unobligated balance in the Operating Account in excess of \$500,000 as of July 1 each year, as certified by the Secretary of State, shall be transferred from the account to the General Fund to be available for general governmental expenditures. [1961 c.280 §10; 1963 c.551 §16; 1981 c.633 §1; 1987 c.58 §12; 1987 c.414 §140; 1991 c.132 §1; 1991 c.425 §9]

56.045 [1985 c.383 §8; repealed by 1987 c.58 §15 and 1987 c.414 §172]

56.050 Copies of records as evidence; fees for copies. (1) Copies of all records and papers of the Office of the Secretary of State, certified by the Secretary of State, shall be received in evidence in all cases equally and with like effect as the original.

(2) The Office of the Secretary of State shall collect a fee as set by rule for making copies of any document filed in its office. For certifying the document it shall collect, in addition, a fee of \$2. [Amended by 1953 c.549 §138; 1957 c.227 §1; 1963 c.580 §14; 1985 c.351 §1; 1985 c.728 §1]

56.060 Records of Secretary of State. The Secretary of State shall keep, as records of office, books showing all acts, matters and things done by the Secretary of State in performing the business registry functions and duties of the Office of Secretary of State. [Amended by 1983 c.740 §6; 1985 c.728 §§2, 2a; 1987 c.158 §9; 1987 c.414 §58]

56.070 Waiving collection of fees, charges or interest amounting to \$3 or less. The Secretary of State may waive collection of any fee, charge or interest, or portion of a fee, charge or interest, which is collectible by the Secretary of State and is no more than \$3. [1955 c.185 §1; 1971 c.184 §1]

56.080 Withdrawal of certificates issued and filings accepted; withdrawal from filing. (1) Except as provided in subsections (2) and (3) of this section, the Secretary of State, within one year after a filing, at any time after a hearing held not less than 20 days after written notice to the company or individual who submitted the document to the office, may withdraw any certificate issued or document filed by the Secretary of State, except filings pursuant to ORS chapter 647, on any ground existing at the time of the filing for which the Secretary of State could have originally refused to issue the certificate or file the document. The written notice of such hearing shall state the reason for the proposed withdrawal.

(2) The Secretary of State, within one year after a filing, may withdraw from filing any document filed by the Secretary of State

when the person who submitted the document advises the office that the document was submitted prematurely or by inadvertence or mistake. The person requesting the withdrawal shall accompany the request with a written statement reflecting the basis of the person's authority to initiate the withdrawal.

(3) The Secretary of State may withdraw without notice or hearing a certificate that the Secretary of State has issued or a document the Secretary of State has filed when the fee was paid with a check that was returned to the office for lack of sufficient funds. Such withdrawal shall be retroactive to the date of filing.

(4) Any decision under this section may be reviewed in accordance with the provisions of ORS 183.310 to 183.550.

(5) A withdrawal from filing of a document under this section is retroactive to the date of the filing but shall not relieve a person of any liability the person may have incurred while the document was filed with the office. The Secretary of State is not required to refund any fees paid in conjunction with the document withdrawn.

(6) At any time prior to a delayed effective date specified in a document, upon written request of the person or persons who originally filed the document with the Secretary of State, the document shall be withdrawn. Upon such withdrawal of a document, the document shall have no further effect and shall be treated as if it had not been filed. The person requesting the withdrawal shall accompany the request with a written statement reflecting the basis of the person's authority to initiate the withdrawal. [1967 c.576 §2; 1981 c.633 §2; 1983 c.717 §4; 1985 c.728 §§3, 3a; 1987 c.414 §59; 1989 c.1040 §1]

56.090 Access to records; Secretary of State not responsible for accuracy of information. (1) The Secretary of State by rule shall adopt a schedule establishing priority of access among members of the general public, governmental agencies and other persons to records of the Secretary of State and the office relating to the business registry functions of the Secretary of State for use at times that the Secretary of State finds that demands for access to the records and to the time and resources of the Secretary of State and the office cannot be satisfied readily.

(2) The Secretary of State shall not be responsible for the accuracy of information contained in the records and provided under this section or ORS 192.410 to 192.505. [1983 c.717 §2; 1987 c.414 §60]

56.100 Electronic materials not subject to public records law. Except as the Secre-

tary of State provides by rule, the following are not public records for the purposes of ORS 192.410 to 192.505:

(1) Electronic data processing programs of the office; and

(2) Electronic media used to record, process or store documents filed with the office under the business registry functions of the office. [1983 c.717 §2a; 1987 c.414 §61]

56.105 Waiver or delay of action by Secretary of State; rules. (1) Notwithstanding any statutory requirement that the failure to make a complete annual report to the Secretary of State shall be cause for the involuntary dissolution, revocation of certificate of authority or notation of inactive status of the entity, the Secretary of State may waive or delay such action if the non-compliance is due solely to the entity's failure to provide a federal taxation identification number.

(2) The Secretary of State shall by rule prescribe the conditions under which dissolution, revocation or notation of inactive status will be waived or delayed pursuant to subsection (1) of this section. [1987 c.843 §13]

56.110 Evidentiary effect of certificates and other documents issued by Secretary of State. This section applies to certificates of the Secretary of State and documents filed by the Secretary of State under the business registry functions of the Secretary of State. All certificates issued by the Secretary of State and all copies of documents filed in the Office of the Secretary of State, when certified by the Secretary of State, shall be taken and received in all courts, public offices and official bodies of this state as prima facie evidence of the facts stated in the certificates or documents. A certificate by the Secretary of State as to the compliance or noncompliance of the document with the filing requirements or other provisions of law administered by the Office of the Secretary of State, or as to the exist-

ence or nonexistence of the facts relating to the matters contained in the documents which would appear from the presence or absence of documents filed in the office of the Secretary of State, shall be taken and received in all courts, public offices and official bodies of this state as prima facie evidence of the existence or nonexistence of the facts stated in the certificates or documents. [1983 c.717 §3; 1987 c.94 §122; 1987 c.414 §62]

56.120 [1983 c.87 §4; repealed by 1987 c.58 §15]

56.140 Fees. The Secretary of State by rule shall establish and collect reasonable fees for the following services relating to the business registry functions of the office:

(1) Computer generated lists on paper and electronic data processing media.

(2) Terminal access to the files of the office.

(3) Microfilm records of the files of the office.

(4) Microfilm processing and development services.

(5) Copies of the programs and files on paper or electronic data processing media. [1987 c.58 §7; 1987 c.414 §135]

56.150 [1987 c.58 §8; 1987 c.414 §136; repealed by 1991 c.132 §37]

56.160 Petty cash fund. The Secretary of State is authorized to establish a petty cash fund, not to exceed \$300, for the purpose of performing business registry functions. [1987 c.414 §65a]

56.170 Exemption of governmental units and instrumentalities from certain fees. The Secretary of State shall not be required to charge or collect any of the fees provided for under ORS 56.050 (2) or 60.007 from the State of Oregon, any political subdivision thereof, or any agency or other instrumentality of any of the foregoing. [Formerly 57.772]

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