

SB 164 -4 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/5, 2/20

WHAT THE MEASURE DOES:

This measure modifies and modernizes Oregon’s law governing limited liability companies (LLCs) through adoption of a tailored and comprehensive version of the Uniform Law Commission’s (ULC) Limited Liability Company Act (LLC Act). This measure generally follows the ULC LLC Act’s structure while preserving key components and language of Oregon’s existing LLC statutes and common law.

Detailed Summary:

The nature, purpose, naming, duration, and formation of LLCs

- Describes the nature, duration, manner in and purposes for which an LLC can be created.
- Describes the role and effect of an LLC operating agreement on an LLC, its members, and third parties.
- Prohibits an LLC from forming for any illegal purpose.
- Enables LLC members to structure the responsibilities and roles of LLC management and members.
- Sets criteria for when person has actual or constructive notice/knowledge of an action taken by an LLC.
- Provides instruction for permissible LLC names, transfer of LLC names, registration, registered agents, the resignation/change of registered agent, and the registered agent’s maintenance of a physical office.

LLC filing requirements and enforcement mechanisms

- Permits the Secretary of State (SOS) to investigate alleged or potential violations of the LLC Act, impose civil penalties, cancel/revoke an LLC’s authorization, or dissolve an LLC for noncompliance.
- Describes the process of LLC formation by express or implied agreement.
- Provides instructions for signing records to be filed with the SOS.
- Details the procedure by which an LLC’s records with the SOS can be updated and corrected.
- Sets the requirements for an LLC’s annual report, updates, and rules.

Individuals’ relationship with and liability arising from an LLC

- Sets criteria for when, under which circumstances, and to what extent a member, manager, or other individual has authority to act as an LLC’s agent and thereby render the LLC liable for that individual’s acts or omissions, including during the winding up or after dissolution of an LLC.
- Renders Oregon’s law governing LLCs more consistent with Oregon’s existing law of agency.
- States that a debt, obligation, or other liability of a limited liability company is solely the debt, obligation, or other liability of the company, subject to certain exceptions.
- Permits LLC members and managers to be held liable, under certain circumstances, for damages resulting from a third party’s reliance on inaccurate information filed with the SOS.
- Sets out the procedure by which a person becomes an original or new member of an LLC.
- Describes the process by which individuals make LLC contributions and receive distributions along with their associated rights and liabilities.

LLC management

- Sets out ground rules for LLC management and control by either members or a manager.
- Describes an LLC’s insurance, indemnification, advancement, and reimbursement requirements.
- Describes an LLC’s managerial selection process, standards of conduct for members and managers, and the rights of access to LLC records.

Transfers between and dissociation of LLC members and LLC dissolution

- Defines an individual's interest in an LLC as personal property.
- Describes member's right to transfer their interest in an LLC to third parties, including creditors, and the associated informational rights of third-party recipients.
- Designates the circumstances and events pursuant to which a member can be removed from the LLC (dissociation) and the consequences of and distributions resulting from that dissociation.
- Defines the dissolution process, winding up, resolution of claims/liabilities, and disposition of assets.
- Provides a process for the Attorney General to seek judicial dissolution of an LLC for operating unlawfully.
- Defines the reinstatement process.
- Set out each member's rights to an LLC's administrative and financial information.

Charitable LLCs, derivative and enforcement actions, governing law, foreign LLCs, and taxation

- Renders an LLC a charitable purpose subject to the Charitable Trust and Organization Act.
- Sets out the process for bringing and judicial review of derivative actions by LLC members.
- Designates the governing law and registration requirements for foreign LLCs.
- Allows the SOS to terminate the registration of and/or file suit to enjoin a foreign LLC acting unlawfully.
- Categorizes LLCs for purposes of taxation.

LLC mergers, interest exchanges, domestication, and penalties for false documents

- Provides parameters and guidelines for LLC mergers and interest exchanges.
- Sets out process for conversion of domestic LLCs to different entity type and domestication of an LLC.
- Directs that the LLC Act be applied and construed to effectuate the purpose of making uniform the law among states that have versions of the ULC LLC Act.
- Penalizes the signing a false document for filing with the SOS.

LLC Act definitions, conforming amendments, and effective date

- Defines terms related to LLCs.
- Includes numerous conforming amendments.
- Specifies that existing principals of law and equity supplement the LLC Act.
- Repeals much of Oregon's existing law governing LLCs. See Background Section, below.
- Becomes operative upon the effective date with respect to LLCs formed thereafter or LLCs that thereafter engage in mergers, interest exchanges, domestications, or conversions to another type of entity.
- Becomes operative as to an existing LLC upon that LLC's affirmative election.
- Becomes operative as to contracts entered on or after the effective date.
- Does not affect an action or proceeding that began or a right that accrued before the effective date.
- Conforming amendments generally become operative on January 1, 2028.

FISCAL: Fiscal impact issued

REVENUE: Has minimal revenue impact

ISSUES DISCUSSED:

- Purpose and intent of the measure
- Development of and stakeholder input into the measure
- Interface between existing Oregon law and the measure
- Preservation of existing legal remedies
- Anticipated effect on Oregon's business community
- Dissolution of LLCs
- Dissociation of members
- Transfers of LLC interests
- Jurisdictions that adopted similar laws

EFFECT OF AMENDMENT:

-4 This amendment makes several distinct changes. First, the amendment deletes Section 12 to clarify that Oregon law on liability remains as it currently exists. Notwithstanding this measure, an LLC, member, or manager remains liable under existing Oregon statutory and common law for a loss or injury caused by a wrongful act, omission, or other actionable conduct.

Second, to better describe the type of proceeding at issue, the word “appeal” is replaced by the term “judicial review” in various sections of the measure.

Third, Section 23(3) is amended to clarify the various ways and form in which an LLC may seek review of its tax liability.

Fourth, Section 64 of the measure limits the time period in which a claimant may bring an action against a dissolved LLC, time-barring such an action five years after the claimant receives notice of the LLC’s dissolution. This amendment, through additions to Section 64(3-5), creates an exception to this five-year statute of limitations, allowing claimants to thereafter bring a claim with recovery limited to a dissolved LLC’s insurance assets.

This -4 amendment consolidates the -2 and -3 amendments.

BACKGROUND:

This LLC Act substantially modifies ORS Chapter 63, which governs limited liability companies, and is modeled after the Uniform Law Commission's (ULC) Limited Liability Company Act. While a similar bill, Senate Bill 909 (2023), received a public hearing on March 23, 2023, the Oregon Law Commission further developed and amended this LLC Act in the intervening two years.

The ULC developed its first model Limited Liability Company Act in 1995, amended it in 1996, and developed the Revised Uniform Limited Liability Company Act in 2006. Led by the American Bar Association, the ULC further amended its model LLC act in 2011 and 2013. The ULC drafters’ general intent was to standardize and update state law to improve predictability for business owners operating across state lines and decrease forum shopping. Currently, 23 other states, including Washington, Idaho, and California, have adopted versions of the ULC’s model LLC Act, as has the District of Columbia.

The Oregon Law Commission and an associated workgroup comprehensively considered, tailored, and modified the ULC’s LLC act with the stated goal of clarifying and modernizing Oregon’s LLC statutes while preserving the parts of existing Oregon statutory law that work well. This measure is the result of that balancing act.