



BIENNIAL REPORT *of the* **OREGON LAW COMMISSION** **2023 - 2025**

The Oregon Law Commission (The Commission) is the neutral, nonpartisan law reform body for the State of Oregon. The Commission is housed at the University of Oregon School of Law.

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Letter from the Chair

This Biennial Report reflects the Commission's work from 2023 – 2025. We are pleased to take this opportunity to share with you the work completed by the Commission this biennium and to also share some updates that have occurred since our last report.

Work Completed

The Oregon Law Commission, with the help of over 50 dedicated and exceptional volunteers, completed work on two pieces of recommended legislation for the 2025 Legislative Assembly. In addition, the Commission is already looking ahead to 2026 and 2027 and has commenced work or will begin work on several other significant law reform projects.

Changes for the Commission

The Oregon Law Commission experienced changes in its membership this biennium. Professor Susan Gary retired from the University of Oregon School of Law and was replaced by Professor Kristen Bell in 2024. Dean Brian Gallini left the Willamette University College of Law and was replaced by Dean Jeffrey Dobbins in 2024. Dean John Parry from Lewis and Clark School of Law will be stepping down from the Commission. Former Commission Chair, PK Runkles-Pearson, the Governor's Appointee, stepped back from the Commission as well.

In addition, Sandy Weintraub, former director of the Oregon Law Commission moved to the University of Oregon and Debbie Thurman, the Commission's administrative staff, retired as well. Amy Zubko, the current director of the Commission, joined the Commission in March 2024.

A deep thank you to the Commissioners and staff for their dedication and sincere interest in the Commission's efforts.

Update on the Commission

Priorities for the Commission in 2024 and 2025 have included communication with and support of the Commission's workgroup chairs and participants, regular meetings of the full Commission, updates to the Commission's website, and a relaunch of the Commission's student fellow program.

The Commission introduced two bills in the 2025 Legislative Session, LC 156, the Municipal and Justice Court Appeals Process and LC 266, modernization of Oregon's Limited Liability Company Act. Two new workgroups, the Electronic Wills Workgroup and the Partition of Heirs Property Workgroup, are expected to begin in 2025.

Thank you

We would like again to thank all of the distinguished and very capable members of the Commission, its Work Groups, and the Director's office at University of Oregon School of Law for their extensive efforts on behalf of the Commission. Thank you as well to the University of Oregon School of Law for its support of the Commission. We look forward to the Commission's continued law reform service in support of the Oregon Legislature and the State of Oregon.

Valerie Sasaki

Chair, Oregon Law Commission



June 12, 2025

On behalf of University of Oregon School of Law, it is my pleasure to congratulate the Oregon Law Commission, its staff, and volunteers for yet another highly productive biennium. This biennium, the Commission has completed legislative proposals relating to Oregon's municipal and justice court appeals process and business law. In addition, this Spring the Commission turned its attention to estate planning and administration among other topics.

The University of Oregon School of Law is proud to support the work of the Commission. This collaboration permits the University to contribute to the all-important endeavor of law reform by providing the Commission with a home at Oregon's only public law school. The School of Law remains committed to partnering with the State of Oregon and supporting the Commission's efforts to strengthen Oregon's legal system.

With best wishes for years to come.

Warmly,

Jennifer Reynolds
Dean, School of Law
Dave Frohnmayr Chair in Leadership and Law

From the Director's Office . . .

With the help of many dedicated volunteers serving on the Oregon Law Commission and its workgroups, the Law Commission prepared two law reform projects during the 2023 – 2025 biennium. This brings the Law Commission's total output from its first session in 1999 to 115 bills, of which approximately 90 percent have been enacted as proposed or with limited amendments.

This biennium, the Law Commission efforts focused on two substantial projects, an update of Oregon's Limited Liability Company Act and an update of Oregon's Municipal and Justice Courts Appeals Process. In addition, the Commission will begin work on two new projects, the Uniform Electronic Wills Act and the Partition of Heirs Property Act. Additional proposals continuing the work on Municipal and Justice Court Appeals and a workgroup looking at the Model Corporation Act are expected to begin in the next biennium.

This Biennial Report contains the explanatory reports from the Commission's bills that were presented during the 2025 legislative session, and documents the Commission's work from July 1, 2023 through June 30, 2025. It is our hope that this report gives the reader clearer insight into the Commission's law reform process, its work, and its potential for the future. The Commission and its staff are proud of its reputation of providing quality law reform recommendations that address complex areas of law by working with the private bar, all three branches of government, and the citizens of Oregon.

We wish to again thank the Oregon Legislative Assembly, the Office of Legislative Counsel, and the University of Oregon School of Law for their support of the Commission and dedication to the work of law improvement and reform in the state. Finally, and most important, we extend our thanks to the many volunteers and legislative staff who have given their time to make this biennium a success.

Amy Zubko

Director

Oregon Law Commission

Commissioners of the Oregon Law Commission

Valerie Sasaki, Chair Attorney at Law, Samuels Yoelin Kantor LLP, Portland, Oregon	Appointed by Board of Governors, Oregon State Bar
P.K. Runkles-Pearson, Vice-Chair Attorney at Law, Oregon Secretary of State	Appointed by the Governor of the State of Oregon
Justice Rebecca A. Duncan Justice, Oregon Supreme Court	Designee of Chief Justice of the Supreme Court
Chief Judge Erin C. Lagesen Chief Judge, Oregon Court of Appeals	<i>Ex Officio</i>
Senior Judge Mary Mertens James Oregon Judicial Department	Appointed by Chief Justice of the Supreme Court
Lisa Udland Deputy Attorney General, Oregon Department of Justice	Designee of Attorney General
Hon. Floyd Prozanski Senator, State of Oregon, Eugene, Oregon	Appointed by Senate President
John DiLorenzo, Jr. Attorney at Law, Davis Wright Tremaine LLP, Portland, Oregon	Appointed by Senate President
Rep. Jason Kropf Oregon House of Representatives, Salem, Oregon	Appointed by Speaker of the House
Rep. Kim Wallan Oregon House of Representatives, Salem, Oregon	Appointed by Speaker of the House
Professor Kristin Bell Professor, University of Oregon School of Law, Eugene, Oregon	Designee of University of Oregon School of Law Dean
Dean John Parry Lewis and Clark Law School, Portland, Oregon	Dean of Lewis and Clark Law School
Dean Jeffrey Dobbins Willamette University College of Law, Salem, Oregon	Dean of Willamette College of Law
Cody Hoesly Attorney at Law, Barg Singer Hoesly PC, Portland, Oregon	Appointed by Board of Governors, Oregon State Bar
Christa Obold Eshleman Attorney at Law, Youth Rights and Justice, Portland, Oregon	Appointed by Board of Governors, Oregon State Bar

Staff of the Oregon Law Commission

University of Oregon School of Law

Amy Zubko
Director

Sandy Weintruab
Director (2018 – 2024)

Debbie Thurman
Administrative Assistant (2018 – 2024)

State of Oregon

Dexter Johnson
Legislative Counsel

We recognize and thank all of the Legislative Counsel attorneys, staff, and editors who worked tirelessly with the Commission, enabling us to complete our recommended legislation. We also recognize and thank all of the Legislative Policy and Research Staff counsel and staff who assisted the Commission throughout the legislative session.

Law Students Staff

One of the goals of the Law Commission is to bring the legal academic community into the law reform process together with legislators, lawyers, judges, and other interested parties. Law students assist the Commission in a variety of ways, including researching new law reform projects, writing legal memoranda, attending Law Commission meetings, and writing final reports. The following law students, from the University of Oregon School of Law, served the Oregon Law Commission this biennium:

Thomas Grossman
Oregon Law Commission Fellow
2024 – 2025

Cara Goldfarb
Oregon Law Commission Research Assistant
2025

Gabriel Hanson
Oregon Law Commission Research Assistant
2025

Undergraduate Student Staff

The following students, from University of Oregon, served the Oregon Law Commission this biennium. These students assisted in a variety of ways, focusing on administrative and research project.

Anne Koontz
Office and Research Assistant
Summer 2024

Commission History and Membership

The Legislative Assembly created the Oregon Law Commission in 1997 to conduct a "continuous program" of law revision, reform, and improvement. ORS 173.315. The Commission's predecessor, the Law Improvement Committee, had fallen inactive, and the State wisely perceived the need for an impartial entity that would address gaps in the law and areas of the law that were confusing, conflicting, inefficient, or otherwise meriting law reform or improvement.

Legislative appropriations supporting the Commission's work began on July 1, 2000. At that time, the State, through the Office of Legislative Counsel, entered into a public-private partnership with Willamette University's College of Law. Between 2000 and 2017, Willamette served as the physical and administrative home for the staff of the Law Commission.

In 2017 the Commission moved to the University of Oregon School of Law. Similar to Willamette, the University of Oregon School of Law provides office space for the Commission and its Work Groups. University of Oregon also facilitates law student and faculty participation in support of the Commission's work.

To carry out its purposes, the Commission is made up of fifteen Commissioners pulled from a unique combination of entities within the state of Oregon. The Commission includes four individuals appointed by legislative leadership, including three current legislators; three representatives from the judicial branch including a Justice from the Oregon Supreme Court, Chief Judge of the Court of Appeals, and a trial court judge; the Deputy Attorney General; a Governor's appointee; the Deans (or their representatives) from each of the three law schools in Oregon; and three licensees of the Oregon State Bar. These Commissioners lead the Commission's various law projects each biennium by chairing work groups composed of experts in the given area of law reform.

Commission Law Reform Project Selection and Reform Process

The Commission serves the Oregonians and the legislature, executive agencies, and judiciary by keeping the law up to date through proposed law reform bills, administrative rules, and written policy analysis. It accomplishes this by identifying appropriate law reform projects through suggestions gathered from members of the public, each branch of government, and the academic community. By remaining in close personal contact with the people who know and use Oregon law, the commissioners and staff are able to identify areas of the law generally considered as "broken" and in need of repair.

Once potential projects are identified, the Commission researches the areas of law at issue, with a particular emphasis on gathering input from impartial experts and those who may be affected by proposed reforms. Staff works with project proponents in order to identify and draft a formal proposal for the Commission.

Formal proposals for commission projects are initially presented to the Commission's Program Committee, currently chaired by Valarie Sasaki, current Chair of the Commission and appointee of the Oregon State Bar. Relying on written guidelines governing the selection process, the Program Committee reviews written law reform project proposals and makes recommendations to the full Commission regarding which proposals should be studied and developed by the Commission. Along with commission staff, the Program Committee helps to manage the workload of the Commission and identify a reasonable scope for projects to be recommended to the Commission.

In considering the Program Committee recommendations, the Commission uses several factors to select law reform project proposals for action. Priority is given to private law issues that affect large numbers of Oregonians and public law issues that are not within the scope of an existing agency. The Commission also considers the resource demands of a particular project, the length of time required for study and development of proposed legislation, the presence of existing rules or written policy analysis, and the probability of approval of the proposed legislation by the Legislative Assembly and the Governor.

Once a law reform project has been approved by the full Commission for study and development, a work group is formed staffed by volunteers from throughout the legal community. The work groups are generally chaired by a Commissioner and often have a designated Reporter to assist with the project. Work group members are selected by the Commission based on their recognized expertise, with work group advisors and interested parties invited by the Commission to present the views and experience of those affected by the areas of law in question. The Commission works to produce reform solutions of the highest quality and general usefulness by drawing on a wide range of experience and expertise, and by placing an emphasis on consensus decision-making, rather than by placing reliance on specific interest-driven policy making. This is hard to do, but constant vigilance over the process by the Commissioners and staff, with heavy reliance on the expertise of technically disinterested work group members, has tended to minimize the influence of personal or professional self-interest on the recommendations of the Commission.

The Law Commission is unique in that it "shows its work" through its stock in trade: written reports that detail each law reform project's objectives, the decision-making process, and the substance of the proposed legislation. The reports work to identify any points of disagreement on specific policy choices, and set out the reasons for and against those choices. When there is dissent or uncertainty within the work group, the report makes an effort to identify the reason for that conflict and to explain why the work group chose to resolve it the way that it did. The Legislative Assembly is then able to identify and resolve any necessary policy choices embedded in the recommended legislation.

A work group's deliberations result in the presentation of proposed legislation and the accompanying written report to the full Commission. The Commission reviews the product of each work group in detail before making its final recommendations to the Legislative Assembly. Those recommendations, in the form of proposed legislation and the accompanying report, are distributed during Session at the time each bill is proposed in Committee and then followed throughout the legislative process. Whether the proposed bills are adopted in full, adopted with amendments, or ultimately fail, the Commission's commitment to thoughtful public policy formation, and the value of memorializing the decisions made in developing the laws, cannot be overstated.

Oregon Law Commission

2023 - 2025

The purpose of the Oregon Law Commission is to conduct continuous substantive law revision. *See* ORS 173.338. The commission does this by reviewing the common law and statutes of the state, considering changes in law recommended by learned bodies, considering suggestions from justices, judges, public officials, lawyers, and the public, and considering topics referred by the Legislative Assembly.

The Oregon Law Commission held, and will hold, meetings from July 1, 2023, through June 30, 2025 at the indicated locations on the following dates:

June 7, 2024	Remote
October 11, 2024	Remote
December 5, 2024	Remote
January 10, 2025	Remote
April 18, 2025	Remote

The Oregon Law Commission meets as necessary to review proposed law reform projects. Please contact the Commission at (541) 346-3298 or check the Commission's Master Calendar web page at the following URL to confirm dates of future meetings: <https://law-olc.uoregon.edu/>.

Program Committee

2023 - 2025

The purpose of the Program Committee is to review law reform projects that have been submitted to the Oregon Law Commission and then review and make recommendations to the Commission.

Commissioners serving on the Program Committee during some or all of the 2023 – 2025 biennium:

Valerie Sasaki
Professor Kristin Bell
Dean Jeffrey Dobbins
Cody Hoesly
Justice Rebecca Duncan
Chief Judge Erin C. Lagesen
Senior Judge Mary Mertens James
Dean John Parry

The Program Committee held two meetings from July 1, 2023, through June 30, 2025 at the indicated locations on the following dates:

July 26, 2023	Remote
December 5, 2024	Remote

The Program Committee meets as necessary to review proposed law reform projects for the Oregon Law Commission. Please contact the Commission at (541) 346-3298 or check the Commission's Master Calendar web page at the following URL to confirm dates of future meetings: <https://law-olc.uoregon.edu/>.

2024 and 2025 Sessions Bill Summary:

Bills Presented by the Oregon Law Commission to the Legislative Assembly

During the 2024 and 2025 Legislative Sessions, the Oregon Law Commission recommended two bills to the Legislative Assembly. The following is a brief summary of the recommendations:

1. **HB 2460** The bill amends and updates Oregon’s appeals process for municipal and justice courts. The focus is generally on the organization of the statutes that bear on appeals from justice and municipal courts. Updated language which addresses the mechanics of appeals from justice and municipal courts, such as the content of notices of appeal, where notices of appeal should be filed, and service of the notices on the adverse parties is addressed. Over the course of the last year, issues such as appeals from default judgments, filing fees, the scope of review on appeal in the circuit court, the circuit court’s dispositional authority, and appeals from civil cases decided by justice courts were also addressed.
2. **SB 164** The bill adopted modified provisions of the Revised Uniform Limited Liability Company Act from the Uniform Law Commission. The adoption of uniform terms and harmonized governance structures across types of entities improves predictability for business owners operating across state lines and decreases forum shopping between organizational jurisdictions. The updated language will more closely align default rules for LLC member and third-party interactions with standard, Oregon business practice and expectations. It will provide better guidance than is in current Oregon law in areas including drafting and amending operating agreements as well as winding up procedures for dissolved entities. The bill clarifies members’ right to access company information in certain circumstances. Further, it standardizes rules for reorganization type transactions for LLCs with the addition of interest exchanges and domestication of foreign LLCs, allows for multi-member nonprofit LLCs, and codifies and clarifies charging order procedures.

Commission's Pending Law Reform Agenda for

Future Legislative Sessions

The following is a list of projects currently approved by the Commission for the 2025 - 2027 interim and sessions:

1. Electronic Wills Act

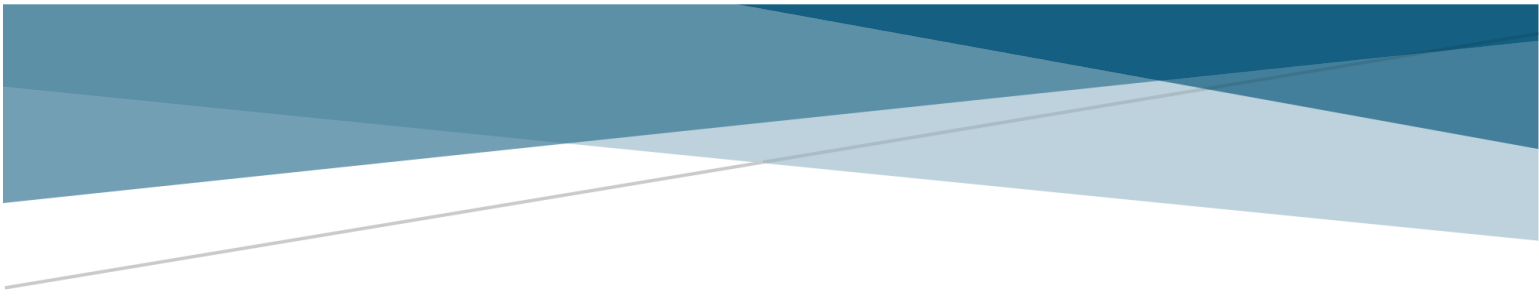
The following projects are currently in the Program Committee and may be considered by the full Commission during the 2025 – 2027 interim and sessions:

1. Partition of Heirs Property Act
2. Model Corporation Act

Report Note

The explanatory reports provided in the following section were approved by both the respective work group and by the Oregon Law Commission for recommendation to the Legislative Assembly, unless otherwise noted in the report. The reports were also submitted as written testimony to the Legislative Committees that heard the respective bills. Thus, these reports can be found in the State Archives as they constitute legislative history.

The reports are generally printed as presented to the Commission; however, some reports had minor edits made after the Commission's approval. Furthermore, some bills were amended after the Commission approved recommendation of the bill and accompanying explanatory report. Rather than try to change the text of the reports affected, and to assist the reader, the Director's office has inserted an "Amendment Note" at the conclusion of some reports when a bill was amended to provide context and history.



APPEALS FROM JUSTICE AND MUNICIPAL COURTS

House Bill 2460B (LC 156)

Oregon Law Commission

Commissioners: Justice Rebecca Duncan and
Christa Obold Eshleman

Originally adopted December 5, 2024, Updated June 10, 2025

Amy H. Zubko
Director

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Introduction

In November 2018, the Oregon Law Commission considered a request from the Direct Criminal Appeals Work Group to approve a project to review and revise the procedural law governing appeals from justice and municipal courts.¹ The Commission adopted the proposal and appointed Commissioners Christa Obold Eshleman and Justice Rebecca Duncan as co-chairs.

As detailed below, the project began in March 2020, a work group was formed, and the work group developed language for a draft bill: Legislative Concept 156. The language was finalized in November 2024. The bill's primary goal is to reorganize, streamline, and clarify existing statutory provisions that govern appeals from justice and municipal courts. Consequently, most of the sections of the bill do not make substantive changes to the law. But, in reviewing the processes for appeals, the work group did identify a few substantive changes that it believed would improve the processes, and the bill includes those. All the sections of the bill are summarized in this report.

The Oregon Law Commission voted to accept Legislative Concept 156, House Bill 2460, and this report on December 5, 2025. The bill was filed at the request of the House Interim Committee on the Judiciary for the 2025 Legislative Session.

House Bill 2460 was amended by the -1 Amendment in the House Judiciary Committee on March 13, 2025. An explanation of the -1 Amendment can be found under “Amendment Notes.”

On May 8, 2025, House Bill 2460A was amended by the -A2 Amendment in the Senate Judiciary Committee. Additional information can be found under “Amendment Notes.” HB 2460B passed the Senate with the House Concurring and was signed by the Governor on June 5, 2025. These are the only changes made to the bill and report since adoption by the Oregon Law Commission in December.

Background and Proposal

In February 2015, the Appellate Commissioner for the Oregon Court of Appeals requested that the Oregon Law Commission sponsor a work group to review and revise the procedural law that governs direct appeals in criminal cases. The Direct Criminal Appeals work group met in 2016 and 2017 and produced Senate Bill 896 (2017) and its corresponding report (<https://olis.oregonlegislature.gov/liz/2017R1/Downloads/CommitteeMeetingDocument/132306>).

