

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: HB 2312 Brings Uniformity to Oregon Law’s Treatment of Corporations and other Entities Established by American Indian Tribal Governments

Submitted by: Oregon State Bar Indian Law Section

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1. Does this amend current law or program? Yes, it would amend the following statutes:

<u>The Definitions of:</u>	<u>Found at ORS:</u>
Foreign Corporation	62.015(10) and 70.005(8)
Foreign Nonprofit Corporation	60.001(17), 62.015(12), 63.001(13) and 70.005(11)
Foreign Professional Corporation	60.001(18), 62.015(13), 63.001(14), 65.001(23) and 70.005(12)
Foreign Business Corporation	65.001(20)
Entity	60.001(14), 63.001(9), 65.001(18) and 648.005(4)

2. PROBLEM PRESENTED (including level of severity):

Oregon law of corporations and partnerships (ORS chapters 56 – 70 and ORS chapter 648) is inconsistent in its treatment of corporations and other business entities created or authorized by federally-recognized American Indian tribal governments.

In some cases Oregon law recognizes these tribally created or authorized entities, and designates them as foreign entities.¹ Otherwise, Oregon law fails to recognize that such tribally authorized entities can exist. This latter situation is problematic, as it unjustifiably creates procedural barriers to ordinary intergovernmental activities. The failure to recognize these tribally authorized entities is clearly an oversight rather than a reasoned policy decision. As such it is in need of correction. All tribal entities should be uniformly acknowledged and treated as foreign entities by the state.²

¹ ORS 60.001(16), 62.015(11), 63.001(11), 65.001(22), 70.005(9), ORS 58.015(1), 60.001(15), 63.001(10), 65.001(21), 62.015(9), 63.001(12), 70.005(10) and 67.005(5)(a). “Foreign”, in this context, means not created under the authority of the state of Oregon. Entities created under the authority of other states, the federal government and other nations are all “foreign”.

² The definitions sections of ORS chapters 58 (Professional Corporations), 60 (Private Corporations), 62 (Cooperatives [i.e., cooperative corporations]), 63 (Limited Liability Corporations), 65 (Non-profit Corporations), 67 (Partnerships; Limited Liability Partnerships), 70 (Limited Partnerships) and 648 (Assumed Business Names) use similar or identical definitions for such terms as “entity”, “foreign corporation”, “foreign limited liability company” or “foreign limited partnership”. In some cases, those definitions acknowledge that tribal governments create or authorize such entities under tribal law. In other cases, the fact that such entities are created by tribal governments is ignored. In several instances, the same term is defined differently in different

3. SOLUTION:

The lack of uniformity is remedied by amendments that uniformly acknowledge that all these entities can be authorized or created by tribal governments, and that when they are, they are “foreign” entities. A relatively discrete set of amendments would accomplish this.

- Uniformly replace the phrase “organized under the laws of a state other than this state” with the phrase “organized under laws other than the laws of this state” for the definitions of “foreign nonprofit corporation”, “foreign professional corporation” and “foreign corporation.” Note that the terms “foreign professional corporation” and “foreign corporation” are already defined this way in some cases but not in others.
- Change the final phrase of the four definitions of “entity” by adding the words “federally recognized American Indian tribal government” between the words “United States” and the words “or any foreign government”.

4. PUBLIC POLICY IMPLICATION of this proposed legislative change:

There is no apparent policy rationale for the patchwork provisions at issue. It is an example of a body of law that has partially overlooked the existence or possibility of tribally authorized institutions. The result of the omission is confusion regarding the authorization and procedures whereby the Secretary of State and other organizations within the state deal with such institutions. These amendments will provide a tidy remedy without introducing new controversies.

5. Could the problem be addressed through a **NON-LEGISLATIVE SOLUTION**, such as administrative rule or education? No.

6. **COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group? No other section or group would be more appropriate. The Indian Law Section has, however, shared this proposal with the executive committees of the following sections: Business Law, Business Litigation, Corporate Counsel, Estate Planning, and Taxation. It received no objections.

7. **IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it? In addition to sharing this proposal with the OSB sections listed above, the Indian Law Section shared it with attorneys for eight of Oregon’s nine tribes. It received no objections. The proposal appears to be non-controversial.

8. **Has this been introduced in a prior session?** No.

chapters. For instance, as defined in ORS sections 60.001(15), 63.001(10) and 65.001(21), the term “foreign corporation” includes tribally authorized entities, yet as defined ORS sections 62.015(10) and 70.005(8) it does not.