

SB 164 A STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Action Date: 02/20/25

Action: Do pass with amendments and requesting referral to Ways and Means. (Printed A-Engrossed.)

Vote: 6-0-0-0

Yeas: 6 - Broadman, Gelser Blouin, Manning Jr, McLane, Prozanski, Thatcher

Fiscal: Fiscal impact issued

Revenue: Has minimal revenue impact

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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 the 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.

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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.
- Sets a five-year statute of limitations on claims against a dissolved LLC, except as to an LLC's insurance 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.
- Sets out the manner and form in which an LLC may seek review of its tax liability.

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 of 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.
- Repeals much of Oregon's existing law governing LLCs but does not expressly alter Oregon's existing remedies for loss/injury resulting from acts, omission, or other actionable conduct.
- Becomes operative upon the effective date with respect to LLC that form or engage in mergers, interest exchanges, domestications, or conversions to another type of entity after the measure's effective date.
- 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.
- Makes the measure's changes applicable to every LLC without regard to the date it was formed or organized, beginning January 1, 2028.
- Conforming amendments generally become operative on January 1, 2028.

ISSUES DISCUSSED:

- Purpose and intent of the measure
- Development of and stakeholder input into the measure
- Interface with existing law

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- Preservation of existing legal remedies
- Anticipated effect on Oregon’s business community
- Dissolution of LLCs, dissociation of members, and transfers of LLC interests
- Jurisdictions that adopted similar laws

EFFECT OF AMENDMENT:

This amendment clarifies the measure by: 1) deleting Section 12 to clarify that Oregon law on liability remains as it currently exists; 2) replaces the word “appeal” with “judicial review” in various sections of the measure; 3) clarifies the various ways and form in which an LLC may seek review of its tax liability; and 4) creates an exception to a five-year statute of limitations, allowing claimants to thereafter bring a claim where recovery is limited to a dissolved LLC’s insurance assets.

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. A similar bill, Senate Bill 909 (2023), received a public hearing but remained in committee upon adjournment. 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 have adopted versions of the ULC’s model LLC Act, including Washington, Idaho, and California, as well as 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 key aspects of existing law.