During its efforts, the Direct Criminal Appeals work group considered the appeals process for municipal and justice courts and, thereafter, to the Court of Appeals. Although the work group determined that the statutory scheme addressing those appeals was ripe for review, analysis,

¹ Oregon Law Commission Direct Criminal Appeals Work Group, <https://law-olc.uoregon.edu/direct-criminal-appeals-work-group>, (last visited 11/6/2024).

and reorganization, it ultimately decided that that project should be addressed separately. The work group recommended that the Oregon Law Commission undertake a new project to address the appeals process from municipal and justice courts:

Historically, appeals from justice courts created by counties and municipal courts created by cities were taken to the circuit court in which the justice or municipal courts were located. In 1999, the Legislature enacted statutes authorizing any justice or municipal court to become a “court of record,” and, if a justice or municipal court chose to become a court of record, an appeal from such a court would be taken directly to the Court of Appeals. Oregon Laws 1999, ch 682, § 11, amending ORS 138.057.

When [the Direct Criminal Appeals] Work Group undertook to review those provisions, the work group discovered that the statutory framework governing appeals from justice and municipal courts were complex, perhaps bordering on labyrinthine.

That the statutes governing appeals from justice and municipal courts are so complex is particularly unfortunate because many, if not most, private parties appearing in such courts are not represented by counsel and are proceeding without the advice or assistance of attorneys. Apart from the amount of time and effort it likely would take to master appeals from justice and municipal courts, the membership of the Work Group did not include representatives of affected parties, such as judges of justice or municipal courts, city attorneys, county counsels, or attorneys who practice in those courts.

The Work Group determined that the scope of the problem of appeals from justice and municipal courts and the absence of participants by persons who would be most affected by changing the law respecting those courts required a separate Work Group devoted to that topic. Therefore, the Work Group recommends that the Commission consider forming a Work Group to review the statutory and case law relating to appeals from justice and municipal courts.²

Overview of Justice and Municipal Courts

Justice and municipal courts are distinct from the Oregon Judicial Department’s unified court system. Justice courts are established by the county in which they are located; municipal courts are established by the city in which they are located.³ They handle county- and city-specific

² [Report of the Direct Criminal Appeals Workgroup on SB 896 \(2017\).](#)

³ Oregon Judicial Department, Other Courts, <https://www.courts.oregon.gov/courts/Pages/other-courts.aspx>, (last visited November 6, 2024).

cases, as well as some state cases. Although justice and municipal court judges are not required to be attorneys, many are.

There are 142 justice and municipal courts in Oregon. Justice and municipal courts are located in population centers throughout a county to provide greater accessibility to Oregonians who do not live near a county seat. Many cases in justice and municipal court involve self-represented litigants.⁴ But, in cases that may result in a loss of liberty, a defendant is entitled to a public defender.

In this report, the term "local courts" is used to cover both justice and municipal courts.

Justice Courts

There are 22 justice courts in Oregon.⁵ Justice courts have jurisdiction within their county, concurrent with the circuit court, in cases involving violations and misdemeanors.⁶ For example, justice courts have jurisdiction over traffic, boating, wildlife, violations of county codes and ordinances and other violations occurring in their county. Justice courts do not have jurisdiction over felonies.

In addition to violations and misdemeanors, justice courts have jurisdiction over certain civil actions where the money or damages claimed does not exceed \$10,000. (Justice courts do not have jurisdiction over civil actions involving title to real property, false imprisonment, libel, slander or malicious prosecution.) Justice courts also have jurisdiction in forcible entry and detainer (FED) cases, more commonly known as eviction cases. In addition, a Justice of the Peace judge may perform weddings.

A county may elect to make its justice court a court of record, if it is not within 50 miles of the court's circuit court.⁷ There are not currently any justice courts of record.

Proceedings in justice courts are conducted in a manner similar to proceedings in circuit courts, except where otherwise specifically provided. Under the current statutory scheme, there are at least eight ORS chapters that contain provisions relating to proceedings in and appeals from justice courts.

⁴ Kidd, Justin, The Role of Justice Courts, Oregon State Bar Bulletin, June 2023, pages 34 and 35, https://www.co.marion.or.us/JC/Documents/FromTheBench_Bulletin_June2023.pdf (last visited November 6, 2024). Presentation to a joint meeting of the Senate and House Interim Judiciary Committees, September 24, 2024 (<https://olis.oregonlegislature.gov/liz/202311/Committees/SJUD/2024-09-24-11-30/Agenda>).

⁵ Oregon Blue Book, Justice Courts, <https://sos.oregon.gov/blue-book/Pages/state/judicial/justice-courts.aspx>, (last visited November 6, 2024).

⁶ ORS 51.050 as amended by section 57, chapter 70, Oregon Laws 2024.

⁷ ORS 51.025.

ORS Chapters Addressing Justice Court Proceedings and Appeals	
ORS Chapter 19	Governs appeals in violation actions heard in justice courts of record
ORS Chapter 51	Justice courts generally
ORS Chapter 52	Civil actions (in justice courts)
ORS Chapter 53	Appeals in civil actions (in justice courts)
ORS Chapter 54	Juries (for justice court actions)
ORS Chapter 55	Small claims actions (in justice courts)
ORS Chapter 138	Governs appeals in criminal actions (some provisions apply, expressly or through cross-references, to justice court)
ORS Chapter 156	Criminal actions (in justice courts) ⁸
ORS Chapter 157	Appeals in criminal actions (in justice courts)

Municipal Courts

There are 119 municipal courts in Oregon.⁹ Municipal courts have concurrent jurisdiction with circuit and justice courts over violations and misdemeanors committed or triable in the city in which the court is located.¹⁰ They do not have jurisdiction over felonies. Municipal courts do not have jurisdiction over civil actions.

Municipal courts primarily hear cases involving parking and pedestrian violations, traffic violations and misdemeanors, vehicle impoundments and forfeitures, and violations of municipal codes and ordinances, including animal, high grass and trash nuisances. They also hear certain cases involving minor tobacco, liquor and drug violations. In addition, a municipal judge may perform weddings.

Many incorporated cities in Oregon have a municipal court as authorized by charter and state law. Although under the Oregon Constitution cities have home rule authority that allows them to shape their municipal courts, municipal court procedures are governed largely by state law. Under current law, except as otherwise provided in ORS chapter 221, appeals from municipal courts not of record to the circuit court are the same as appeals from justice courts not of record to the circuit court. ORS 221.359(1).

⁸ There is some ambiguity in Oregon law about what constitutes a “crime” or a “criminal” case, because one statute (ORS 161.515) defines a “crime” in effect as a felony or a misdemeanor, but another statute (ORS 131.005) defines “criminal action” to include felonies, misdemeanors, and violations. Because justice courts and municipal courts do not have jurisdiction of felony trials, most of the statutes referring to “criminal” cases in those courts are effectively referring to misdemeanor and violation cases.

⁹ Oregon Blue Book, Municipal Courts, <https://sos.oregon.gov/blue-book/Pages/state/judicial/municipal-courts.aspx>, (last visited November 6, 2024).

¹⁰ ORS 221.342.

Municipal courts may elect to be a court of record, although few have.¹¹ Currently there are eight municipal courts of record.¹²

"Courts of Record" and "Courts Not of Record" □

The appeals process for a justice or municipal court (a "local court") depends on whether the local court is a court of record. Decisions from a local court of record are appealed directly to the Oregon Court of Appeals, as if the case originated in a circuit court.¹³ Such appeals are possible because there is a record of the local court's proceedings that the Court of Appeals can review for errors. A case is not litigated anew in the Court of Appeals. As a general rule, the Court of Appeals does not receive any new evidence; no witnesses are called; and no exhibits are submitted. The purpose of such an appeal is to allow a party to challenge rulings that the lower court made.

In the Court of Appeals, an appellant initiates an appeal by filing a "notice of appeal" that designates the parts of the lower court record that the Court of Appeals will need to consider. The appellant then files a written brief in which it identifies the lower court rulings that it believes are erroneous. The other party, known on appeal as the respondent, then files an answering brief. The parties may orally argue the case to the Court of Appeals. After briefing and oral argument (if any), the Court of Appeals will take the case under advisement and later issue a decision regarding the appellant's claims that the lower court erred.

When a local court is not a court of record, appeals are taken to the circuit court, which is a court of record.¹⁴ That is because, if the local court is not a court of record, it is not possible for an appellate court to review what occurred in the local court. So, instead of reviewing the local court proceedings to determine if the local court made an erroneous ruling, it is necessary for the case (or at least the part of the case that the appellant is challenging) to be litigated anew in the circuit court.

If a case is appealed from a local court to a circuit court, the circuit court proceedings will be recorded. If a party wants to challenge a ruling of the circuit court, it can proceed to the Court of Appeals, as if the case had originated in the circuit court.¹⁵

¹¹ ORS 221.342.

¹² Oregon Justice/Municipal Court Registry, Oregon Judicial Department, <https://www.courts.oregon.gov/courts/pages/other-courts.aspx> (last accessed November 11, 2024).

¹³ ORS 51.025(5) and ORS 221.342.

¹⁴ ORS 51.050 and ORS 221.359.

¹⁵ There is an exception to that general rule: if a small claims case originates in a circuit court, it cannot be appealed to the Court of Appeals. Correspondingly, if a small claims case originates in a justice court that is not a court of record and is appealed to a circuit court, it cannot be appealed from the circuit court to the Court of Appeals.

Under current law, the type of local court (justice or municipal), the type of case (civil, violation, or misdemeanor), and whether or not the local court is a court of record all influence how a case is appealed.

To illustrate the current complicated statutory scheme, Jim Nass, former Oregon Judicial Department Appellate Commissioner and a member of the Direct Criminal Appeals work group, outlined some of the challenges in the current justice court appeals process in a memo submitted in 2016 to the Direct Criminal Appeals work group.

A justice court has jurisdiction of all “offenses” committed within the territorial jurisdiction of the justice court. “Offenses” includes misdemeanors and excludes felonies.¹⁶ Presumably “offenses” also excludes violations as defined by state law or county ordinance, at least for appeal purposes. A justice court also has jurisdiction of certain civil cases (recovery of damages up to \$10,000, recovery of personal property with a value of up to \$10,000, and recovery of any penalty or forfeiture provided by statute or contract not exceeding \$10,000).¹⁷ To further complicate things, if a defendant is cited into a justice court for a misdemeanor, the defendant can remove the action to a circuit court.¹⁸ Lastly, an appeal in either a civil, violation, or criminal case normally is taken to the circuit court in the county in which the justice court is located, but, if the justice court has become a court of record, the appeal is taken to the Court of Appeals.

Below are seven unique processes all stemming from a justice court and governed by statutes from different ORS chapters:¹⁹

- Transfer of a misdemeanor from a justice court to a circuit court (ORS 51.050);
- Appeal in a *civil action* from a justice court when the justice court *is not* a court of record (ORS 53.005-53.130);
- Appeal in a *civil action* when the justice court *is* a court of record (ORS 53.005 (providing that such appeals “shall be as provided in ORS Chapter 19 for appeals from judgments of circuit courts”));
- Appeal in a case involving a *misdemeanor* from a justice court that *is not* a court of record (ORS 157.005-157.081);
- Appeal in a case involving a *misdemeanor* from a justice court that *is* a court of record (ORS 157.005 (providing that such appeals “shall be as provided in ORS chapter 138 for appeals from judgments of circuit courts”));

¹⁶ ORS 51.050.

¹⁷ ORS 51.080.

¹⁸ ORS 51.050(2). Presumably, once removed to a circuit court, any appeal would be to the Oregon Court of Appeals and would be subject to ORS chapter 138, the same as any other misdemeanor originally charged in a circuit court.

¹⁹ This list is provided as an example of justice courts processes. Processes for municipal courts can be just as complicated.

- Appeal in a case involving a *violation* from a justice court that *is not* a court of record (ORS 138.057); and
- Appeal in a case involving a *violation* from a justice court that *is* a court of record (ORS 138.057(1)(a) (providing that the appeal "shall be as provided in ORS chapter 19, except that the standard of review is the same as for an appeal from a judgment in a proceeding involving a misdemeanor or felony ")).²⁰

To further complicate matters, some cases involve both misdemeanors and violations. In addition, some justice courts serve as municipal courts.²¹

Because the statutes governing appeals from local courts are codified in several different chapters of the ORS, and because the processes they establish vary, it can be difficult for parties and courts to determine the processes for appeals. Navigating the statutes can be time consuming and result in costs for those involved, including litigants, lawyers, nonprofit organizations, cities, counties, and courts. Moreover, because of the ambiguity regarding the appellate procedures, inconsistent practices have developed.

Although justice and municipal courts judges, staff, and practitioners prioritize access to justice—including the use of plain language, accessible courthouses, and customer service—the current statutes can create confusion, especially for litigants, most of whom are self-represented. For all these reasons, the statutes were ripe for review and revision.

Justice and Municipal Court Appeals Project

The Justice and Municipal Court Appeals Project was approved by the Oregon Law Commission at the November 9, 2018, meeting held at Willamette University School of Law. Commissioners Christa Obold Eshleman and Justice Rebecca Duncan agreed to serve as cochairs.

Since the first meeting held on May 20, 2020, the project has gone through three iterations. The progress was initially slow due to the challenges of the COVID-19 pandemic. In addition, the work group did not have a draft bill to work from. Work group participant and former Appellate Commissioner Jim Nass took the lead in reviewing and summarizing existing statutes. He

²⁰ This statute is particularly problematic, because it addresses *violations* and provides that appeals from justice courts of record are taken as provided in ORS chapter 19, but it is found in the chapter addressing appeals in criminal cases. And, unlike all other provisions relating to justice and municipal courts, which are addressed separately in their respective enabling statutes, the statute addresses appeals from both justice and municipal courts of record. Lastly, the Legislature adopted the statute as a freestanding statute and Legislative Counsel chose to place it in ORS chapter 138 rather than ORS chapter 19, even though appeals in violation cases having nothing to do with ORS chapter 19.

²¹ ORS 51.037 provides that a city may enter into an agreement with a court for the provision of judicial services under which a justice court "shall have all judicial jurisdiction, authority, powers, functions and duties of the municipal court."

worked with the Office of Legislative Counsel to create a draft bill, so that the work group would have proposals to review.

In 2022, after legislative counsel completed the first working draft of a bill, meetings of a subgroup dedicated to the drafting process started, with discussion and review of the first draft through early March of 2023. The work group meetings went into hiatus during the 2023 legislative session while the working draft was updated.

The most recent iteration of the project began meeting in August of 2023 with expanded participation and has met 21 times through November 2024.

Participation:**Chairs**

- Justice Rebecca Duncan, Oregon Supreme Court (Commissioner)
- Christa Obold Eshleman, Youth, Rights & Justice (Commissioner)

Participants

- James Brewer, Oregon Public Defense Commission
- Hon. Karen Brisbin, Clackamas County Justice Court
- Hon. Juliet Britton, Presiding Judge, Beaverton Municipal Court and Oregon Judges Association
- Hon. Daniel A. Cross, Washington County Justice Court
- Lindsey Detweiler, Senior Assistant General Counsel, Oregon Judicial Department
- Amie Fender-Sosa, Legislative Policy and Research Office, Oregon State Legislature
- Melissa Franz, City of Eugene
- Sean Foster, Oregon Law Center
- Bill Golden, Clackamas County District Attorney's Office
- Hon. Greg Gill, Eugene Municipal Court
- Susan Grabe, Oregon State Bar
- John Henry Hingson, Attorney
- Jordon Huppert, Attorney
- Linda Hukari, Marion County Trial Court Administrator, Oregon Judicial Department
- Hon. Justin Kidd, Marion County Justice Court
- Kris Kolta, Legislative Policy and Research Office, Oregon State Legislature
- Charles Kovas, Attorney
- Heather Marek, Oregon Law Center

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| <ul style="list-style-type: none"> • Anna McCormack, Warren Allen, LLP • Kimberly McCullough, Senior Counsel for Government Relations, Oregon Judicial Department and Oregon Department of Justice • Jim Nass, Attorney, <i>(Retired)</i> Appellate Commissioner, Oregon Judicial Department • Hon. Emily Oberdorfer, Tigard Municipal Court • Hon. Cris Patnode, Gilliam County Justice Court • John Powell, Klamath and Lake Counties Trial Court | <ul style="list-style-type: none"> Administrator, Oregon Judicial Department • Tony Rosta, Oregon Criminal Defense Lawyers Association • Dominique Rossi, Oregon State Bar • Matt Shields, Oregon State Bar • Patrick Sieng, Oregon Municipal Judges Association • Paul Smith, Deputy Solicitor General, Oregon Department of Justice • Scott Winkels, League of Oregon Cities • Hon. Erin Zemper, Eugene Municipal Court |
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Staff

- | | |
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| <ul style="list-style-type: none"> • Jessica Minifie, Senior Deputy Legislative Counsel, Office of Legislative Counsel, Oregon State Legislature • Victor Reuther, Deputy Legislative Counsel, Office of Legislative Counsel, Oregon State Legislature | <ul style="list-style-type: none"> • Sandy Weintraub, Director, Oregon Law Commission (2020 – 2024) • Amy Zubko, Director, Oregon Law Commission (2024 – present) |
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The participants listed above provided valuable insights, subject matter expertise, and a nuanced understanding of the appeals process for municipal and justice courts. Without the participation of justices of the peace, municipal court judges, prosecutors, criminal defense practitioners, representatives from the Oregon Judicial Department (current and retired), the Oregon Department of Justice, cities, legal aid providers, and appellate and civil practitioners, as well as the support of the Legislative Policy and Research Office and the Office of Legislative Counsel, LC 156 would not have been completed. While each participant's expertise informed the bill draft and report, LC 156 and the accompanying report are the product of the Oregon Law Commission. Participation should not be understood to be an endorsement of each policy change in the bill.

Recommendation to continue to address additional issues

When this project began, the focus was generally on organizing of the statutes that bear on appeals from justice and municipal courts. Discussion and analysis then turned to the mechanics of appeals from justice and municipal courts, such as the content of notices of appeal, where notices of appeal should be filed, and service of the notices on the adverse parties. Over the course of the last year, issues such as appeals from default judgments, filing fees, the scope of review on appeal in the circuit court, the circuit court's dispositional authority, and appeals from civil cases decided by justice courts were also addressed.

As discussions and drafting have wrapped up, the work group identified a number of issues that warrant additional analysis, including

- the limitations on appeals from municipal offense convictions;
- whether violations appealed from the local court to the circuit court and then to the Court of Appeals should proceed under ORS Chapter 19 or Chapter 138;
- Forcible Entry and Detainer (FED) undertakings for appeals to a circuit court;²²
- Treatment of records of abolished local courts;
- efficiency in service requirements on district attorneys because they are not involved in all cases; and
- the options for local courts to become courts of record.

In addition, given the scope and complexity of LC 156, it is possible that issues will be identified during the implementation and application of the bill, and those issues may warrant additional legislation in the 2026 or 2027 legislative session. For these reasons, approval of additional work on municipal and justice court appeals, as well as the restrictions on becoming courts of record, is recommended.

SECTION-BY-SECTION

This part of the report summarizes Legislative Concept 156 (the bill), section by section. As mentioned, a primary goal of the project is to make the statutes that govern appeals from justice and municipal courts more accessible. One way the bill does this is by making the appeal process the same for different types of cases when possible. So, where an aspect of the process could be the same for appeals in civil actions as for appeals in cases involving violations or misdemeanors, the work group tried to make it the same and set it out in a single set of provisions. For example, for justice courts, the provisions relating to what a notice of appeal

²² "Undertaking" is defined in Section 25(1)(a) of the bill as "a written promise signed by an appellant to take an action in connection with an appeal from the justice court to circuit court that is supported by a bond, one or more sureties or a deposit of money with the justice court."

must contain and where it must be filed are similar for all three types of cases and are set out together.

The work group considered consolidating the provisions for justice courts with those for municipal courts but ultimately decided that it was better to keep the provisions for the two types of courts separate, in ORS Chapters 51-55 and 156-157, while statutes specific to municipal courts are in ORS Chapter 221.

The bill is divided into three parts: Justice Courts (Sections 1-35c); Municipal Courts (Sections 36-54); and General (Sections 55-56).

Within the Justice Courts part, there are sections that concern justice courts generally (Sections 1 -15), others that apply to appeals in all types of justice court cases (civil, misdemeanor, and violation) (Sections 16-15), and still others that apply only to appeals in some types of justice court cases, for example, violations and misdemeanors (Sections 16-23) and civil actions (Sections 24-30).

Although the justice court provisions are separate from the municipal court provisions, the work group made the provisions the same or similar when possible. Consequently, within the Municipal Courts part of the bill (Sections 36-54), many of the sections are identical to sections in the Justice Courts part of the bill on the same topic. Others are nearly identical, differing in that, for example, references to "justice court" have been changed to "municipal court" and references to civil actions have been deleted because municipal courts do not hear civil actions.

In this chapter, the sections of the bill are explained in the order they appear in the bill. For most sections, there is a summary and a description of how the section relates to current law. If a section in the Municipal Courts part of the bill is the same or substantively the same as a section in the Justice Courts part of the bill, that fact is noted and the content is not explained a second time.

In the explanations, many of the citations to current statutes are accompanied by margin notes that contain the text of the statutes for easy reference.

