

**Oregon Law Commission
Modernization of Oregon’s LLC Act Workgroup
Amendment Note
SB 164 -4 Amendment**

Section 12 in Senate Bill 164 as introduced will be deleted from the bill by the -4 Amendment.

Section 12, which addresses supplemental principles of law, was removed after discussions between the Oregon Law Commission, Uniform Law Commission, Oregon Trial Lawyers Association, and Oregon Business and Industry.

The first sentence of Section 12 came from Section 111 of the Uniform Law Commission’s uniform act and was also included in the 2023 version of the bill (SB 909); it would have been new statutory language for Oregon. The second and third sentences of Section 12, as they appeared in LC 266, were added after discussions with the Oregon Trial Lawyers Association; those two sentences were then modified in the proposed -1 Amendment after further discussions with the Oregon Trial Lawyers Association and Uniform Law Commission; those sentences, in their original form and as modified, were intended to clarify Oregon law on liability.

Specifically, during discussions, stakeholders agreed the intent of the bill is to maintain existing Oregon common and statutory law regarding liability of limited liability companies and their members and managers, i.e., to neither expand nor contract Oregon law on liability as it currently exists. The Oregon Trial Lawyers Association had expressed concern that the first sentence of Section 12 could potentially limit liability where it currently exists under Oregon law; the added sentences were intended to address that concern by eliminating that potential.

Oregon Business and Industry then expressed concern that the additional two sentences in Section 12 could potentially create liability where it does not currently exist under Oregon law, i.e., that the amended version of Section 12 might cause the opposite problem that the Oregon Trial Lawyers Association had been concerned the original version of Section 12 might cause.

After discussions with the Oregon Law Commission, Uniform Law Commission, Oregon Trial Lawyers Association, and Oregon Business and Industry, those groups determined that instead of trying to amend and further clarify the language in Section 12, the cleanest path forward would be to remove Section 12 from the bill in its entirety.

The deletion of Section 12 is intended to clarify that Oregon law on liability remains as it currently exists, as do the changes to RULLCA made in Section 36 of Senate Bill 164.

Sections 23, 33, 68, and 89 in Senate Bill 164 as introduced will be amended by the -4 amendment at the request of the Oregon Judicial Department. These sections use the word “appeal” however “appeals” are covered by Oregon Revised Statutes, Chapter 19, which does not apply to these cases. The appropriate phrase to use is “judicial review” which falls under ORS chapter 183.

Section 23(3)(a) in Senate Bill 164 as introduced will be amended by the -4 amendment at the request of the Oregon Judicial Department and the Oregon Department of Revenue. Section 23(3)(a) was split into two subsections, (a) and (b) for accuracy and clarity of tax-related issues.

Section 64 in Senate Bill 164 as introduced will be amended by the -4 amendment at the request of the Oregon Department of Justice. Under the current language in SB 164, an LLC today could dissolve pursuant to the statute and claims against that entity would generally be barred after five years. That could apply to claims that are not discovered until after the five-year period, and for which the LLC has insurance coverage. The proposed language, based on language from the 2021 bill that passed (HB 2377), would allow a party to pursue claims against the LLC that are otherwise viable (i.e., not time barred) to the extent of the LLC's insurance assets, thereby avoiding an unearned windfall for the LLC's insurer(s).