LC 156 is organized as follows:

Section 1 through Section 6a

Section 6b through Section 15

Section 16 through Section 23

Section 24 through Section 30

Section 30a through Section

30c

Section 30d through Section 34
Statutes

Section 35

Section 35a through Section
35c

Section 36 through Section 51

Sections 52 through Section

52a Section 53

Section 54

Section 55 through Section 56

Justice Courts

Justice Courts Generally

Appeals from Justice Courts (Generally)

Appeals from Justice Courts in Violation and
Misdemeanor Cases

Appeals from Justice Courts in Civil Actions

Appeals from Justice Courts in Small Claims

Amendments to Existing Justice Court

Repeals

Conforming Amendments

Municipal Courts

Appeals from Municipal Courts

Amendments to Existing Statutes

Repeals

Conforming Amendments

General

Captions and Operative Date

JUSTICE COURTS

JUSTICE COURT JURISDICTION

SECTION 1 - JUSTICE COURT JURISDICTION OVER OFFENSES (VIOLATIONS AND MISDEMEANORS)

1. SUMMARY

- a. Section 1 of the bill concerns justice court jurisdiction over offenses. As current law does, Section 1 specifies that justice courts have jurisdiction over "all offenses committed or triable in their respective counties" but not over "the trial of any felony or a designated drug-related misdemeanor as defined in ORS 423.478." Also, as current law does, Section 1 provides that justice courts do not have jurisdiction over municipal offenses (described as "offenses created by the charter or ordinance of any city"), except as provided in ORS 51.037 (which allows cities to enter into agreements with justice courts for the provision of judicial services).

2. RELATIONSHIP TO CURRENT LAW

- a. Section 1(1) concerns the scope of justice courts' jurisdiction. It is the same as current law, specifically ORS 51.050(1). It is an affirmative statement about the scope of a justice court's jurisdiction over "offenses." It also provides that justice court's jurisdiction is concurrent with any jurisdiction that may be exercised by a circuit or municipal court.
- b. Section 1 deletes ORS 51.050(2), which concerns transfers of cases from justice to circuit courts. That deletion is necessary because the bill addresses transfers in another section: Section 5. The deletion is not intended to change current law. It simply separates the jurisdictional provisions from the transfer provisions because they concern different issues. The jurisdictional provisions govern the types of cases that a justice court can hear. The transfer provisions allow defendants to transfer justice court matters to circuit courts.
- c. Section 1(2) simply renumbers ORS 51.050(3) to ORS 51.050(2) because the bill moves current ORS 51.050(2), which concerns transfers. Section 1(2) is the same as current ORS 51.050(3), which specifies that justice courts do not have jurisdiction over felonies and "designated drug-related misdemeanors" as defined in ORS 423.478.

SECTION 1a - JUSTICE COURT JURISDICTION OVER ANIMAL ABUSE OFFENSES**1. SUMMARY**

- a. Section 1a amends current law, specifically, ORS 156.705, which gives justice courts jurisdiction over certain animal abuse offenses. The purpose of the amendment is to clarify that justice courts do not have jurisdiction over felony animal abuse offenses.
- b. ORS 156.705 does not apply to municipal courts. But municipal courts have jurisdiction over "all violations committed or triable in the city where the court is located." ORS 221.339(1). In addition, subject to certain exceptions set out in ORS 221.339, municipal courts also have jurisdiction over "misdemeanors committed or triable in the city." ORS 221.339(2). They do not have jurisdiction over felonies or drug-related misdemeanors as defined by ORS 423.478. ORS 221.339(2). Thus, like justice courts, municipal courts have jurisdiction over animal abuse violations and misdemeanors, but their jurisdiction is subject to exceptions under ORS 221.339(4).

2. RELATIONSHIP TO EXISTING LAW

- a. ORS 156.705 currently provides, "Justices of the peace shall have concurrent jurisdiction over all offenses committed under ORS 167.315 to 167.333 and 167.340." Those statutes define animal abuse offenses. Most of those offenses are misdemeanors, but some can be elevated to be felonies if certain conditions are met, and at least two of them are felonies.
- b. The bill amends ORS 156.705 to provide that justice courts do not have jurisdiction over felony animal abuse crimes. The reason for the change is because justice courts do not have jurisdiction over felonies. As discussed in connection with Section 1, current law provides that "[a] justice court does not have jurisdiction over the trial of any felony." Section 1a does not alter justice courts' jurisdiction over animal abuse offenses that are violations or misdemeanors.

SECTION 2 - JUSTICE COURT JURISDICTION OVER CIVIL ACTIONS**1. SUMMARY**

- a. Section 2 identifies the types of civil actions that a justice court can hear. It also provides that a justice court's civil jurisdiction conferred by this section is concurrent with any that may be exercised by a circuit court.

2. RELATIONSHIP TO CURRENT LAW

- a. Section 2(1) is an affirmative statement of the types of civil actions that justice courts can hear. It limits those actions to certain types of actions and, for some of those types, includes a \$10,000 limit.
 - i. Sections 2(1)(a)-(c) are the same as **ORS** 51.080(1)(a)-(c).
 - ii. Section 2(1)(d) is based on ORS 105.110, which provides that justice courts have jurisdiction over actions for "forcible entry or wrongful detainer," more commonly referred to as FED or eviction cases. Section 2 adds FED cases to the list that is currently in ORS 51.080(1), so that all types of civil actions that can be brought in a justice court are listed in one place.
 - iii. Section 2(1)(e) is the same as ORS 51.080(1)(d).
- b. Section 2(2) is the same as ORS 51.080(2), which specifies that the \$10,000 limits in Section 2(1) do not include costs, disbursements, or attorney fees.
- c. Section 2(3) identifies certain types of civil actions that justice courts do not have jurisdiction over (even if they would otherwise have jurisdiction over them under Section 2(1)). It is the same as ORS 51.090, except that it makes a minor change to modernize language in ORS 51.090(1).
- d. Section 2(4) is new. It states that a justice court's jurisdiction in civil cases is concurrent with any "that may be exercised by a circuit court." It is based on and intended to parallel ORS 51.050(1), which applies in cases involving violations or misdemeanors. It is intended to make explicit that a justice court's civil jurisdiction is concurrent with that of circuit courts, which is not disputed.

JUSTICE COURT RECORDS

SECTION 3 - JUSTICE COURT CASE RECORDS

1. SUMMARY

- a. Section 3 defines terms relating to the records that a justice court must keep. The section is intended to modernize existing terminology and make the record-keeping provisions for justice courts parallel to those of municipal courts.
- b. Section 3(1) defines "case record" as including the "docket" and "case file" of a case.
- c. Section 3(2) defines the "docket" as a log of the events in a case, including, but not limited to the dates of filings and orders.
- d. Section 3(3) defines the "case file" as the documents filed with or by the justice court clerk, as well as any audio recording or stenographic or other reporting made pursuant to ORS 51.105, if all parties agree that the recording is the official record of the proceeding. ORS 51.105 allows parties to arrange for recording of justice court proceedings.
- e. Note that the fact that there is a recording or reporting does not alter the nature of the appeal from the justice court to the circuit court. Section 3(3) simply provides that the recording or reporting is part of the case file, which the justice court is required to transmit to the circuit court when a case is appealed.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 3(1) introduces a new term, "case record," to cover both the "docket" and the "case file," so that the term "case record" can be used to describe the materials that a justice court must maintain and, of particular relevance to the bill, what materials a justice court must send to a circuit court when an appeal is taken. Note that the terms currently used to refer to court materials are not consistent. For example, ORS 157.040 provides that, if a defendant is in custody at the time an appeal is allowed, the justice of the peace "shall make the proper transcript and deliver it to the clerk of the appellate court[.]" In that statute, "transcript" is not used in its most common sense, which is a written record of oral statements. Section 3(1) would eliminate the use of that potentially confusing term. ORS 157.040 and other statutes that currently govern case records are repealed by the bill.
- b. Section 3(2) is based on several statutes: ORS 51.120, which requires justice courts to maintain a "docket" and prescribes what it must contain; ORS 221.352, which does the same for municipal courts; and ORS 7.020, which requires courts of record to maintain a "register" and prescribes what it must contain.
 - i. Section 3(2) is similar to ORS 51.120(1)(a) and ORS 221.352(1)(a).
 - ii. Section 3(2)(a) is similar to ORS 51.120(1)(b) and ORS 221.352(1)(b).
 - iii. Section 3(2)(b) is taken from ORS 7.020(2), which defines the term "register" for courts of record and requires the entry of certain

information into the register. Specifically, Section 3(2)(b) is the same as ORS 7.020(2).

- iv. Section 3(2)(c) is similar to ORS 51.120(d) and ORS 221.352(d).
 - v. Section 3(2)(d) is similar to ORS 51.120(e) and ORS 221.352(d).
 - vi. Section 3(2)(e) is the same as ORS 51.120(f) and similar to ORS 221.352(f).
 - vii. Section 3(2)(f) is the same as ORS 51.120(g) and the same as ORS 221.352(h).
 - viii. Section 3(2)(g) is the same as ORS 51.120(h) and similar to ORS 221.352(i).
 - ix. Section 3(2)(h) is similar to ORS 51.120(k) and ORS 221.352(L).
 - x. Section 3(2)(i) is similar to ORS 51.120(n), similar to ORS 221.352(o), and the same as ORS 7.020(3).
- c. Section 3(3) defines "case file." It is based on ORS 51.110, which defines the "records and files of a justice court," and ORS 7.090, which defines "the files of the court," when the court is a court of record.
- d. Section 3(4) provides that a justice court may maintain its docket or case files electronic form. It is based on ORS. 51.120(2).

SECTION 4 - CUSTODY OF JUSTICE COURT CASE RECORDS**1. SUMMARY**

- a. Section 4 concerns the custody of case records.
 - i. Section 4(1) provides that the justice of the peace shall keep the court's case records safe and secure. It also provides that the case records are public records.
 - ii. Section 4(2) provides that when any justice court is abolished, the justice of the peace shall turn over the records to the county's circuit court.

2. RELATIONSHIP TO EXISTING LAW

- a. The first sentence of Section 4(1) is substantively the same as the first sentence of ORS 51.130. The only change is to replace "the docket and files" with "the case record."
- b. The second sentence of Section 4(1) is similar to the last sentence of ORS 51.130. The language has been updated to replace "public writing" with "public records for the purposes of ORS 192.311 to 192.478." The update is not intended to be a substantive change; all existing limits on disclosure are intended to remain.
- c. Section 4(2) is the same as the second sentence in ORS 51.130.

TRANSFER OF CASES FROM JUSTICE COURT TO CIRCUIT COURT

SECTION 5 - TRANSFER OF CASES TO CIRCUIT COURT

1. SUMMARY

- a. Section 5 concerns two points at which a case can be transferred from a justice court to a circuit court before completion in the justice court.
 - i. As under current law, Section 5(1) provides that, if a justice court is not a court of record, a defendant in a case involving a misdemeanor can transfer the case to a circuit court at the outset.
 - ii. Section 5(2)(a) creates a new provision, which allows a defendant to transfer a case involving a violation or misdemeanor to the circuit court after an adverse ruling on a pretrial motion, if the prosecutor and justice court consent. The reason for the addition is to eliminate the need for a full trial in the justice court, when -- if the case was tried -- the defendant might still appeal so that motion could be ruled on by a court of record. The purpose of Section 5(2) is similar to the purpose of conditional guilty pleas in circuit courts. Under Section 6(2) of the bill, conditional guilty pleas are not permitted in justice courts.
 - iii. Under Section 5(2)(b), if a case transferred under this subsection involves only a charge of a violation, the filing fee for an appeal applies because this transfer provision is meant to serve in the place of an appeal.
 - iv. Section 5(3) makes it clear that, if a case is transferred from a justice court to a circuit court, the parties have the same right to appeal the circuit court's orders and judgments as they would if the case originated in the circuit court. That is, they can appeal from the circuit court to the Court of Appeals.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 5(1) is the same as ORS 51.010(2), except that Section 5(1) uses the term "must" instead of "shall," and uses the term "circuit court" instead of "appropriate court."
- b. Section 5(2) is new and intended to avoid unnecessary justice court proceedings when a case is likely to go to the circuit court anyway.
- c. Section 5(3) is new. It is intended to make it clear that when a case is transferred from a justice court to the circuit court, the parties can appeal the circuit court's orders or judgments to the Court of Appeals just as they could if the case had originated in the circuit court. This right to appeal is implicit in current law, and Section 5(3) makes it explicit.

PLEAS IN JUSTICE COURT CASES INVOLVING OFFENSES

SECTION 6 - PLEAS

1. SUMMARY

- a. Section 6 amends current law to address conditional guilty pleas, which are allowed in circuit court under **ORS 135.335(3)**. Conditional guilty pleas exist so that, when a circuit court decides a pretrial motion adversely to a defendant, the defendant can enter a conditional guilty plea and appeal the judgment to the Court of Appeals. They are often used when a circuit court denies a motion to suppress evidence that would be sufficient to support a conviction and the defendant plans to appeal the denial of the motion.
- b. Section 6 clarifies that, in justice courts, a defendant cannot enter a conditional guilty plea. Instead, if a defendant wants to challenge an adverse pretrial ruling, the defendant can have the case transferred to the circuit court, as provided in Section 5(2), provided that the prosecutor and justice court agree. If they do not agree, the case will proceed to trial in the justice court, and the defendant can then appeal to the circuit court.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 6(1), which provides that a defendant "may plead the same pleas as upon an indictment," is the same as **ORS 156.080**.
- b. Section 6(2) is new, and it provides that conditional guilty pleas are not available in justice courts, but, as discussed above, transfers are.

OBTAINING ADVERSE PARTY CONTACT INFORMATION

SECTION 6a - ADVERSE PARTY CONTACT INFORMATION

1. SUMMARY

- a. Section 6a is intended to make it easier for a party to determine who the adverse party is so that the party can serve the adverse party as required to initiate an appeal. Because there are multiple governmental entities that can initiate a prosecution in justice court, it may not always be clear to a defendant who the adverse party is.
- b. Sections 6a(1)(a) and (b) provide that, in a case involving a violation or misdemeanor, the justice court will notify a defendant that they may request the name and contact information of the government official or entity that should be served a copy of the notice of appeal. If that request is made, the justice court will provide the information it has on file.
- c. Sections 6a(2)(a) and (b) similarly provide that, in a civil action, a justice court will notify the parties that they may request the name and contact information for adverse parties and that, if requested, the justice court will provide the information it has on file.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 6a is new. It is intended to assist parties in locating the information they need to serve adverse parties because service is required in order to bring an appeal to the circuit court.

APPEALS FROM JUSTICE COURTS (GENERALLY)

The next sections of the bill, Sections 6b-15, concern appeals from justice courts generally. They apply to all types of justice court cases: civil actions, cases involving misdemeanors, and cases involving violations. Sections 6b-15 concern matters including where an appeal is taken, what must be in a notice of appeal, who must be served with the notice of appeal, filing fees, when the appellate court obtains jurisdiction, the nature of appeals to circuit courts, the types of judgements a circuit court can render, and writs of review.

SECTION 6b - DEFINITIONS

1. SUMMARY

- a. Section 6b defines a new term, "matter," which is used to identify what is on appeal in a circuit court. If the appeal is from a judgment of conviction and sentence, then the entire case is on appeal. But if the appeal is from a pretrial order, post-trial order, or an amended or corrected judgment, then the appeal is narrower in scope. It includes "the order or judgment from which the appeal is taken and any issue, factual or legal, necessary to decide the appeal." The "any issue, factual or legal, necessary to decide the appeal" provision was added based on a recognition that, when the circuit court considers the order or judgment being appealed anew, factual or legal issues may arise that did not arise in the local court. It is intended to clarify that the circuit court has the authority to consider and decide any such issue as necessary to decide the appeal.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 6b is new. It is intended to clarify when an entire case is on appeal and when only parts of a case are on appeal.

SECTION 7 - COURT TO WHICH APPEAL IS TAKEN**1. SUMMARY**

- a. Section 7 concerns where an appeal from a justice court is taken and what statutes govern the appeal. In short, when a justice court is a court of record, appeals from the justice court proceed in the same manner as appeals from a circuit court: they go straight to the Court of Appeals and are subject to the same statutes as appeals from a circuit court to the Court of Appeals. That is because, with a record, the case can be reviewed, in the ordinary sense, by the Court of Appeals to determine whether the lower court erred. When a justice court is not a court of record, there is no record for the Court of Appeals to review. Therefore, the case proceeds to the circuit court, where the matter is litigated anew and a record can be created. Then, if a further review is desired after the circuit court issues its order or judgment, the order or judgment can be appealed to the Court of Appeals, as if the case had originated in the circuit court.
- b. Section 7(1) governs appeals from justice courts that *are* courts of record.
 - i. Section 7(1)(a) provides that, in violation cases, appeals from justice courts that are courts of record shall be taken as provided in ORS 138.057. That statute provides, in part, that in a violation case, "[i]f a justice court or municipal court has become a court of record under ORS 51.025 or 221.342, an appeal from a judgment involving a violation shall be as provided in ORS chapter 19 for appeals from judgments entered by circuit courts, except that the standard of review is the same as for an appeal from a judgment in a proceeding involving a misdemeanor or felony." Chapter 19 governs appeals in civil cases.
 - ii. Section 7(1)(b) provides that, in misdemeanor cases, appeals from justice courts that are courts of record, shall be taken to the Court of Appeals "as provided in ORS 138.010 to 138.310 for appeals from circuit court." The cited statutes govern appeals in criminal cases.
 - iii. Section 7(1)(c) provides that, in civil cases, appeals from justice courts that are courts of record, shall be taken to the Court of Appeals as provided in ORS Chapter 19 for appeals from circuit court.
- c. Section 7(2) governs appeals from justice courts that *are not* courts of record.
 - i. Section 7(2)(a) provides that such appeals shall be taken to the circuit court where the justice court is located as provided in Sections 8 to 30 and Section 30c of this 2025 Act.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 7(1)(a), relating to violations, tracks current law, specifically, **ORS 138.057(1)(a)**.

- b. Section 7(1)(b), relating to misdemeanors, tracks current law, specifically, ORS 157.005.
- c. Section 7(1)(c), relating to civil actions, tracks current law, specifically ORS 53.005.
- d. Section 7(2) relating to appeals of all case types provides that an appeal from a justice court that is not a court of record shall be taken to the circuit court where the justice court is located pursuant to the provisions of this bill. Currently, the statutes that govern appeals from justice courts that are not courts of record are spread across several ORS chapters: ORS chapter 53 (civil actions); ORS chapter 157 (misdemeanors); ORS 138.057 (violations).

SECTION 8 - TIME WITHIN WHICH APPEAL MUST BE TAKEN**1. SUMMARY**

- a. Section 8 establishes the deadlines for filing notices of appeal. Section 8(1) provides that the deadline is 30 days from the date that the judgment or order is entered in the justice court docket. Section 8(2) establishes an exception to that deadline for violation and misdemeanor cases when a motion for new trial or motion in arrest of judgment is timely filed and served. If that occurs, the notice of appeal is due within 30 days of the date of entry of the order disposing of the motion or the date that the motion is deemed denied, whichever is earlier.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 8(1)'s 30-day deadline is consistent with current law, except that there is currently a 10-day limit for small claims appeals. See ORS 53.030 (civil cases); ORS 55.110 (small claims cases); ORS 157.030 (criminal cases); ORS 138.057(1)(b) (violations). The bill changes the deadline for small claims cases so that they have a 30-day deadline, like all other appeals from justice and municipal courts.
- b. Section 8(2) is new. It serves to make the deadlines for an appeal from a justice court the same as that from a circuit court when a motion for a new trial or a motion in arrest of judgment has been timely filed and served. When there is such a motion, it makes sense to allow a party to wait to file a notice of appeal until the justice court has ruled (or had an opportunity to rule) on the motion. Section 8(2) is based on ORS 138.071(1), which applies to appeals in criminal cases from circuit courts to the Court of Appeals.
- c. Note that the work group considered adding a provision for late notices of appeal, as there is for appeals from circuit court to the Court of Appeals, see ORS 138.071(5)(a), but decided against doing so.

SECTION 9 - CONTENTS OF NOTICE OF APPEAL**1. SUMMARY**

- a. The purpose of Section 9(1) is to list, in one place, the required contents of a notice of appeal for an appeal from a justice court to a circuit court for all case types. Currently, the requirements are listed in different statutes, which cover different types of cases, and state the requirements differently.
- b. Although the list of the required contents is long, the contents are basic: case title, parties' names, a notice that an appeal is being taken, identification of the order or judgment being appealed, contact information for the parties and their attorneys, if any.
- c. Section 9(2) requires the State Court Administrator to create a model form notice of appeal.

2. RELATIONSHIP TO EXISTING LAW

- a. Current statutes relating to the contents of a notice of appeal are ORS 53.020 (relating to civil actions and mentioning the title of the case and the designation of parties); ORS 53.030 (relating to civil actions and mentioning notices of appeal, but not specifying contents); ORS 19.250 (relating to civil appeals from circuit courts to the Court of Appeals); ORS 55.120 (relating to small claims appeals from justice court to circuit courts and setting out a form); and ORS 138.015 (providing that ORS 19.250 applies to criminal appeals from circuit courts to the Court of Appeals).
- b. The intent behind Section 9(1) is to make the requirements for notices of appeal easier to locate (by putting them in one place so that litigants and courts do not have to follow cross-references across multiple ORS chapters), and (2) to make the requirements consistent across case types, when appropriate, to reduce confusion and increase ease of use.
- c. The requirements listed in Section 9(1) are drawn from current statutes, including ORS 19.250, the statute that governs appeals from circuit courts to the Court of Appeals.
 - i. Although Section 9(1) is based, in part, on ORS 19.250, it does not include all the provisions of that statute.
 1. ORS 19.250 states that an appellant must provide "either an electronic email address for the appellant or a statement that the appellant does not have an electronic mail address." But Section 9(1) does not include that requirement. That is because it was brought to the work group's attention that some persons may have email addresses but not be able to access their email frequently and, therefore, not want to receive communications about their appeals by email.

2. Because Section 9(1) applies only to justice courts that are not courts of record, it does not include the provisions of ORS 19.250 that relate to the designation of the record.
- d. Section 9(2) is new. It requires the State Court Administrator to create a model form for notices of appeals from justice courts to circuit courts. The purpose of the model form is to make it easier for parties to provide (and, therefore, for courts to receive) the information required to initiate an appeal.
 - i. The work group learned that several justice or municipal courts have developed their own forms. Having the State Court Administrator develop a model form will spare local courts that work, while increasing the uniformity of the notices of appeal that circuit courts receive from the various local courts.

SECTION 10 - FILING AND SERVICE OF NOTICE OF APPEAL**1. SUMMARY**

- a. Section 10 governs where a notice of appeal must be filed and on whom it must be served.
 - i. Section 10(1)(a) requires appellants to file their notices of appeal in the justice court, and it requires that the notices be accompanied by either proof of service or an acknowledgement of service signed by the adverse party.
 - ii. Section 10(b) requires appellants to serve the adverse party, or if the adverse party is represented, the adverse party's attorney.
 - iii. Section 10(c) applies to cases involving violations or misdemeanors. It requires defendants to serve the notice on the county attorney, if the case has brought in the county's name, and the district attorney, if the case has been brought in the state's name.

2. RELATIONSHIP TO EXISTING LAW

- a. Currently, the filing and service of a notice of appeal is governed by different statutes, depending on the type of case. Some of those statutes cross-reference each other.
 - i. In civil cases, ORS 53.030 governs the filing and service of a notice of appeal in a civil case.
 - ii. In criminal cases, ORS 157.030 governs; it provides both that "the appeal is taken in the same manner" as in a civil case, except that the notice shall be served on the district attorney or private prosecutor.
 - iii. In violation cases, ORS 138.057(1)(b) and (c) govern the filing and service of notices of appeal.
- b. Section 10(1)(a) retains current law by requiring appellants to file their notices of appeal in justice courts.
 - i. The question of whether a notice of appeal should be filed in the justice court, as under current law, or in the circuit court, which would be consistent with the practice of filing notices of appeal in the court that will hear the appeal, was the subject of a significant amount of discussion. Questions about having the notice filed in the justice court included, but were not limited to, questions about (1) whether it was efficient to have the notice filed in the justice court only to have the justice court forward the notice of appeal to the circuit court, (2) whether the point at which jurisdiction changes from the justice court to the circuit court would be more clear if the notice of appeal was filed directly in the circuit court, (3) whether justice courts are open as often as circuit courts to receive notices, and (4) whether appellants will have confidence that the justice court will properly process the notice. Arguments in favor

of having notices filed in justice court included (1) retaining existing law, (2) the fact that the appellant is familiar with the location of the justice court, and (3) the possibility that the justice court will be easier for the appellant to access. In the end, the work group chose to retain current law.

- c. Section 10(1)(b) requires service on the adverse party or, if the adverse party is represented, the adverse party's attorney. It tracks ORS 50.030, which applies to civil cases.
- d. For violation and misdemeanor cases, Section 10(2) requires a defendant to serve the county attorney if the case was brought in the county's name and the district attorney if the case was brought in the state's name.
 - i. Section 10(2) is based on ORS 157.030(1), which applies to appeals in misdemeanor cases from justice courts to circuit courts, and ORS 138.057(1)(b), which applies to appeals in violation cases from justice courts to circuit courts.
 - 1. ORS 157.030(1) provides that, in appeals in misdemeanor cases from a justice court to a circuit court, the notice "shall be served upon the district attorney for the county, or the deputy of the district attorney, or upon the private prosecutor in the action."
 - 2. ORS 138.057(1)(c) provides, in an appeal in a violation case from a justice court to a circuit court, "the copy of the notice of appeal must be served on the district attorney for the county."
 - ii. Note that the work group discussed requiring serving a copy of the notice of appeal on the circuit court, so that the circuit court would be aware of the notice of appeal because the circuit court acquires jurisdiction over some aspects of the case once a notice of appeal is filed. The work group opted not to do that because it would impose an additional burden on the appellant, which would be contrary to the reason that the group chose to continue to require that the notice be filed in the justice court. If an appellant needs to file a motion, such as a motion to stay, with the circuit court close in time to when the notice of appeal is filed in the justice court, the motion itself will alert the circuit court to the fact that the appeal has been initiated.

SECTION 10a - FILING FEE**1. SUMMARY**

- a. Section 10a concerns filings fees for appeals in civil actions and in cases charging only a violation. If a violation case is transferred to the circuit court after a pretrial ruling, under Section 5(2), the transfer is like an appeal, and a filing fee is required.
- b. There are no filing fees for cases charging a misdemeanor. If a case involves both a violation and a misdemeanor, there is no filing fee.
- c. Section 10a requires an appellant to submit a filing fee (or an application for a waiver or deferral of the fee) to the justice court, which is the same court where the appellant will file the notice of appeal. The justice court will accept the fee (or application for a waiver or deferral) and transmit it to the circuit court. The justice court will not rule on the application for the waiver or deferral. The circuit court will do that, and it will do so in the manner provided in ORS 21.680 to 21.698.
- d. The filing fee amount is governed by ORS 21.135(1), (2)(b) (violation appeals from local courts) or 21.160 (tort or contract actions).
- e. Section 10a(2) concerns when the state or a political subdivision of the state must pay a fee and provides that payment is subject to ORS 20.140, which states that such entities are not required to pay fees in advance.

2. RELATIONSHIP TO EXISTING LAW

- a. Currently, ORS 21.135 requires a \$281 filing fee in a civil proceeding, including "[a]ppeals from a conviction of a violation in justice or municipal courts as provided in ORS 21.285."
 - i. In turn, ORS 21.285 provides that filing and trial fees are due "[i]n an appeal to a circuit court from a justice court or municipal court actions for commission of a state violation or an action for violation of a city charged or ordinance, but not in an action for commission of a state crime." Thus, ORS 21.285 requires filing and trial fees in violation cases but not in misdemeanor cases.
- b. ORS 21.160 requires filing fees in tort and contract cases that begin at \$170, if the amount claimed is \$10,000 or less, and increase as the amount claims increases. ORS 21.160(4) provides that "[a] court shall collect the filing fees provided by this section when an appeal from a justice court is filed under [ORS 53.005](#) to [53.125](#) or a case is transferred from a justice court under [ORS 52.320](#)." (The ORS chapter 53 statutes cited are the statutes that govern civil appeals from justice courts.)
- c. ORS 21.225 requires trial fees in civil actions. ORS 21.285 requires trial fees in violation appeals from local courts.

- d. The work group learned that the current practices, regarding the collection of fees, vary. Section 10a is intended to clarify what cases require fees, how the fees are to be collected, and what the fees are. The work group discussed eliminating both fees, but ultimately chose to retain the filing fee and eliminate the trial fee. There was disagreement among work group participants about whether to also repeal filing fees for violations, or whether to impose a substantially lesser fee, and further discussion on that issue is among the recommendations of this report.
- e. Section 10a makes it clear that, "[o]n appeal from a justice court to the circuit court in a civil action, or in an action for the commission of a violation, the parties are subject to the circuit court filing fees described in ORS 21.135 [violations] or 21.160 [tort and contract claims]."
- f. If the circuit court denies the application for a fee waiver or deferral, the appellant will be expected to pay the filing fee or the circuit court will reject the case record and refuse the appeal in accordance with ORS 21.100. This is in alignment with *Otnes v PCC Structural*, 367 Or 787, 484 P3d 1049 (2021), which stands for the proposition that, when a court rejects a filing for failure timely to pay a required filing fee, the party has a reasonable opportunity to cure the deficiency by paying the filing fee, and if the party does so, the filing of the document relates back to the date the document originally was submitted to the court clerk for filing.

SECTION 11 - CIRCUIT COURT'S APPELLATE JURISDICTION**1. SUMMARY**

- a. Section 11 concerns when a circuit court can take certain actions in an appeal from a justice court.
- b. Section 11(1) provides that a circuit court has "jurisdiction to exercise judicial authority in the matter upon the filing of the notice of appeal." The purpose of this subsection is to make it clear that a circuit court can take certain actions, such as ruling on motions to waive a filing fee or motions for stays, even before an appeal is "perfected."
- c. Section 11(2) provides that neither a justice court nor a circuit court can waive or extend the deadline for filing or serving the notice of appeal, subject to exceptions in Section 11(4).
- d. Section 11(3) provides that an appeal is perfected "upon the timely filing of the notice of appeal, service on the adverse party and transfer of the case record" from the justice court to the circuit court.
- e. Section 11(4)(a) provides that, if an appellant mistakenly files the original notice of appeal in the circuit court, the error is not a jurisdictional defect, so long as the appellant timely served a copy of the notice on the justice court.
- f. Section 11(4)(b) provides that timely service on an adverse party is not jurisdictional if the appellant relied on the contact information provided by the justice court pursuant to Section 6a of this bill, and that the circuit court may extend the time for proper service.
- g. Section 11(4)(c) provides that, in a violation or misdemeanor case, timely service on the county attorney or district attorney is not jurisdictional and the time for service may be extended by the circuit court.

2. RELATIONSHIP TO EXISTING LAW

- a. Currently, the last sentence of ORS 53.030 provides that "[w]hen the notice of appeal has been served and filed, the appellate court shall have jurisdiction of the cause." Similarly, ORS 157.030, which applies to appeals in criminal cases, provides, in part, that "[w]hen the notice of appeal has been filed with the court from which the appeal is being taken, the appellate court shall have jurisdiction of the cause."
- b. Section 11(1) makes explicit what is implicit in current law: that the circuit court has authority to act in a case once the notice of appeal is filed; that is, it can take administrative actions, rule on motions, etc. But the circuit court does not have authority to reach the merits of the case until the appeal is perfected, which occurs upon timely filing and service of the notice of appeal and receipt of the local court case record.
- c. Section 11(2) is based on **ORS 53.090**, which applies in a civil appeal from a justice court to a circuit court and allows for extension of time for submission of

the justice court materials. It differs from ORS 53.090 in that it does not require that an order extending the deadline be made within the time for submission.

- d. Section 11(3) is based on ORS 53.090, which applies in a civil appeal from a justice court to a circuit court, and ORS 157.060, which applies in misdemeanor appeals. ORS 53.090 provides, in part, "[u]pon the filing of the transcript with the clerk of the appellate court, the appeal is perfected." ORS 157.060 provides, "[f]rom the filing of the transcript with the clerk of the appellate court the appeal is perfected and the action is deemed pending therein for trial upon the issue tried the justice court."
- e. Section 11(4)(a) is new. It serves to ensure that, if an appellant actually delivers a notice of appeal to the justice court, the notice can be deemed filed, even if it is a copy rather than an original because the original was mistakenly filed in the circuit court.
- f. Section 11(4)(b) is new. It relates to Section 6a, which is also new and provides that a justice court must notify parties that they can ask the court for contact information for adverse parties and that, if parties do, the court must provide it.
- g. Section 11(4)(c) provides that a failure to serve the county attorney or district attorney is not jurisdictional. It is based on ORS 157.030, which applies to appeals from justice courts to circuit courts in misdemeanor cases, and ORS 138.057, which applies to appeals from circuit courts to the Court of Appeals in violation cases. ORS 157.030 provides, in part, "Failure to serve a notice of appeal on the appropriate attorney shall not preclude jurisdiction in the appellate court[.]" ORS 138.057(2)(b) provides that, "Notwithstanding ORS 19.270, timely service on the city attorney or district attorney under the provisions of this subsection is not jurisdictional and the Court of Appeals may extend the time for that service."

SECTION 12 - SUBMISSION OF THE RECORD**1. SUMMARY**

- a. Section 12 concerns when a justice court must submit a case record to the circuit court for an appeal. It requires a justice court to submit a case record to the circuit court no later than 30 days after the filing of the notice of appeal, or, in a misdemeanor case, no later than 10 days after the filing of the notice of appeal if the defendant is in custody. But Section 12 allows the circuit court to extend the time for submission. It also allows justice and circuit courts to agree to electronic submission of case records.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 12 is based on ORS 53.090 (civil actions); ORS 157.030 and ORS 157.040 (misdemeanor cases); and ORS 138.057(1)(e) (violation cases). It is not identical to those provisions. It clarifies that it is the justice court's obligation to submit the case record to the circuit court and that the submission should be made no later than 30 days after the filing of the notice of appeal, except when a defendant is in custody, in which case it should be no later than 10 days after the filing of the notice.
- b. The 30-day limit is the same as under current law for civil cases under ORS 53.090. The 30-day limit appears to apply in non-custody misdemeanor cases by way of ORS 157.030 (providing that an appeal is taken in the "same manner * * * as in the case of an appeal from a judgment in a civil action"). There does not appear to be a specific limit for violation cases; ORS 138.057(1)(e) provides that, "upon filing of the notice of appeal, the justice court or municipal court shall forward all files relating to the case to the circuit court to which the appeal is taken."
- c. The 10-day limit for in-custody defendants is the same as under ORS 157.040.

SECTION 13 - PROCEEDINGS IN THE CIRCUIT COURT AND STANDARD OF REVIEW GENERALLY**1. SUMMARY**

- a. Section 13(1) provides that the circuit court may dismiss an appeal that is not properly taken or perfected, but not on the ground that the justice court failed to submit the case record as required.
- b. Section 13(2) describes how an appeal from a justice court that is not a court of record proceeds. Although the circuit court proceeding is an "appeal," it differs from other appeals because there is no record for the circuit court to review. Thus, rather than reviewing the justice court's order or judgment for error, the circuit court shall "hear and decide the matter anew[.]"
- c. Section 13(3) allows for amendments of pleadings.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 13(1) is based on ORS 53.110. It is consistent with current law in that it provides for dismissal of appeals that are not properly taken or perfected. It adds a provision that makes it clear that a court cannot dismiss based on a justice court's failure to submit the case record to the circuit court.
- b. Section 13(2) is based on ORS 53.090 and is substantively the same as that statute, which, in pertinent part, provides, "[t]henceforth the action shall be deemed pending and for trial therein as if originally commenced in such court, and the court shall have jurisdiction of the cause and shall proceed to hear, determine and try it anew, disregarding any irregularity or imperfection in matters of form which may have occurred in the proceedings in the justice court."
- c. Section 13(3) allows for amendments of pleadings and is based on ORS 53.100 and ORS 157.060. It is substantively the same as those provisions.

SECTION 14 - RENDERING JUDGMENT; REMAND; NOTICE TO JUSTICE COURT**1. SUMMARY**

- a. Section 14(1) requires a circuit court to enter a judgment resolving an appeal.
- b. Section 14(2) describes what actions a circuit may take after resolving the matter on appeal.
- c. Section 14(2) and Section 14(3) concern the types of judgments that a circuit court can enter.
 - i. Section 14(2)(a) applies if, on appeal, the circuit court determines that any of the terms of the justice court judgment should be reversed or modified. If the circuit court has made such a determination, then the circuit court "shall render a judgment as if the case had been originally commenced in the circuit court." Such a judgment is to be enforced "as a judgment of the circuit court."
 - ii. Section 14(2)(b) applies if, on appeal, the circuit court determines that none of the terms of the judgment should be reversed or modified. It provides that the circuit court "shall render a judgment affirming the decision and remanding the case to the justice court for enforcement of the judgment." This provision was created with the idea that, if the circuit court affirms and remands, then the justice court can enforce its judgment.
 - iii. Notwithstanding Section 14(1) and (2), a circuit court can affirm a justice court order or judgment and enter its own order or judgment, which it can enforce. Section 14(3) provides that, "in its discretion and for good cause, the circuit court may render such judgment or order as may be proper, including rendering a judgment containing all necessary terms to be enforced as a judgment of the circuit court, and may remand the case to the justice court for further proceedings in accordance with the decision of the circuit court."
- d. Section 14(4) requires the circuit court to notify the justice court of the result of the appeal to the circuit court. Section 14(4)(a) requires the circuit court to notify the justice court within 40 days after the date of entry of the circuit court's judgment, if that judgment has not been appealed to the Court of Appeals. If the judgment has been appealed to the Court of Appeals, then the circuit court must notify the justice court of the Court of Appeals' decision within 10 days after the circuit court receives the Court of Appeals' appellate judgment.

2. RELATIONSHIP TO CURRENT LAW

- a. Section 14(2)(a) is similar to current statutes for both civil and criminal appeals, ORS 53.125 (civil) and ORS 157.065 (misdemeanor and violation).

- b. Section 14(2)(b) is new. It was added to enable justice courts to enforce their own judgments if an appeal to the circuit court did not result in any change to that judgment.
- c. Section 14(3) is consistent with current law which allows a circuit court to enter an appellate judgment or order as may be proper.
- d. In *State v. Lyman*, 30 Or App 955, 569 P2d 39 (1977), an appeal from a justice court to the circuit court, the Court of Appeals held: “The circuit court in reviewing de novo does not affirm, reverse, or modify the judgment of the lower court but issues a new judgment in all respects.” The court did not address ORS 157.065, which provides, in part: “the appellate court may give such other judgment or order as may be proper, and direct that the cause be remitted to the court below for further proceedings in accordance with the decision of the appellate court.” *Accord*, ORS 53.125 (as to civil cases). Subsection (1) of Section 14, along with section 19(1), in effect, codify the Court of Appeals’ statement in *Lyman* that, on de novo review of a judgment of conviction and sentence of a misdemeanor, the circuit court must enter a new judgment. However, subsection (3), in effect, carries forward the part of ORS 157.065 that permits a circuit court in other circumstances to enter a judgment modifying or reversing a part of the local court’s decision and remanding, with or without instructions.

SECTION 15 - AVAILABILITY OF WRIT OF REVIEW

1. SUMMARY

- a. Section 15 maintains current law, which provides that the right to bring an appeal to a circuit court does not prevent a party from seeking a writ of review in the circuit court pursuant to ORS 34.010 to 34.100.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 15 does not change current law. It is based on ORS 53.130 (civil cases) and ORS 157.070 (criminal cases).

VIOLATIONS AND MISDEMEANOR CASES

The sections in the previous part of the bill (Sections 6b -15) establish procedures that apply to appeals from justice courts to circuit courts in all types of cases (civil, misdemeanor, and violation). The sections in this part of the bill (Section 16 - 23) establish additional procedures that apply only to misdemeanor and violation cases.

SECTION 16 - APPEAL AND CROSS-APPEAL BY THE DEFENDANT

1. SUMMARY

- a. Section 16(1) identifies the types of orders and judgments that a defendant can appeal.
- b. Section 16(2) provides that, in a proceeding involving a violation, a defendant may appeal an order denying a motion for relief from default under ORS 153.105. It applies only to violations because default judgments are not allowed in misdemeanor cases. If a defendant fails to appear in a misdemeanor case, a warrant can be issued for the defendant's arrest.
- c. Section 16(3) specifies when a defendant can cross-appeal. A cross-appeal may be taken when the adverse party has taken an appeal. So, for a defendant to take a cross-appeal, the prosecutor would need to have taken an appeal. Appeals by prosecutors are addressed in Section 17. Appeals by prosecutors are uncommon; generally, they occur when a prosecutor wants to appeal a pretrial ruling or a sentencing issue. Section 16 does not require a defendant to take a cross-appeal. A defendant's decision not to take a cross-appeal does not preclude the defendant from appealing a matter from the justice court.

2. RELATIONSHIP TO EXISTING LAW

- a. Currently, ORS 157.020 governs who may appeal from a justice court to a circuit court in a misdemeanor action. It does not specify the types of orders or judgments that may be appealed. ORS 157.020(1) provides, "[e]xcept as provided in subsection (2) of this section, an appeal may be taken only by the defendant and whether or not the judgment is that the defendant pay a fine or be imprisoned." (Subsection (2) concerns appeals by the plaintiff (the prosecutor)).
- b. Section 16(1) specifies the types of orders and judgments that a defendant may appeal. It is based on ORS 138.035, which identifies the types of orders and judgments that a defendant may appeal from a circuit court (or a local court of record) to the Court of Appeals.
- c. Section 16(2) provides that a defendant may appeal an order denying a motion for relief from default.
 - i. The work group (and a subgroup) spent a significant amount of time discussing appeals from justice courts to circuit courts in violation cases where a defendant failed to appear and the justice court entered a

default judgment. The primary issue discussed was the circuit court's standard of review. At least one work group participant preferred an "abuse of discretion" standard of review based on the assumption that the justice court considered the same evidence for relief from default as the circuit court. The work group ultimately decided to apply the same procedure that applies to all other appeals from justice courts: a record is created in the circuit court and the circuit court decides the matter before it "anew" based on that record.

- d. Section 16(3) provides that a defendant may (but is not required to) file a cross-appeal when the prosecutor files an appeal. Section 16(3) is based on ORS 138.035, which applies to appeals from circuit courts to the Court of Appeals. ORS 138.035(5) provides, "A defendant may cross-appeal when the state appeals pursuant to ORS 138.045(1)(d)."

SECTION 17 - APPEAL BY THE STATE OR COUNTY**1. SUMMARY**

- a. Section 17 concerns appeals from justice courts to circuit courts by the prosecutor in cases involving violations or misdemeanors.

2. RELATIONSHIP TO EXISTING LAW

- a. ORS 157.020(2) lists the types of judgments that a prosecutor in a misdemeanor case in a justice court may appeal to a circuit court.
- b. ORS 138.045 identifies the types of orders and judgments that the state can appeal from the circuit court to the Court of Appeals.
- c. The idea behind Section 17 is that the types of orders that a prosecutor can appeal from a justice court that is not a court of record should be the same as those that the state can appeal from a justice court that is a court of record or from the circuit court.
- d. Section 17(1) is intended to combine the lists of the orders and judgments that a prosecutor can appeal that are currently in ORS 157.020(2) and ORS 138.045.
 - i. Section 17(1)(a) refers to "[a]n order made prior to trial dismissing or setting aside one or more counts in the accusatory instrument." This type of order is not currently mentioned in ORS 157.020(2), but it is in ORS 138.045(1).
 - ii. Section 17(1)(b) refers to "[a]n order allowing a demurrer." It is taken verbatim from ORS 138.045(2).
 - iii. Section 17(1)(c) refers to "[a]n order made prior to trial suppressing evidence." It is similar to ORS 157.020(2)(c) and the same as ORS 138.0045(1)(d).
 - iv. Section 17(1)(d) refers to "[a]n order made prior to trial for the return or restoration of evidence." It is similar to ORS 157.020(2)(d) and ORS 138.045(1)(e).
 - v. Section 17(1)(e) is the same as ORS 157.020(2)(b) and ORS 138.045(1)(c).
 - vi. Section 17(1)(f) is the same as ORS 138.045(1)(i). There is no equivalent provision in ORS 157.020.
 - vii. Section 17(1)(g) is the same as ORS 138.045(1)(j). There is no equivalent provision in ORS 157.020.
- e. Section 17(2) is new. It concerns default judgments, which can be entered in violation cases. It provides that the prosecutor can appeal a justice court's grant of a motion for relief from a default judgment. Note that the scope of review in such an appeal is discussed in Section 18b(5).
- f. Section 17(3) is similar to current law. Section 17(3) provides that the state or county may not appeal the dismissal of a violation by reason of a police officer's failure to appear at the trial of the matter if the police officer was timely provided with notice of the trial date. Section 17(3) is based on ORS 138.057(3),

which provides, "[i]n any case in which only violations are charged, the state may not appeal from an order dismissing the case that is entered by reason of a police officer's failure to appear at the trial of the matter." Section 17(3) changes existing law, so that the limitation on the state or county's ability to appeal will apply only if the police officer received notice of the trial date.

SECTION 18 - PROCEEDINGS IN THE CIRCUIT COURT IN GENERAL IN CASES CHARGING OFFENSES**1. SUMMARY**

- a. Section 18 concerns the proceedings for appeals in the circuit court. As discussed, an appeal from a justice court that is not a court of record is not the same as an appeal from a justice court that is a court of record. If a justice court is a court of record, then the appellate court can review the record to determine if the justice court erred. Consequently, such appeals can be brought directly to the Court of Appeals. But, if a justice court is not a court of record, then there is no record for the appellate court to review to determine if the justice court erred, and, therefore, the appeal is more akin to a new proceeding.
- b. Section 18(1) concerns how circuit courts should proceed, in general, when handling appeals involving violations or misdemeanors.
- c. Section 18(2) governs a circuit court's sentencing options when a defendant appeals a case involving a violation or misdemeanor from a justice court to a circuit court. The idea underlying Section 18(2) is that the circuit court's sentencing authority is the same as that of the court that the appeal is taken from.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 18(1) is based on ORS 221.390(1), which governs the appeals from municipal courts to circuit courts. Section 18(1) closely tracks ORS 221.390(1) but is not identical to it. ORS 221.390(1) refers to "an attorney provided by the city with the municipal court from which the appeal is taken." Because Section 18(1) applies to justice courts, it refers to "an attorney provided by the county or other political subdivision of the state that enacted the ordinance or adopted the provision of a charter the defendant was convicted of violating."
- b. Section 18(2) is based on ORS 221.390(2), which governs appeals from municipal courts to circuit courts.

SECTION 18a - SCOPE OF REVIEW IN GENERAL OF ORDER OR JUDGMENT OTHER THAN JUDGMENT OF CONVICTION AND SENTENCE**1. SUMMARY**

- a. Section 18a concerns the scope of review when a party appeals an order or judgment other than a judgment of conviction and sentence. Section 18, just discussed, applies when a violation or misdemeanor case has been litigated to completion in the justice court (whether through a plea or trial) and the defendant is appealing the judgment of conviction and sentence. Section 18a applies to other appeals, for example, appeals of pretrial rulings or post-trial orders. Section 18a provides that the circuit court "may review only the order or judgment from which the appeal is taken and any issue necessary to decide the appeal but may receive and consider evidence as necessary to decide the matter anew."
- b. The purpose of Section 18a is to make it clear that, even though an appeal to a circuit court is like a new proceeding, it does not always involve a new trial in the circuit court.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 18a is new. It makes explicit what is believed to be implicit in current law.

SECTION 18b - SCOPE OF REVIEW IN SPECIFIC CASES**1. SUMMARY**

- a. Section 18a establishes the scope of a circuit court's review in certain types of cases.
- b. Section 18b(1) concerns appeals in cases where a defendant pleaded guilty or no contest in the justice court. In those appeals, the circuit court treats the plea as if it was entered in the circuit court. Only the defendant's sentence is at issue, and the circuit court sentences the defendant anew.
- c. Section 18b(2) provides that the parties are bound by any sentencing agreement they reached in the justice court.
- d. Section 18b(3) concerns appeals of restitution orders or judgments and provides that the circuit court shall sentence the defendant anew. The circuit court does not address only the restitution issue. Because the imposition of restitution could have affected other parts of the defendant's sentence, the circuit court sentences the defendant anew.
- e. Section 18b(4) concerns appeals of amended or corrected judgments. It provides that such appeals shall proceed in the same manner as an appeal from the original judgment, unless the time for filing a notice of appeal from the original judgment has passed, in which case the circuit court may review only the corrected or amended part of the judgment or any part of the judgment affected by the correction or amendment."
- f. Section 18b(5) concerns appeals from justice court rulings on motions for relief from default. (Under Section 16(2), a defendant can appeal a ruling denying such a motion, and under 17(2), the prosecution can appeal a ruling granting such a motion.) The circuit court shall determine whether to grant the relief in accordance with **ORS 153.105**, which establishes the standard applied in criminal cases that originate in circuit court.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 18b is new.
- b. The provisions in sections 18b(1), (2), and (3) clarify existing practice and establish consistent limitations on the scope of circuit court review in some types of cases.
- c. The language of Section 18b(4) derives from ORS 138.105(10)(b).
- d. Section 18b(5) is intended to be modeled on the process that would occur in a case originating in circuit court.

SECTION 19 - CIRCUIT COURT PROCEEDINGS ON APPEAL IN VIOLATION AND MISDEMEANOR CASES**1. SUMMARY**

- a. Section 19 relates to the actions that a circuit court may take after resolving the merits of an appeal in a misdemeanor or violation case.
- b. Section 19(1) provides that, in a misdemeanor case, on appeal by the defendant of a judgment of conviction or sentence or of an amended or corrected judgment, the circuit court must enter a judgment as provided in Section 14(2)(a), that is, a judgment "as if the case had been originally commenced in the circuit court * * * and to be enforced as a judgment of the circuit court."
- c. Section 19(2) provides that, in a violation case, on appeal by the defendant of a judgment of conviction or sentence or of an amended or corrected judgment, if the circuit court determines that no term of the justice court should be reversed or modified, the circuit court can either issue a judgment affirming the judgment of the justice court and remanding the case to the justice court for enforcement of the judgment, as provided by Section 14(2)(b), or render a judgment to be enforced as a judgment of the circuit court.
- d. Section 19(3) concerns appeals by a defendant from a judgement or order described in Section 16(1)(b) or (c), which relates to restitution or probation. It provides that the court shall render a judgement disposing of as much of the case as was tried before the circuit court.
- e. Section 19(4)(a) concerns appeals by defendants in violation cases. It provides that, if a defendant appeals the denial of a motion for relief from default in such a case and the circuit court determines that relief should be granted, the circuit court should vacate the default judgment and either (A) remand the case for further proceedings, or (B) retain the case in the circuit for further proceedings, if the justice court has adopted a rule described in Section 19(4)(b).
- f. Section 19(4)(b) provides that a justice court may adopt a rule to allow proceedings described in Section 19(4)(a) to remain in circuit court.
- g. Section 19(5) concerns pretrial appeals by the prosecution. It provides that, after a circuit court has decided the matter appealed, a party may ask the circuit court to keep the case. If a party does, the circuit court shall take jurisdiction of the case, try the remainder of the case, and render a judgment as if the case had originated in the circuit court. But if no party asks the circuit court to keep the case, then the circuit court shall render a judgment disposing of as much of the case as was tried before the circuit court and remanding the case to the justice court for further proceedings.
- h. Section 19(6) concerns appeals by the prosecution of post-verdict orders. In such appeals, the circuit court "shall render a judgment reflecting its decision and remanding the case to the justice court."

- i. Section 19(7) concerns appeals by the prosecution in violation cases where the justice court granted a motion for relief from default. In such an appeal, if the circuit court determines that the defendant should not be granted relief from default, then the circuit court shall render a judgment vacating the justice court's order granting relief and remanding the case for further proceedings.
2. RELATIONSHIP TO EXISTING LAW
 - a. Section 19 is new. Current law describes a circuit court's judgments in a general manner. See ORS 53.125 (civil) and ORS 157.065 (misdemeanor and violation). Like Section 14, Section 19 provides more guidance for (and limitations on) circuit courts. It is intended to enable circuit courts to keep cases in certain situations, but to direct circuit courts to send cases back to the justice court in other situations.

SECTION 20 - Section 20 was intentionally omitted from the bill to maintain the numbering from a prior draft.

SECTION 21- STAY OF ENFORCEMENT OF JUDGMENT

1. SUMMARY

- a. Section 21 concerns stays of the enforcement of judgments in misdemeanor and violation cases. It is intended to retain current law.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 21 is not intended to change existing law.
- b. Section 21(1) is based on ORS 157.050.
- c. Section 21(2) is based on ORS 138.057.
- d. Section 21(3) is intended to clarify that other sources of authority for stays are not affected by the provisions in this section.

(SECTION 22 - INTENTIONALLY OMITTED TO MAINTAIN NUMBERING FROM PRIOR DRAFTS)**SECTION 23 - APPEAL FROM CIRCUIT COURT****1. SUMMARY**

- a. Section 23 concerns what happens after a circuit court has resolved the matter before it on appeal from a justice court.
- b. Section 23(1)(a) provides that in a violation case, "the order or judgment may be appealed as provided in ORS 138.057." Similarly, ORS 138.057(2) provides that, "[s]ubject to provisions of this subsection, an appeal from a judgment involving a violation entered by a circuit court may be taken as provided in ORS chapter 19." That chapter governs civil appeals from circuit courts to the Court of Appeals.
- c. Section 23(1)(b) concerns misdemeanor cases. It provides that, when a misdemeanor case has been appealed from a justice court to a circuit court, the circuit court's order or judgment can be appealed as provided in ORS 138.010 to 138.310. Those statutes govern criminal appeals from circuit courts to the Court of Appeals.
- d. Section 23(2) provides that, in any case where only violations are charged, the state may not appeal from an order dismissing a case based on a police officer's failure to appeal if the officer had timely notice of the trial.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 23(1)(a) is based on ORS 138.057(2), which relates to violations and provides that "an appeal from a judgment involving a violation entered by a circuit court may be taken as provided in ORS chapter 19." ORS 153.121 provides generally that an appeal from a judgment in a violation proceeding may be taken, "[f]rom a proceeding in circuit court, as provided in Chapter 19, except that the standard of review is the same as for an appeal from a judgment in a proceeding involving a misdemeanor or felony."
- b. Section 23(1)(b) provides that appeals from a misdemeanor are taken as provided in ORS 138.010 to 138.310. This is intended to retain current law.
- c. Section 23(2) is based on ORS 138.057(3). It is similar to Section 17(3) which prohibits appeals by the state when a police officer fails to appear for trial after timely notice.

CIVIL ACTIONS

The sections in this part of the bill (Sections 24-30) establish procedures that apply only to civil cases from justice courts.

SECTION 24 - WHO MAY APPEAL

1. SUMMARY

- a. Section 24 concerns when a party may appeal a judgment in a civil action.
- b. Under Section 24(1), in order to appeal, there must be a minimum amount in controversy (\$30) or the action must be for the recovery of the possession of real property under ORS 105.110 (an eviction case).
- c. The work group discussed the low minimum amount in controversy and noted that it was established in 1977. The group ultimately decided to leave the amount unchanged.
- d. Section 24(2) concerns appeals in cases involving default judgments. The work group spent a significant amount of time discussing such appeals. The work group decided that default judgments themselves should not be appealable. Instead, if a party is seeking relief after a default judgment, the party must file a motion for relief from the default judgment in the justice court. The justice court will rule on that motion. The party can then appeal the ruling on the motion for relief to the circuit court.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 24(1) is based on ORS 53.010.
- b. Section 24(2) is new. It is intended to clarify what parties and courts may do after a default judgment has been entered.

SECTION 25 - UNDERTAKING FOR COSTS AND DISBURSEMENTS AND STAY OF PROCEEDINGS**1. SUMMARY**

- a. Section 25 concerns undertakings and related stays.
- b. Section 25(1)(a) defines "undertaking."
 - i. It makes clear that an undertaking can be supported by security other than personal sureties, including bonds and security deposits, which apparently is the practice of at least some justice courts. The purpose of adding bonds and security deposits as forms of security undertakings is to reflect modern practice whereby most appellants either procure corporate bonds or make cash deposits and do not rely on personal sureties.
 - ii. ORS 22.020 may already permit cash deposits, as well as letters of credit, and other forms of security, but the justice court participants of the work group were uncertain of the applicability of ORS 22.020 and the availability of other forms of security.
- c. Section 25(1)(b) establishes the requirements for a surety.
- d. Section 25(2) requires an appellant to file an undertaking within 5 days after the filing of the notice of appeal, although the justice or circuit court, for good cause, may extend the time for filing.
- e. Section 25(3) concerns stays. Section 25(3) recognizes that an undertaking can serve a purpose other than securing payment of the costs a respondent is likely to incur on appeal; it recognizes that an undertaking also can be used to stay enforcement of the judgment being appealed (such undertakings are often called supersedeas undertakings). To obtain a stay using an undertaking, the appellant must promise in the undertaking to pay the justice court judgment to the extent that the circuit court affirms the justice court's decision; under section (1), any such promise must be supported by sufficient security so that the respondent on appeal will be more readily able collect the amount due if the respondent prevails on appeal.
- f. Section 25(4) concerns objections to the sufficiency of an undertaking. Section 25(4) recognizes that a respondent may object to the adequacy of the appellant's undertaking, which may be especially important if it is a supersedeas undertaking that prevents the respondent from enforcing the judgment pending appeal.
- g. Section 25(5) provides the procedures that will allow the tenant in an eviction action to stay a judgment of eviction pending appeal. It allows a tenant to file an undertaking promising to deposit money with the court each month equal to the fair market rental value of the property. Either in the undertaking or by order of the justice court, the tenant will be obligated to deposit that amount by a certain day each month. So long as the tenant does so, the landlord may not enforce the judgment and evict the tenant. However, if the tenant fails to deposit the entire

amount or fails to deposit it timely in any month, the landlord may proceed to enforce the judgment and evict the tenant. Subsection (5) also provides a means to disburse the funds deposited with the justice court to the persons entitled to the funds after the appeal is resolved. Typically, the landlord would be entitled to all of the deposited funds, but in a case where the lack of habitability of the rental property may affect the fair market rental value of the property, it is possible that some of the funds could be returned to the tenant. Subsection (5)(c) authorizes the circuit to decide such issues on motion of the parties.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 25(1)(b) is based on the first sentence of ORS 53.070.
- b. Section 25(2) is based on ORS 53.030 and ORS 53.040.
- c. Section 25(3) is based on the second sentence of ORS 53.040.
- d. Section 25(4) is new. ORS 53.070 currently recognizes that, on appeal from justice courts in civil cases, ORCP 82 governs the qualifications of sureties and that the adverse party may challenge the qualifications of sureties under ORCP 82. However, under ORS Chapter 22, a party may use other forms of security, such as a cash deposit or a corporate bond. Section 25(4) expands on those provisions and makes explicit that an undertaking can be supported by a bond or a cash deposit. Subsection (4) also recognizes that, under ORCP 82 F, in addition to challenging the qualifications of sureties, the beneficiary of an undertaking may object to such matters as the amount of the undertaking or the lack, or inadequacy, of the security in support of an undertaking. Subsection (4) also recognizes that ORCP 82 G provides a process for hearing and deciding objections to the sufficiency of an undertaking. Subsection (4) differs from ORCP 82 F only in that ORCP 82 F provides that the beneficiary of an undertaking has only 10 days after the undertaking is served and filed to file an objection, but under subsection (4), such party will have 14 days. Using increments of seven days makes it more likely that the due date of a court filing will not fall on a Saturday, Sunday, or holiday when the court will be closed.
- e. Section 25(5) is new and codifies practices that have grown up in circuit courts (and at least some justice courts) in appeals in residential FED (eviction) cases. It is almost impossible for a tenant to get personal sureties or a corporate bond to stay enforcement of a judgment of eviction. The only realistic way for tenants to provide security in support of a stay pending appeal is to make monthly cash deposits with the circuit court equal to the fair market rental value of the property. Section 25 prescribes the procedures for that purpose and is intended to balance the interests of both the tenant and the landlord.
- f. Section 25(6) provides that when judgment is given in the circuit court against the appellant, either with or without the trial of the action, it must also be given against the sureties in the undertaking of the appellant, according to its nature and effect. Section 25(6) is similar to the provision in Section 29.

SECTION 26 - STAY OF PROCEEDINGS WITHOUT UNDERTAKING**1. SUMMARY**

- a. Section 26 provides that, if the justice court judgment is in favor of the appellant, the proceedings on the judgment are stayed by the filing of the notice of appeal and the undertaking for costs.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 26 is based on ORS 53.050 and does not change the substance of current law.

SECTION 27 - RECALL OF EXECUTION WHEN STAY IS GRANTED**1. SUMMARY**

- a. Section 27 requires a justice court to recall the execution of a judgment if the judgment has been stayed.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 27 is based on the second and third sentences of ORS 53.060 and does not change the substance of current law.

SECTION 28 - ENFORCEMENT OF JUDGMENT IN CONTRACT ACTION NOTWITHSTANDING APPEAL**1. SUMMARY**

- a. Section 28 allows a respondent to enforce a judgment in a contract action, despite the filing of an undertaking, if the respondent files an undertaking to the effect that, if the judgment is changed or modified on appeal, the respondent will make such restitution as the circuit court may direct.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 28 is based on ORS 53.080 and does not change the substance of current law.

SECTION 28a – APPEALS FROM ACTIONS FOR THE RECOVERY OF REAL PROPERTY**1. SUMMARY**

- a. Section 28a(1) provides an expedited timeline in appeals for actions for the recovery of real property for justice courts to forward the notice of appeal and case record to the circuit court (10 days).
- b. Section 28a(2) clarifies that no first appearance is required on appeal to the circuit court, and establishes a timeline for trial. This is not intended to affect the ability of the circuit court to hold pretrial hearings or schedule mediation prior to trial at the court's discretion.

2. RELATIONSHIP TO EXISTING LAW

- a. This section is new.

SECTION 29 - JUDGMENT ON DISMISSAL OR AFTER TRIAL; JUDGMENT AGAINST SURETIES

1. SUMMARY

- a. Section 29 governs what a circuit court must do if it dismisses a case. Among other things, it provides that when judgment is entered against an appellant, it must also be given against any surety.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 29 is based on the second and third sentences in ORS 53.110 and does not change the substance of current law.

SECTION 30 - APPEAL FROM CIRCUIT COURT**1. SUMMARY**

- a. Section 30 provides that, after an appeal from a justice court that is not a court of record to a circuit court, and after an order or judgment is entered by the circuit court, an appeal may be brought to the Court of Appeals.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 30 is new. It is intended to make explicit that, after a case is appealed from a justice court to a circuit court and, after an order or judgment is entered by the circuit court, thereby, a record is created, the case can be appealed from the circuit court to the Court of Appeals.

SMALL CLAIMS**INTRODUCTION**

Small claims cases are governed by statutes in ORS Chapter 55. Small claims cases can be heard in justice courts. The bill amends the small claims statutes that relate to appeals from justice courts that are not courts of record. Like other appeals from such courts, the appeal is to the circuit court, which decides the matter anew. Like other civil appeals from justice courts, an appeal requires a minimum amount in controversy. Small claims cases that are originally litigated in the circuit court are not appealable to the Court of Appeals. The same is true for small claims cases that are appealed from the justice court to the circuit court; they cannot go further and be appealed to the Court of Appeals.

SECTION 30a – CONCLUSIVENESS OF JUDGMENT**1. SUMMARY**

- a. Section 30a concerns when an appeal may be taken from a justice court to a circuit court in a small claims case. It provides that an appeal cannot be taken from a judgment by confession or for want of an answer, but an appeal can be taken from a ruling on a motion for relief from default. It also establishes a \$30 minimum amount at issue, which is the same as for other civil cases. See Section 24(1).
- b. Note that Section 30a(3)(b) bars appeal from the small claims department of a justice court of record.

2. RELATIONSHIP TO EXISTING LAW

- a. Section 30a modifies ORS 55.110. It adds provisions addressing judgments taken by confession or for want of an answer (default judgments). It treats appeals in cases involving default judgments the same as other sections of the bill: it requires the defaulting party to file a motion for relief from default and it allows an appeal of the justice court's ruling on that motion. Section 30a makes it clear that appeals from justice courts in small claims cases are allowed only when the justice court is not a court of record.

SECTION 30b

1. SUMMARY - Section 30b concerns the placement of Section 30s in the ORS. Its purpose is to make sure that the small claims sections of the bill are placed in the series of statutes in ORS Chapter 55 that concern small claims.

SECTION 30c

1. SUMMARY

- a. Section 30c(1) provides that appeals to justice courts in small claims cases shall proceed in the manner provided in the bill for other appeals to justice courts. It also requires the State Court Administrator to create a model form for notices of appeal in small claims cases. In addition, Section 30c provides that appeals in small claims cases are decided anew (like other appeals from justice courts that are not of record). Finally, Section 30c provides that the circuit court's decision shall be final and conclusive (which is the case for small claims cases that originate in circuit court).

2. RELATIONSHIP TO EXISTING LAW

- a. Section 30c is based on ORS 55.110, which provides for appeals from justice courts to circuit courts. Section 30c retains some parts of ORS 55.110, eliminates others, and adds new provisions. It makes substantive changes to the law, as discussed below.
 - b. Section 30c provides that the appeal shall proceed in the manner provided in section 8 to 30 of the bill.
 - i. Section 8 requires notices of appeal to be filed within 30 days of the date of entry of the judgment in the justice court docket. Currently, ORS 55.110 establishes a 10-day deadline for small-claims notices of appeal. Section 30c changes the deadline from 10 days to 30 days. The work group discussed this change and many participants strongly supported it both because participants thought that the deadline should be the same for all case types to avoid confusion and because participants thought 10 days was too short.
 - ii. This amendment, combined with the repeal of ORS 55.120, has the effect of extending the time within which a small claims appellant must file the undertaking at the same time as filing the notice of appeal to five days after filing of the notice of appeal.
 - c. Section 30c also deletes a section of ORS 55.110 that required a party that unsuccessfully appealed to pay a \$10 attorney fee to the other party. The deletion is because the amount is an anachronism and small claims litigants rarely would have incurred any attorney fees, and the amount is too low to be meaningful.

AMENDMENTS TO EXISTING STATUTES

Section 30d amends ORS 19.240, which addresses how appeals are taken from circuit courts and justice and municipal courts of record to the Court of Appeals. The amendment in ORS 19.240(2)(c) clarifies a requirement to serve the notice of appeal on the trial court transcript coordinator “if applicable.” The amendment reflects that justice courts do not have transcript coordinators.

Section 30e amends ORS 153.105 and outlines the criteria and process for relief from a default judgment in violation cases. The amendment to ORS 153.105(1) modifies the term “mistake” to explicitly include “a clerical mistake” or that the court committed a legal error in entering the judgment as reasons for relief from a default judgment. Further, the addition of Section 30e(3) to ORS 153.105 makes explicit that the additional reasons in ORS 153.105(1) do not limit the inherent authority of the court to relieve a party of a judgment within a reasonable time. The intent is to have requests for relief from default in violation cases more closely align with requests for relief from default in civil cases in circuit courts.

Section 30e(2) adds a requirement that a justice court must note in the docket if a defendant makes an oral request for relief from default or if the court rules on the request orally that the request was made and the court’s decision was made on that request.

(SECTION 31 - INTENTIONALLY OMITTED TO MAINTAIN NUMBERING FROM PRIOR DRAFTS)

Section 32 amends ORS 138.005, which defines terms for appeals to the Court of Appeals in criminal (felony and misdemeanor) cases. The amendment is needed because, in appeals from justice and municipal courts of record in prosecutions for misdemeanors created by a county or a municipality, the county or the city is the real party in interest for the prosecution in the case; therefore, the provisions of ORS Chapter 138 governing appeals in criminal cases that apply to the State of Oregon for misdemeanors created by state law also need to apply to counties and cities for misdemeanors created by counties or cities.

Section 32a amends ORS 138.090 amends ORS 138.090 to avoid unintended consequences from the addition of the new definition of “state” in ORS 138.005.

Section 33 amends ORS 138.057(2) to incorporate this bill’s appellate provisions relevant to violations for courts not-of-record. It further clarifies that nothing in this section is intended to affect the authority of the circuit court to stay enforcement of the judgment. Finally, the amendment also clarifies that in a violation case, the state may not appeal from an order dismissing the case that is entered by reason of a police officer’s failure to appear at the trial of the matter if the police officer was timely provided with notice of the trial.

Section 34 amends ORS 138.081, which addresses service and filing of notices of appeal in criminal (felony and misdemeanor) cases. The amendments reflect that counties and cities have

the authority to appeal misdemeanors and, on a defendant's appeal in such cases, the prosecutor to be served with notice of appeal is the county counsel or the city attorney.

REPEALS

Section 35 – Repeals the following statutes: ORS 21.285, ORS 51.070, ORS 51.080, ORS 51.090, ORS 51.110, ORS 51.120, ORS 51.130, all of ORS Chapter 53 and all of ORS Chapter 157. The essential provisions of those statutes are reenacted in other parts of the bill and are part of the workgroup's effort to consolidate and streamline statutory provisions now scattered across a number of ORS chapters, and to reorganize them in a more logical and user-friendly manner. A notable exception is the elimination of trial fees on appeal from violations through repeal of ORS 21.285 without reenactment of the trial fees provision. This is addressed in the comments to Section 10a above.

Section 35a – Conforming Amendment.

MUNICIPAL COURTS

As mentioned, one of the projects goals was to clarify the processes for appeals from local courts, and one way the work group tried to do that was to make the processes the same (or as similar as possible) for appeals in different case types and from different courts. Although the work group considered drafting a single set of statutes for appeals from both justice and municipal courts, it ultimately decided against that because of how the current statutes are organized, with justice court provisions and municipal court provisions in different ORS chapters. But, because the work group wanted to make the processes for justice and municipal courts the same (or as similar as possible), the sections of the bill that relate to justice courts and are described above are mirrored in the sections that relate to misdemeanor courts. The following chart shows the municipal court sections of the bill and their corresponding justice court sections.

MUNICIPAL COURT PROVISION	SUBJECT	JUSTICE COURT PROVISION
36	Not applicable to justice courts; simply specifies where Section 36a to 51 should be added to the ORS: in chapter 221	N/A
37	Transfer to circuit court	5
37a	Adverse party contact information	6a
37b	Definition of "matter"	6b
38	Court to which appeal is taken	7
39	Time within which appeal must be taken	8
39a	Contents of notice of appeal	9
40	Filing and service of notice of appeal	10
40a	Filing fee	10a
41	Jurisdiction over the matter and to decide the appeal	11
41a	Submission of the record	12
42	Proceedings in the circuit court and standard of review generally	13
42a	Rendering judgment; remand; notice to justice court	14
43	Availability of writ of review	15
43a	Appeal and cross-appeal by the defendant	16
44	Appeal by the prosecution	17
44a	Proceedings in circuit court generally in cases charging offenses	18
45	Scope of review in general of order or judgment other than judgment of conviction and sentence	18a
46	Scope of review in specific cases	18b
47	Circuit court proceedings in specific appeals	19
48	(intentionally omitted to retain numbering from earlier draft)	20
49	Stay of enforcement of judgment	21
50	Validity of charter or ordinance provision determined before merits	None
51	Appeal from circuit court to Court of Appeals	23

Because the municipal court sections generally mirror the justice court sections, this report does not repeat the explanations of the sections here. Notably, one of the municipal court sections, Section 50, does not have a corresponding justice court section. That is because Section 50 concerns a subject that, under current law, is unique to municipal courts. Portions of Section 43a are also unique.

SECTION 43a – APPEAL AND CROSS-APPEAL BY THE DEFENDANT

Although LC 156 reorganizes and rewrites ORS 221.359 and 221.360 to promote clarity, the Work Group intends to preserve the meaning of ORS 221.359 and 221.360 and the case law interpreting and applying those statutes. By replicating part of ORS 221.359 in Section 43a(5) and ORS 221.360 in Section 43a(6), the Work Group intends to preserve *City of Eugene v. Lincoln*, 183 Or App 36, 50 P3d 1253 (2002), and *City of Lowell v. Wilson*, 197 Or App 291, 105 P3d 856, rev den, 339 Or 406 (2005), as authoritative case law.²³

SECTION 50 - VALIDITY OF CHARTER OR ORDINANCE PROVISION DETERMINED BEFORE MERITS

1. SUMMARY

- a. Section 50(1) provides that, whenever a defendant is charged with violating a provision of city charter or ordinance and the defendant challenges the constitutionality of the charter or ordinance provision, the municipal court shall determine the challenge and enter an order on that issue before deciding the case on its merits.
- b. Section 50(2) provides that, if the municipal court judge declares the provision unconstitutional, the city may appeal from the municipal court to the circuit court, and that if the circuit court affirms the municipal court, the city may appeal to the Court of Appeals. It further provides that, if a city so appeals, the defendant shall be released, with or without bond, for reappearance at the discretion of the trial court until such time as the case is remanded.
- c. Section 50(3) provides that, if the municipal court declares the charter or ordinance provision valid, the municipal court may proceed to try the matter. If the municipal court convicts the defendant, the defendant may appeal as provided in Section 51.

AMENDMENTS TO EXISTING STATUTES

Section 52 amends ORS 221.352 and identifies what should be included in a municipal court case record. Section 3 of the bill identifies what should be included in a justice court case record. The amendments to ORS 221.352 are intended to more closely align the case records of

²³ The description of Section 43a above was inadvertently left out of the final report submitted to the Oregon Law Commission at their December 5, 2024 meeting.

justice and municipal courts and to insure that, if an appeal is taken from a justice or municipal court, the appellate court has the same case materials that were considered by the justice or municipal court. The amendments clarify that the case record has two essential parts: the docket, which is a log of every significant event in a case and every document filed in a case, and the case file, which contains the documents themselves. Section 52 also provides that, if a party arranges to have a municipal court proceeding recorded, it is part of the case record if all parties agree that the recording is the official record of the proceeding, and the recording or other reporting has been filed with the court. Lastly, Section 52 allows municipal courts to maintain their dockets and case file in electronic form. While Section 52 and Section 3 address many of the same issues, the language in the two sections do not directly mirror each other.

Section 52a amends ORS 221.358 and allows for audio, stenographic or other recording of municipal court proceedings in courts not of record and gives such courts the authority to determine how to store those recordings based on their resources. Section 52 mirrors the provisions of ORS 51.105, which authorizes parties in cases in justice courts not of record to arrange for recording of court proceedings.

REPEALS

Section 53 repeals the following sections of ORS Chapter 221: ORS 221.359, ORS 221.360, ORS 221.370, ORS 221.380 and ORS 221.390. These statutes constitute the complete subsection “Appeals” in ORS Chapter 221. The essential provisions of these statutes are reenacted by the bill, in some instances replicating the exact wording in current statutes. The repeal and reenactment is part of the workgroup’s effort to make the statutes more user-friendly. As previously noted in this report, under current law, municipal courts operate much like justice courts, but the statutes that govern appeals require the reader to flip back and forth between a number of chapters to determine the process for appeals. Based on the advice of Legislative Counsel, the workgroup elected to recommend this bill, which assembles the statutes applicable to justice courts in the ORS title applicable to state courts in one place and the statutes applicable to municipal courts in the ORS title applicable to cities.

CONFORMING AMENDMENTS

Section 54 – Section 55 contain technical amendments for statutes that cross-reference or are otherwise affected by statutes being amended or repealed.

CAPTIONS

Section 55 explains that the unit and captions used in the bill are provided only for convenience and do not become part of the statutory law.

OPERATIVE DATE

Section 56 provides that sections of the bill become operative on January 1, 2026.

Section 57 provides that the act takes effect on the 91st day after the date on which the regular session of the 83rd Legislative Assembly adjourns.

TABLE OF SECTIONS

JUSTICE COURT PROVISIONS		
PROVISION	SUBJECT	CORRESPONDING MUNICIPAL COURT PROVISION
JUSTICE COURTS GENERALLY		
1	Amending ORS 51.050	ORS 221.339 is corresponding provision, not amended by the bill
1a	Amending ORS 156.705	None
2	Civil Jurisdiction	None because municipal courts do not hear civil actions
3	Case Record	52
4	Keeping Case Record	None
5	Transfer to circuit court	37
6	Pleas	37(2)
6a	Adverse party contact info	37a
APPEALS FROM JUSTICE COURTS GENERALLY		
6b	Definition of "matter"	37b
7	Court to which appeal is taken	38
8	Time within which appeal must be taken	39
9	Contents of notice of appeal	39a
10	Filing and service of notice of appeal	40
10a	Filing fee in civil cases	40a
11	Jurisdiction over the matter and to decide the appeal	41
12	Submission of the record	41a
13	Proceedings in the circuit court and standard of review generally	42
14	Rendering judgment; remand; notice to justice court	42a
15	Availability of writ of review	43
VIOLATION AND MISDEMEANOR APPEALS FROM JUSTICE COURTS		
16	Appeal and cross-appeal by the defendant	43a
17	Appeal by the prosecution	44
18	Proceedings in circuit court generally in cases charging offenses	44a
18a	Scope of review in general of order or judgment other than judgment of conviction and sentence	45

18b	Scope of review in specific cases	46
19	Circuit court proceedings on appeal in violation and misdemeanor cases	47
20	(intentionally omitted)	
21	Stay of enforcement of judgment	49
--	Validity of charter or ordinance provision determined before merits	50
22	(intentionally omitted)	None
23	Appeal from circuit court	51
CIVIL APPEALS FROM JUSTICE COURTS		
24	Who may appeal	None because municipal courts do not hear civil actions
25	Undertaking for courts and disbursements	None because municipal courts do not hear civil actions
26	Stay of proceedings without undertaking	None because municipal courts do not hear civil actions
27	Recall of execution when stay granted	None because municipal courts do not hear civil actions
28	Enforcement of judgment in contract action notwithstanding appeal	None because municipal courts do not hear civil actions
28a	Appeals from actions for the recovery of real property	None because municipal courts do not hear civil actions
29	Judgement on dismissal or after trial; judgment against sureties	None because municipal courts do not hear civil actions
30	Appeal from circuit court	None because municipal courts do not hear civil actions
SMALL CLAIMS APPEALS FROM JUSTICE COURTS		
30a	Appeals from rulings on motions for relief from default	None because municipal courts do not hear civil actions
30b	Adding section 30 c to ORS Chapter 55	None because municipal courts do not hear civil actions
30c	Appeals to be taken the same as for appeals in civil cases generally	None because municipal courts do not hear civil actions
AMENDING EXISTING STATUTES RELATING TO JUSTICE COURT APPEALS		
30d	Amending ORS 19.240 (technical amendment)	
30e	Amending ORS 153.105 re: motions for relief from default in violation cases	Chapter 153 applies to violation proceedings in all courts
31	(intentionally omitted)	

32	Amending ORS 138.005 to define "state" to include a city in a prosecution in municipal court	
32a	Amending ORS 138.090 to conform to amendments of ORS 138.005 in Section 32.	
33	Amending ORS 139.057	Also applies to municipal courts
34	Amending ORS 138.081	
REPEALS		
35	Repeals various statutes	
CONFORMING AMENDMENTS		
35a	Amending ORS 21.135 relating to filing fees	Applies by its terms to municipal courts
35b	Amending ORS 21.160 relating to filing fees on appeal from justice courts in civil cases	None because municipal courts do not hear civil actions
35c	Amending ORS 21.160 relating to appeals from a justice court that ceases to be a court of record	54
MUNICIPAL COURT PROVISIONS		
PROVISION	SUBJECT	CORRESPONDING JUSTICE COURT PROVISION
36	Not applicable to justice courts; adds Section 36a to 51 to ORS chapter 221	
37	Transfer to circuit court	5
37a	Adverse party contact info	6a
37b	Definition of "matter"	6b
38	Court to which appeal is taken	7
39	Time within which appeal must be taken	8
39a	Contents of notice of appeal	9
40	Filing and service of notice of appeal	10
40a	Filing fee in civil cases	10a
41	Jurisdiction over the matter and to decide the appeal	11
41a	Submission of the record	12
42	Proceedings in the circuit court and standard of review generally	13
42a	Rendering judgment; remand; notice to justice court	14
43	Availability of writ of review	15

43a	Appeal and cross-appeal by the defendant	16
44	Appeal by the prosecution	17
44a	Proceedings in circuit court generally in cases charging offenses	18
45	Scope of review in general of order or judgment other than judgment of conviction and sentence	18a
46	Scope of review in specific cases	18b
47	Circuit court proceedings in specific appeals	19
48	(intentionally omitted to retain numbering from earlier draft)	20
49	Stay of enforcement of judgment	21
50	Validity of charter or ordinance provision determined before merits	None
51	Appeal from circuit court to Court of Appeals	23
AMENDING EXISTING STATUTES		
52	Amending ORS 221.352 re: case record	
REPEALS		
53	Repeals various statutes	
CONFORMING AMENDMENTS		
54	Amends ORS 221.343 re: appeals from a municipal court of record	35c
55	Captions provisions	
56	Operative date	
57	Effective Date	

AMENDMENTS

-1 Amendment

Substantive Change

Section 9, Section 13 and Section 18b – Justice Courts (Section 39a, Section 42, and Section 46 – Municipal Courts)

The -1 Amendment addresses a concern regarding the process included in HB 2460 as introduced to appeal a guilty or no contest plea. The proposed language draws from the statutes

that would be relevant to appeals of guilty or no contest pleas in ORS 138.105 and 138.085, which establish a requirement to plead a claim of legal error in the notice of appeal.

The goal of this language is to incorporate the concept from ORS Chapter 138 into the framework for appeals from courts not-of-record. But, because of the lack of record, the circuit court will not assess the merits of the asserted claim of legal error. Instead, a new sentencing proceeding is necessary because legal questions like whether a consecutive sentence was allowed would be dependent on the evidence about the facts of the case, and whether any factual findings in a written order were supported by the record could not be determined without a record.

The equivalent changes were made to the municipal court sections (Sections 39a, Section 42, and Section 46).

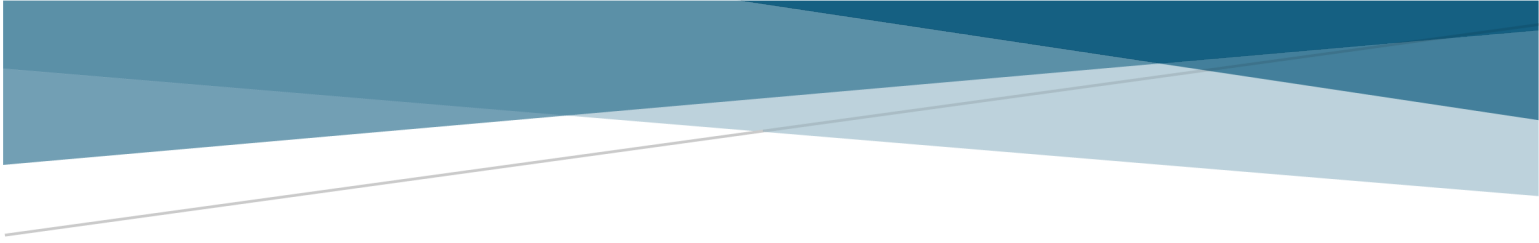
Technical Changes

Additional changes were made to HB 2460 by the -1 Amendment. These changes, however, were technical in nature, and do not change the analysis found in the report.

-A2 Amendment

The -A2 Amendment was made at the request of Sen. Floyd Prozanski, Chair, Senate Judiciary Committee. The -A2 Amendment updates the amount in controversy from \$30 to \$100 for appeals in a Justice Court to a Circuit Court.

--- END OF REPORT --



REPORT OF THE LLC MODERNIZATION WORKGROUP

Senate Bill 164A (LC 266)

Oregon Law Commission

Commissioners: John DiLorenzo and Valerie Sasaki

December 5, 2024
Updated July 17, 2025

Amy H. Zubko

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Introduction

In 1994, Oregon adopted its limited liability company (LLC) act. The initial Oregon statutory scheme was an amalgamation of Oregon's statutes relating to corporations, limited partnerships and general partnerships. Since that time, Oregon's LLC statutes, codified as Chapter 63 of the Oregon Revised Statutes, have been amended on numerous occasions.

When adopted, the act was cutting edge legislation. Practitioners and business owners didn't quite know what this new type of entity was or how it could be useful for Oregonians. They just knew that this new entity type had tax advantages over corporations, was more flexible to administer than corporations, and provided limited liability. Thirty years later, LLCs have become the most commonly formed business entity in Oregon. LLCs are especially popular with small business owners and startup entities.

Over the years, Oregon has made some changes to its LLC Act, notably 2017's House Bill (HB) 2191, which implemented certain changes in favor of transparency and enhanced enforcement. However, the Legislature had not undertaken a comprehensive review or reform of these statutes in quite some time.

Oregon business lawyers believed that it was time to update Oregon's LLC act. Accordingly, they submitted a proposal to the Oregon Law Commission to start a workgroup to examine the possibility of adopting the current model act for LLCs in Oregon.

History of the Project

The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived, and well-drafted legislation that brings clarity and stability to critical areas of state statutory law (<https://www.uniformlaws.org/home>).

The ULC developed its first model Limited Liability Company Act in 1996 and the Revised Uniform Limited Liability Company Act ("RULLCA") in 2006. Lead by the American Bar Association, the ULC amended that uniform law in 2011 and 2013 to harmonize definitions between RULLCA and the other model business entity acts. Drafters noted that the adoption of uniform terms and harmonized governance structures across types of entities improves predictability for business owners operating across state lines and decreases forum shopping between organizational jurisdictions. Currently, 24 other states, including Washington, Idaho,

and California, have adopted either the initial model act, the Uniform Limited Liability Company Act (ULLCA), or RULLCA.

In 2018 the Oregon State Bar’s Business Law Section proposed investigating the adoption of RULLCA to the Oregon Law Commission (“OLC”). The section identified key benefits of enacting RULLCA: “reduced compliance costs, streamlined administration (which reduces costs to states), and consistency across jurisdictions.” The OLC authorized this project, and the workgroup met from 2019 to 2022.

The Oregon Law Commission Revised Uniform LLC Act workgroup had its first meeting in March 2019. The workgroup met in-person on a monthly basis through 2019 and switched to remote meetings in the Spring of 2020. They continued to meet through the Summer of 2022 when they submitted their edited draft with commentary to Legislative Counsel’s office for drafting.

In 2022 the bill draft was approved by the Oregon Law Commission for submission to the Legislature and introduced as Senate Bill 909. The bill received a hearing in the Senate Judiciary Committee on March 20th, 2023; however, the bill did not move forward, and the bill was in committee upon adjournment.

During, and after the 2023 legislative session, the Oregon Department of Justice, the Oregon Trial Lawyers Association, and the Oregon Department of Revenue all reached out with proposed updates to SB 909. In response, additional changes were made to SB 909 which were incorporated into LC 266.¹ The updated language is addressed in the section write-up below.

LC 266 was pre-session filed by the Interim Senate Judiciary Committee in December 2024. The bill was introduced as Senate Bill 164 and sent to the Senate Judiciary Committee for consideration. The bill was amended in the Senate Judiciary Committee with the -4 amendment which included language and feedback from the Oregon Judicial Department, the Oregon Department of Justice, the Oregon Department of Revenue, the Uniform Law Commission, Oregon Business and Industry, and the Oregon Trial Lawyers Association.²

LC 266 passed out of the Senate Judiciary Committee unanimously with the -4 Amendment was sent to the Joint Committee on Ways and Means where it stayed until adjournment.

LC 266 is a comprehensive rewrite of the Oregon LLC act. The workgroup’s goal continues to be to clarify and modernize the LLC Act, while leaving intact the parts of the existing Oregon statutory scheme that work well. The workgroup prioritized consistency and following the

¹ Sections 10, 12, 36, 39, 53, 57, 88, and 89.

² For information on the -4 Amendment, please review the Amendment Note at the end of this report.

RULLCA structure while ensuring that the existing language built into Oregon's statutory scheme stayed intact.

Workgroup: A diverse group of members served on this workgroup, including members of the bar, accountants, professors, and representatives from the Oregon Department of Revenue and Secretary of State's office. The workgroup was chaired by John DiLorenzo (Davis Wright Tremaine LLP), with Valerie Sasaki (Samuels Yoelin Kantor LLP) serving as vice chair and project leader. Sandy Weintraub, the former director of the Oregon Law Commission at University of Oregon School of Law, provided support to the workgroup. The other members of the workgroup included David Ludwig (Farleigh Wada Witt), Jeffrey Tarr (Sussman Shank LLP), Cody Hoesly (Barg Singer Hoesly PC), Michael Walker (Samuels Yoelin Kantor LLP), Mohsen Manesh (University of Oregon School of Law), James Hein (Hein Business Law), Aurelia Erickson (Chenoweth Law Group PC), Keil Mueller (Keller Rohrback LLP), Catherine Schulist (WLR), Jaime Weddle-Jones (Oregon Secretary of State), Roberta Mann (University of Oregon School of Law), Hon. Teresa Pearson (US Bankruptcy Court), and Emily Maass (Immix Law Group PC). This workgroup also benefited from the contributions of many interested persons who regularly attended meetings.

Statement of the problem area and objectives of the measure

Technological and social changes have affected business practices of LLC members and managers. LC 266 replaces ORS Chapter 63 to provide default rules that are more closely aligned with the expectations and practices of Oregon's small business owners, while maintaining the flexibility to craft sophisticated economic relationships and deal terms. It also provides newer and simpler tools to accomplish things (like interest exchanges and domestication) that currently require multiple steps and expensive drafting.

Review of legal solutions existing or proposed elsewhere

After some discussion, the workgroup decided to approach this project by using the RULLCA provisions as the baseline. The workgroup discussed each RULLCA provision sequentially, discussed how Oregon's statutes addressed the same issues and whether there were any policy objectives that are reflected in the corresponding ORS provision, and then modified the RULLCA language as appropriate to reflect such policy objectives. The workgroup also reviewed statutes from other states, critically Washington, where appropriate.

The workgroup was guided by a number of key principles. First, when the group discerned that the Oregon Legislature had made a clear policy decision, particularly in the last ten years, the group sought to draft its proposed legislation consistent with that decision. For example, in 2017, the Oregon legislature amended ORS 63.047 with House Bill 2191 and added the requirement

that a LLC's Articles of Organization include the initial street address of the LLC and an individual with knowledge of the LLC's operations and business activities. Contrary to Section 201 of RULLCA, which contains only a "bare bones" list of required provisions for the model act, the workgroup maintained Oregon's current disclosure and transparency requirements.

Second, absent a clear policy decision from the Oregon Legislature, and in the interests of promoting uniformity in Oregon's entity laws with other states, the workgroup sought to keep the proposed legislation consistent with RULLCA wherever possible. The statutes of other states that have adopted versions of RULLCA were reviewed periodically, particularly the version of the act adopted by the state of Washington.

The Measure

The Revised Uniform Limited Liability Act is split into eleven articles. Each Article addresses a different aspect of the Act from formation to dissolution, to general provisions. For ease of review, the bill sections below are delineated by Article.

Article 1: General Provisions

Section 1 through Section 23 contains the general provisions governing some basic mechanics, including how long a LLC is in existence, what purposes a LLC may be organized for, the name of a LLC, and the agent for service of process. These sections also address the role of the operating agreement and the ability of the members to structure the management responsibilities and the powers of the members and managers in a way that the members agree.

These provisions generally parallel similar provisions in ORS Chapter 63 and, to reflect legislative transparency objectives or reflect current Oregon law and practice, pull in language from current Oregon statutes where appropriate.

Section 1 adopts RULLCA 101 and states the short title of the Act, the "Oregon Limited Liability Company Act."

Section 2 adopts RULLCA 102 which includes the definitions for the Oregon Limited Liability Company Act. The definitions follow RULLCA language with the following changes designed to incorporate Oregon specific requirements.

Articles/Certificate

LC 266 uses the word "articles" rather than "certificate." This change was made throughout the bill.

Distribution

Language was added to the definition of “distribution.”

Person

The definition of “person” found in the statute includes not only foreign and domestic persons and entities, but also professional corporations and tribal governments.

Principal Office

The definition of “principal office” was modified to provide a more specific description and requires the physical street address. It also excludes a commercial mail receiving agency, a mail forwarding business, or physical office.

Shell Entity

The workgroup was intentional in reflecting the definition of a “shell entity” found in ORS 63.001(31) and added it to the definitions. Shell entities are addressed in Section 58 of LC 266 which discusses events that cause dissolution.

Sign

LC 266 adopts the Electronic Signatures Act found in ORS Chapter 84.

Section 3 does not correspond to a section of RULLCA and rather updates and incorporates ORS 63.002 and the application of statutes to members and managers of limited liability companies. The language used in this section clarifies that the statutory language that applies to partners and directors also applies to managers and members while explicitly stating that the bill does not supersede ORS 679.020.

Section 4 addresses when a person has knowledge or notice of an action and adopts RULLCA Section 103. Of particular interest are the constructive knowledge provisions found in this section which is new to Oregon law. This language is an essential concept to the RULLCA structure and is intended to tie the statute closer to concepts found in agency law. The workgroup clarified that because the sections of ORS 63.034 (4), (5), and (6) are all covered by the RULLCA language found in Section 4, there is no intent to modify the policy behind these subsections.

Of note, the use of the phrase “ordinary course” in Subsection (3) can be best understood by developing a factual framework for the particular business. Further, Subsection (4)(b) adds 90 days notice for certain action which adds specificity and is new to Oregon law.

Section 5: Section 5 does not have an equivalent in the Oregon Revised Statutes. This is new language, based on RULLCA Section 104, which states that the laws of the State of Oregon

govern. Of interest is the concept of “internal affairs.” There is significant amount of common law which defines “internal affairs” in Oregon and clarifies when the Oregon statutes govern. A similar supporting concept can be found in the Restatement of Conflicts of Laws. Additional commentary and analysis can be found in the Uniform Law Commission’s Commentary on Section 104, p. 21.

Section 6 adopts, in part, RULLCA 105. This section expands what constitutes an operating agreement under current Oregon law. The updated language allows for the inclusion of implied agreements and will allow more records to be considered “operating agreements” for the purpose of this statute. When considering whether an operating agreement is valid, capacity issues, as well as many other factors, may come into consideration. Because operating agreements are, by definition, a contract, state law applies if the validity or structure of an operating agreement is questioned.

Subsection (3), which identifies what an operating agreement may not do, does not have a direct Oregon statutory equivalent. However, Subsection (3) has a similar focus as current statutes ORS 63.155 (10) and (11) which address areas of operating agreements that may not be modified. Subsection (3)(k) is not intended to change existing Oregon law.

Subsection (4)(b)(A) incorporates language from ORS 72.302 and provides guidance to the court to determine the unreasonableness of certain actions.

Section 7 adopts RULLCA Section 106 and addresses how operating agreements affect LLCs and their members. The effect of operating agreements on a third party is addressed in Section 8. While the adoption of this language increases the types of agreements that will be considered operating agreements in Oregon, the updated language should not override Oregon’s existing law on the interpretation of contracts, and the definition of an operating agreement should not be construed otherwise. Further, existing rules concerning integration clauses should still apply based on the common law of contracts. The language of Subsection (1) addresses the treatment of oral agreements, which are not currently singled out under current Oregon law. Subsection (2) addresses situations where a member has deemed to have assented to an operating agreement. The best practice is for the member to sign a “joinder agreement.” While that does not always happen, the workgroup identified the goal of this section as filling in gaps and providing clarity as to when a member does or does not assent to an agreement. Subsections (3) and (4) adopt Section 106(c) of RULLCA. Currently there is no specific comparison in existing Oregon law. These sections allow for terms that can benefit a single member LLC in a pre-formation agreement.

Section 8 adopts RULLCA Section 107. The section addresses how operating agreements affect third parties. The effect of operating agreements on the LLC and its members is addressed in

Section 7. Section 8 identifies a process for incorporating people's expectations in the operating agreement. Subsection (1) is expected to be especially helpful in the context of bankruptcy, specifically when a lender is attempting to force a bankruptcy for a remote entity. This language could lead to additional investments by creating a lending process with more assurances. Subsection 2 designates a member who represents a minority interest, especially those who have an inherited decedent interest, as a transferee. Under this section, because the voting rights do not follow them, the member will not be held accountable for new debts after they inherit a part of the LLC. Subsection 3 is new to Oregon law. If records are delivered to the Secretary of State which are ineffective under Section 6(3) or (4)(a) (D), (E), or (F) of this act, those provisions are ineffective under the operating agreement. Section 8(4) provides the process for addressing ineffective provisions.

Section 9 identifies the nature, purpose, and duration of a LLC and adopts RULLCA Section 108. Under current Oregon law, some limited duration LLCs are specifically allowed. Section 9 updates this by allowing limited duration LLCs under the philosophy of RULLCA itself rather than explicitly allowing for a limited duration in statute. This is demonstrated by moving many key decisions from the Articles of Organization to the Operating Agreement. For example, because an operating agreement may be easily amended under the RULLCA, a LLC may have a limited duration. Of note, under this new statutory scheme, drafters will need to be aware that anything in an Operating Agreement can be varied if it is not included in the specifically excluded sections of Section 6. This decision was made to allow for more leeway in the creation of operating agreements. For additional discussion of "perpetual" found in Section 9(3), see the Uniform Law Commission's Commentary on RULLCA Section 108, Subsection (c).

Section 10 provides statutory sidebars on a LLC's purpose, prohibiting illegal purposes. Subsections (1), (2), and (3) incorporates ORS 63.074 into LC 266. Subsection (4) was adopted at the request of Oregon Department of Justice and states that a LLC with a charitable purpose is considered a charitable organization and is subject to the Charitable Trust and Organization Act and the oversight of the Attorney General.

Section 11 Although this section adopts the language in RULLCA Section 109, and ORS 63.955 is deleted, the updated language is not intended to change Oregon law.

RULLCA Section 110 (see Section 126).

Section 12³ adopts RULLCA Section 111 and acknowledges that the principles of law and equity supplement this bill unless otherwise displaced by the bill. Of note, the word "displaced" was kept in the statutory language because it is tied to the Uniform Commercial Code (UCC).

³ See "Amendment Notes" for additional information on Section 12.

After discussion with the Oregon Trial Lawyers Association, additional language was added to clarify that notwithstanding any provision found in the Act, a LLC and its members and/or managers are liable for loss or injury caused by a wrongful act or omission, or other actionable conduct under any statute or common law.

Section 13 adopts RULLCA 112 while tracking on the provisions of ORS 63.094(1) and (2), and identifies permitted names for a LLC.

Although historically the allowable naming conventions have been more limited in Oregon, the workgroup determined that consistency with the uniform law had sufficient value. This was decided in part because RULLCA is more comprehensive in regard to foreign corporations. Further, the RULLCA language found in Section 13 includes LLCs that have been previously dissolved. Under the current statutory scheme, these LLCs were not included in the existing Oregon statutory language. Using the RULLCA language provides greater clarity when dealing with these entities. Subsections (3)(c), (d), and (e) are new to Oregon, however they should be familiar to practitioners who focus on mergers and acquisitions.

Section 14 adopts RULLCA Section 113 and identifies the process to reserve, and the ability to transfer, the exclusive use of a name by a LLC. Of note, the word “exclusive” will be new to Oregon law. This change is necessary to be consistent with other sections of RULLCA.

Section 15 adopts RULLCA Section 114 while incorporating language from ORS 63.101(2) and provides guidance on the registration of a name. The existing Oregon statutory language found in ORS 63.101(2) was kept to prohibit foreign entities from using ORS 63.101 as a workaround to obtain limited liability protection. In that vein, the use of “certificate of existence,” also known as a “certificate of good standing” language was incorporated to comply with legislative intent.

Section 16 adopts RULLCA Section 115(a) while incorporating language from ORS 63.111(1). Section 16 identifies the requirements for a registered agent and their office. The statutory language in this section incorporates the requirement found in ORS 63.111(1), that a LLC have a registered office in the state and must be located at a physical location where process may be personally served on the registered agent. Further, the registered office may not be a commercial mail receiving agency, a mail forwarding business, or a virtual office. The requirement in the current Oregon statute, that the registered agent and office must be continuously maintained, is implicit in RULLCA section 115.

Section 17 describes the process for changing or updating the address of a registered agent. After reviewing the RULLCA language in Section 116, the workgroup updated the statutory language found in Subsection (3) to address possible confusion on the part of the reader and clarified that members or managers of a LLC are not responsible for approving the delivery of updated

address information to the Oregon Secretary of State or the appropriate official in a foreign jurisdiction.

Section 18 adopts RULLCA Section 117 in its entirety and addresses the resignation of a registered agent. For practitioners, when a registered agent resigns, it will be important to review RULLCA Section 211 (Section 34) to review and potentially update what was stated on the Certificate of Good Standing with the Secretary of State.

Section 19 addresses the change of a name or address of a registered agent. This section adopts RULLCA Section 118 with additional language. Like Section 16, Section 19 references the requirement currently found in ORS 63.111(1) and incorporated into Section 16(b) of LLC 266 which references the requirement for a LLC's registered agent to maintain a physical address in Oregon. This requirement was most recently updated in House Bill 2191 during the 2017 Legislative Session.

Section 20 addresses service of process and notice or demand and adopts RULLCA Section 119. Of particular note is the requirement in Subsection 4 that the Secretary of State is the agent of last resort which is not included in the RULLCA language.

Section 21 adopts RULLCA Section 120. This section addresses delivery of record and does not have a current counterpart in Oregon law.

Section 22: Section 22 was deleted. Subsequent sections were not renumbered.

Enforcement Powers of the Secretary of State

Section 23⁴ incorporates ORS 63.032 and addresses investigations and the imposition of fines for any violations of LC 266, Sections 1- 125. The section outlines the authority of the Secretary of State and Department of Revenue and allows for rulemaking.

Article 2: Formation; Certificate of Organization and Other Filings

Sections 24 through Section 35 addresses how members form a LLC and confirms the role of the Secretary of State's office related to public records for filing a LLC. These provisions generally parallel similar provisions in ORS Chapter 63 and, where appropriate to reflect legislative transparency objectives or current Oregon law and practice, pull in language from current Oregon statutes. Note that the workgroup recommended substitution of ORS 63.787 language for proposed RULLCA 212.

⁴ See "Amendment Note" for updates on Section 23.

Section 24 relying on the concepts of the law of agency, adopts language from Section 201 of RULLCA while incorporating concepts and language from ORS 63.047(e), (g), (h), and (i) to ensure the statutory language continues to follow Oregon legislative intent.

Section 24 describes the process for organizing a LLC, including submission of the articles of organization to the Secretary of State by one or more persons. The adoption of the language in Section 201 is an example of the policy change inherent in the adoption of the RULLCA model where the operating agreement is given preeminent authority, and the articles of organization should not be utilized to make legal decisions. If the articles of organization are relied upon, remedies can be found in later sections of LC 266.

Section 24(a) exemplifies the systematic changes that adoption of the RULLCA creates. For example, language incorporated from ORS 63.047, which requires identifying information for each organizer and that at least one member or manager must be included in the articles of incorporation, is included in Section 24. However, unlike ORS 63.047(d), there is no requirement to include a statement in the articles of organization regarding whether a LLC is member-managed or manager-managed.

This change in LC 266 was adopted by the workgroup for greater consistency and to provide greater transparency to third parties. According to the RULLCA Commentary to Section 301(a) (p.75), most LLC statutes, not just in Oregon, allow for a concept entitled “statutory apparent authority” which is based on the idea of “apparent authority” found in the original Uniform Partnership Act. Apparent authority relied on the naming conventions and type of partnership, limited or general, for third parties to determine whether a specific partner had the authority to bind an entity, in this case a partnership. LLCs however, which by statute were allowed to identify whether an entity was member or manager-managed in their articles of organization, rather than through naming conventions or the type of entity, muddled the waters by requiring a third party to go to the public record to determine who can bind a LLC.

Further, Section 24(2) continues the prioritization of the operating agreement as a statement of authority more so than the articles of organization. The operating agreement criteria can be found in Section 6 of this act.

Section 25 adopts RULLCA Section 202 in its entirety and addresses the ability of a LLC to amend or restate its articles of organization. As mentioned in the commentary to Section 24 above, RULLCA gives greater deference to operating agreements than current Oregon law. Under the structure found in Section 25, operating agreements should include issues such as voting quorum and the authority to amend the articles of organization. As a result, when details

are not as clear in an operating agreement, evidentiary rulings in a litigation context will now need to be decided by using the concepts of general agency law.

Subsection (4) is new to Oregon law and makes correcting inaccuracies the responsibility and obligation of an individual member or manager rather than a liability for a LLC as an entity which may increase liability for an individual member. Because Subsection (4) interacts well with RULLCA Section 205/Section 24 of LLC 266, the workgroup determined that subsection (4) should be adopted.

This section is a crucial piece for future client education because it potentially creates new forms of personal liability and will require articles to be updated more frequently.

Section 26 adopts RULLCA Section 203 in its entirety with additional language consistent with the Oregon Legislative Assembly's efforts to discourage fraud.

Section 27 adopts RULLCA Section 204 in its entirety with the addition of "state or federal court of competent jurisdiction" in subsection (1). Section 27 addresses the requirement to sign or deliver a record pursuant to a judicial order to the Secretary of State. This section is intended to make this process easier for judges and may be of particular interest when a receiver may be used.

Section 28 addresses liability for LLC members and managers if there is inaccurate information in a filed record. Section 28 was one section that caused a significant amount of conversation, and the workgroup ultimately voted on a number of aspects. The workgroup determined that RULLCA Section 205 should be adopted in its entirety. Of particular interest was the inclusion of "reasonable" when considering whether a person relied on information submitted to the Secretary of State in Section 28(1). Further, the group discussed whether the members or managers of a LLC would require either actual or constructive knowledge of an inaccuracy in a filed record. The workgroup ultimately decided that both actual and constructive notice, along with a record delivered to the secretary of state on behalf of the LLC, may be sufficient to allow a person to recover damages.

Section 29 outlines the signing and filing requirements for delivery of records to the Secretary of State and adopts RULLCA Section 206 in part. Section 29 does not adopt RULLCA 206(5)(b) which addresses the redaction of specific information if required by law. Further, language was added to RULLCA 206 in response to a policy decision made by the Oregon Legislature in House Bill (HB) 2998 (2019) which created a requirement of the Secretary of State to make business filing forms in Spanish, Chinese, Vietnamese, Russian, and Korean, as well as English.

Section 30 adopts RULLCA 207 in part and addresses the effective date of a record filed. The workgroup, after review of the Secretary of State's standards, declined to adopt parts of RULLCA Section 207. Specifically, the time stamp requirement found in RULLCA Section 207(1) does not work with the Secretary of State's practices. If a time stamp was required, it could add significant costs to upgrade software and add additional employees for the Secretary of State. In response, the workgroup decided to incorporate requirements found in ORS 63.111 along with RULLCA Section 207(3) and (4).

Section 31 addresses the ability of a filer to withdraw a filed record before effectiveness and adopted RULLCA Section 208 in its entirety. While the workgroup believes that this may be a useful tool, its utility may only be helpful in some circumstances. However, the workgroup ultimately decided to adopt the section because it creates a process to withdraw a faulty document without an extensive process. The Secretary of State's Office confirmed that the withdrawn form would show up in a LLC's record on the Secretary of State's website, though the initial incorrect filing may not be necessarily removed. It will be essential for practitioners to pay close attention to ensure they are relying on correct documents.

Section 32 addresses the process to correct a filed record and adopts RULLCA Section 209 in its entirety. After review of the language, the workgroup concluded that Section 209 is consistent with the current practice in Oregon with the addition of providing a process for rectifying defective electronic transmissions. The addition of this process is considered a crucial piece of modernizing the current statute.

Section 33⁵ outlines the duties of the Secretary of State to file records submitted under this act or other laws, creates a review process, and outlines how the Secretary of State may deliver a file. Based on the feedback on time stamps in response to Section 30 of this Act from the Secretary of State's office, the workgroup modified RULLCA Section 210.

Section 34 adopts the requirement that the Secretary of State will issue a certificate of existence or a certificate of authorization. Section 34 adopts, in part, RULLCA Section 211 and is consistent with current Secretary of State practices. The modifications the workgroup made to RULLCA Section 211 are to ensure that the Secretary of State can continue with its current processes.

Section 35 does not adopt RULLCA Section 212 but incorporates current ORS 63.787 which outlines the requirements for a LLC's annual report, updates, and rules. The decision ensures that LC 266 is in line with the Oregon Legislature's policy decisions regarding public recording and disclosure.

⁵ See "Amendment Note" for updates on Section 33.

Article 3: Relations of Members and Managers to Persons dealing with Limited Liability Company

Sections 36 through 40 govern the external-facing interactions of the LLC’s members and managers with third parties—specifically folks who are not members and who are dealing with the LLC. These provisions generally parallel similar provisions in ORS Chapter 63 and, where appropriate to reflect legislative transparency objectives or current Oregon law and practice, pull in language from current Oregon Revised Statutes, including ORS 63.771 regarding records access. The language in this section, specifically in Sections 36 and 39, was updated since the bill’s original introduction in 2023 (SB 909) to more closely hue to existing Oregon law.

Section 36 was updated after discussions with both the Oregon Department of Justice and the Oregon Trial Lawyers Association. While the proposed language in Senate Bill 909 (2023) adopted Section 301 of RULLCA in its entirety, the language included in LC 266 in Section 36 pulls from three current Oregon statutes: ORS 64.140, Agency powers of managers and members; interest in real property, ORS 63.170, Liability of limited liability company for acts, omissions or conduct of member or manager, ORS 63.629, Agency power of members and managers after dissolution.

In addition, Section 36 includes RULLCA 301(b) with the addition of managers in Section 36(8). The workgroup does not view the language in Subsection (8) as imposing liability or speaking to foreign nations; rather, the subsection states that the mere fact a person is a member or manager does not shield the LLC from liability if a law outside LC 266, such as common law or another statute, imposes liability on the LLC for the member or managers conduct.

Section 37 addresses a Limited Liability Company’s statement of authority and adopts RULLCA Section 302 in its entirety. The workgroup determined that Section 37 would be an improvement over current Oregon law.

Section 38 addresses statements of denial. The workgroup determined that if RULLCA Section 302 (in Section 37) was incorporated into LC 266, Section 38 would also need to be adopted. The workgroup adopted RULLCA Section 303 in its entirety.

Section 39 addresses the liability of members and managers and adopts RULLCA Section 304 in its entirety with the addition of Subsection (3) which incorporates language from ORS 63.074(2). ORS 63.074(2) and subsection (3) of Section 39 address the liability of a professional who is a member or member-manager. Section 39 was updated in conjunction with the discussions surrounding Section 36 (see above) to include a reference to a “member” who is also a manager.

Section 40 incorporates ORS 63.992, liability for certain actions in connection with operation of a shell entity; actions as a false claim, enforcement by civil action into LC 266. ORS 63.992 was added to chapter 63 in the 2017 Legislative Session as HB 2191.

Article 4: Relations of Members to each other and to the Limited Liability Company

Sections 41 through 50 govern the members' relationship with each other and with the LLC. It provides the default rules for member management and manager management. These provisions generally parallel similar provisions in ORS Chapter 63 and, where appropriate, reflect legislative transparency objectives or current Oregon law and practice by pulling in language from current Oregon Revised Statutes. These sections reflect a modern approach to LLCs, for example by discussing total assets at LC 266 Section 45/RULLCA 405(a)(2) in the context of distribution limitations while still embracing the concept of what is "reasonable under the circumstances" and preserving the fair value concept of ORS 63.229(1)(b).

Section 41 outlines the process for becoming a member of a LLC and adopts RULLCA 401 in its entirety. According to the ULC Commentary on Section 401, Article 4 of the RULLCA follows the structure of most LLC statutes by addressing in separate provisions 1) how a LLC obtains its initial member or members and 2) how additional persons might later become members. Section 41 updates Oregon law by adding the option to add a new member with an affirmative vote or consent of all members. Unlike the current requirement found in ORS 63.245, the date a member is added to a LLC is no longer a factor when considering the admission of a member.

Section 42 and Section 43 adopts RULLCA Section 402 and RULLCA 403 respectively. Section 42 addresses the form of contribution and Section 43 address liability for contributions.

The workgroup discussed these two sections as a package. Current Oregon laws ORS 63.175 and ORS 63.180 govern contributions to LLCs and state that a promise of a member to contribute is only enforceable if in writing. Section 42 and Section 43 do not include this requirement.

In Oregon, the statute of frauds is explicitly included in ORS 63.175 and ORS 63.180. However, it is not included in Section 42 or Section 43 of LC 266 or the RULLCA. According to the Uniform Law Commission's RULLCA Commentary, page 90, RULLCA "does not contain a statute of frauds specifically applicable to promised contributions. Generally applicable statutes of fraud may apply, however."

Separately, Section 43 does not tie the timing of a contribution to the beginning of a specific member's involvement making it a LLC friendly choice.

Section 44 adopts RULLCA 404 in its entirety which creates an equal share default rule for rights to shares of distributions before dissolution. While current Oregon law utilizes a proportional approach to distributions in this scenario, the updated language found in Section 44 removes duplicative and potentially inconsistent distribution rules from Oregon law and is considered an improvement by the workgroup. The default rule applies to redemptions as well as operating distributions.

Section 45 identifies limitations on distributions and adopts RULLCA 405 in its entirety. This language, according to the ULC Commentary on Section 405 (page 95) is derived from the Model Business Corporation Act. Current Oregon law allows for a distribution based on, in part, the total value of the LLC's assets. However, as the workgroup discussed, value can change frequently. RULLCA 405 identifies total assets and does not explicitly state how assets should be valued. The workgroup intends that the concept of fair value, reasonable under the circumstances, found in current ORS 62.229(1)(b) should still be considered when determining the value of the total assets.

Section 46: addresses liability for improper distributions and adopts RULLCA 406 in full. This concept is very similar to current ORS 63.225 with the addition of Subsection (2) which is based on a concept that comes from the Model Business Corporations Act. Subsection (2) may be changed by the operating agreement.

Section 47 addresses the management of a LLC. RULLCA Section 407 establishes a default classification for LLCs as "member" managed although members may elect to be a manager-managed entity. Section 47 discusses the relationship between members and a manager or managers as well as how that individual or individuals are appointed. This is substantially consistent with current Oregon law under ORS 63.130. Similarly, there are areas where the default settings of the Act require unanimous consent of the members (such as amendment of the entity's operating agreement) and talks about debt relationships involving the LLC and members.

Section 48 adopts RULLCA 408 in its entirety and addresses reimbursement, indemnification, advancement and insurance. While this section replaces ORS 63.784, which required a LLC to report indemnifications or advances in writing to its members, nothing in Section 48 limits a member or manager's duty of transparency, which would require them, among other things, to give notice when a claim or demand first arises for which the member or manager seeks advances under Section 48, Subsection (3).

Section 49 identifies standards of conduct for members and managers and adopts RULLCA 409 in its entirety. This section is consistent with the fiduciary duties of loyalty, as well as providing a duty of care and incorporating the contractual obligation of good faith and fair dealing. While the duties in this section are subject to a LLC's operating agreement, Section 6 of LC 266, Operating Agreements, includes limitations on the power of an operating agreement to affect fiduciary and other duties as well as the obligation of good faith and fair dealings. Although the current language found in ORS 63.155 may be both more specific and flexible, the workgroup determined that consistency with RULLCA was paramount.

Section 50 addresses many of the same issues as current ORS 63.771, Limited Liability Company Records. This section adopts RULLCA Section 410 with additional language addressing access restriction and confidentiality of a LLC's records in Subsection (7). After discussion, the workgroup concluded that the access restriction found in Subsection (7) would be unreasonable if applied to the records identified in Subsection (1) of Section 50. Further, Subsection (13) of Section 50 pulls in the concepts found in ORS 63.781, Court-ordered inspection.

Article 5: Transferable Interests and Rights of Transferees and Creditors

Sections 51 through Section 54 discuss the nature of the LLC interest and the idea that members should be able to decide who they wish to be in business with. It also talks about the rights of transferees of a member's interest, and creditors of members, who seek to enforce or foreclose on a charging order. This is similar to ORS 63.259 but reflects the evolution of Oregon and national caselaw on what remedies are available to the creditors of members in LLCs.

Section 51 identifies a transferable interest as personal property. While Section 51 adopts RULLCA 501 in its entirety, the workgroup did not intend to substantively change the rule found in the second sentence of ORS 63.239, "A member is not a co-owner of and has no interest in specific limited liability company property."

Section 52 adopts RULLCA 502 in its entirety. The updated language found in this section addresses the inherent right of a transferee to information. Although Section 52 is similar to ORS 63.249, the workgroup considered the RULLCA language an improvement, for example when a party may be a competitor or hostile to the rights of the LLC.

Section 53 adopts RULLCA 503 and adds subsection (4)(b) which references ORS 18.225, Satisfaction of Money Awards Generally. Under this section, the judgement creditor of a member or transferee is entitled to a charging order against the relevant transferable interest. Of note, under Subsection (2), the workgroup wanted to clarify that a receiver is not the only person

authorized to make to make inquiries. Further, Subsection (2) is not intended to displace the Oregon Supreme Court's holding in *Law v. Zemp*, 362 Or 302, 408 P.3d 1045 (2018), or prohibit any court from authorizing a creditor to make debtors' inquiries. This language was updated at the request of the Oregon Department of Justice.

Section 54 identifies the powers of a legal representative when a member passes away and adopts RULLCA Section 504 in its entirety.

Article 6: Dissociation

Sections 55 through Section 57 state what can cause a member to be removed from the LLC (dissociation) and the consequences of that dissociation. These provisions generally parallel similar provisions in ORS Chapter 63 and, where appropriate to reflect legislative transparency objectives or reflect current Oregon law and practice, pulls in language from current Oregon Revised Statutes. The workgroup wished to make clear that it believes there are no major policy changes from Oregon law in Article 6. For example, the workgroup understands that LC 266 57 / RULLCA 603 preserves the policy objectives of ORS 63.209(2).

Section 55 adopts RULLCA Section 601 in its entirety. The section addresses the power to disassociate from a LLC. While Section 55 addresses the ability of a member to disassociate from a LLC, the workgroup wanted to highlight that the express language of this section makes clear that all of the provisions in this section may be modified by the operating agreement. The language incorporated in Section 55, related to a member's ability to choose when to disassociate, will potentially protect less sophisticated members and is therefore an improvement over current Oregon law.

The workgroup also discussed the language in Subsection (3) and its similarity to current Oregon law. As a matter of policy, this language is not designed to limit the amount of damages that can be obtained from a member in the case of an inappropriate dissociation.

Section 56 identifies events that can cause dissociation. Section 56 adopts RULLCA 602 in its entirety with a change to Subsection (8)(c), which is addressed below.

Section 56 primarily states default rules, which may be modified in some respects by an operating agreement. The workgroup identified Section 56 as a framework that is designed to guide less sophisticated members of a LLC through this process. At its core, the benefit of this statute is the need for an expressed will to withdraw from a LLC, or a specifically denoted event that needs to occur which spurs a member to leave.

Of note, the workgroup discussed Section 56, Subsection (5) in detail. Subsection (5)(a) addresses expelling a member if their involvement with the LLC and its activities may be unlawful. Subsection (5)(b), which carves out exceptions to the ability to expel a member is, according to the workgroup, significantly more sophisticated than current Oregon law and should provide greater clarity. Further, while Subsection (5)(c) also addresses dissolution, the goal of the workgroup was not to prevent an administrative dissolution (for example, a lack of payment of fees) that this language does not disallow from occurring.

The modification to RULLCA Section 602 which is found in Section 56, Subsection 8(c), does not include “seeks, consents to, or acquiesces” to the appointment of trustee’s, receiver’s or liquidator’s administration or control. This modification was used in the Washington State version of RULLCA and is expected to give more clarity to distressed members. It should also apply to involuntary receiverships.

Section 57 adopts RULLCA 603 in its entirety with additional language added by the Oregon Department of Justice at Section 57(1)(c). This section provides guidance on the treatment of a member who is disassociated from a LLC, and it is not a significant change from current Oregon Law. Similar to current ORS 63.205 and 63.209, the language makes clear that a member who disassociates from a LLC does not relieve themselves of any debt or obligation to the LLC. While the workgroup chose to adopt RULLCA 603 in its entirety, the goal was to keep existing policy found in ORS 63.209 Expulsion of a member, Subsection (2).

Article 7: Dissolution and Winding Up

Sections 59 through Section 68 talk about the dissolution of a limited liability company. It discusses what can cause dissolution as well as the rights of members and third parties upon dissolution of a limited liability company. These provisions generally parallel similar provisions in ORS Chapter 63 and, where appropriate to reflect legislative transparency objectives or reflect current Oregon law and practice, pull in language from current Oregon Revised Statutes. For example, Section 58/ RULLCA 701(4)(a) incorporates text from ORS 63.661. The workgroup did not recommend adoption of RULLCA 706, which it believes is appropriate for Oregon and consistent with other neighboring state adoptions. As another example, the workgroup also recommended addition of language at Section 65/RULLCA 707 to reflect language from ORS 63.674.

Overview of Sections 58, 59, and 60. Section 58 enacts RULLCA Section 701 with additional language from ORS 63.661. The language from ORS 63.661 in Section 58 comes from House Bill 2191 (2017) which regulates shell corporations. As mentioned in the introduction, the workgroup prioritized Oregon specific policy choices, such as HB 2191, when reviewing

RULLCA and drafting LC 266. Of note, in Sections 58, 59 and 60, addressed immediately below, the authority provided to force a dissolution in these three sections is in compliance with the policy identified in HB 2191.

Section 59 incorporates current ORS 63.664: Procedure for Judicial Resolution into the Act. There is no RULLCA section equivalent. Section 68 of LC 266 addresses judicial review of denial of reinstatement.

Section 60 incorporates existing ORS 63.671 Procedure for Judicial Dissolution into the Act. There is no RULLCA section equivalent.

Section 61 addresses the process for winding up of a LLC's activities and affairs and enacts RULLCA Section 702 in its entirety. While there is no current equivalent in the Oregon Revised Statutes to Section 61, the workgroup determined that the addition of this language would provide a positive roadmap to small LLCs in the winding up process. Of note, the workgroup discussed the identity of a legal representative found in Subsection (2)(b) and determined that a conservator or bankruptcy trustee could serve in this role. Further, the legal representative does not necessarily need to be an attorney.

Subsection (5), which addresses judicial supervision of, and appointment of a receiver to manage the winding up of a LLC. The workgroup discussed the relationship to receivership when evaluating this section and acknowledged that a receiver may need to take control in situations dictated by this section.

Section 62 addresses the process for rescinding dissolution and identifies scenarios where a recission is not possible. Section 62 adopts RULLCA 703 in its entirety.

Section 63 addresses known claims against a dissolved limited liability company and provides a process for giving notice to those claimants. Sections 704 and 705 provide guidance for LLCs in regard to achieving finality in regard to claims. Section 63 adopts RULLCA 704 in its entirety.

Section 64.⁶ While Section 63 addresses known claims, Section 64 addresses other claims against a dissolved limited liability company. Section 64 adopts RULLCA 705 in its entirety. This language is modeled after language found in the Model Business Corporation Act (https://www.americanbar.org/groups/business_law/resources/model-business-corporation-act/). Although there is no analog in current Oregon law, the workgroup determined that the section could provide security for debts of the LLC. Further, if a LLC desired additional security, it could use the process identified in Section 64. Although there was discussion regarding the

⁶ See "Amendment Note" for updates on Section 64.

ability in Section 63 to cut off all claims, the workgroup ultimately determined that the benefit outweighed the potential for misuse.

RULLCA Section 706 of the Revised Uniform Limited Liability Company Act addresses court proceedings. After review, the workgroup decided not to adopt Section 706 and noted that very few states have adopted this section. Because RULLCA Section 706 was not adopted, the reference to this Section in Section 705(d)(2)/Section 64 of LC 266 was removed.

Section 65 addresses the disposition of assets in the winding up of a LLC. Section 65 adopts RULLCA 707 in its entirety with the addition of subsection (5) which addresses assets of a LLC that are deposited with the State Treasurer. The goal of the workgroup was not to make a substantial change from current Oregon law and did not intend to apply to this process to distributions. The language in subsection (5) is based on ORS 63.674 and references a “person” rather than a “receiver.”

Section 66 addresses administrative dissolution of a LLC. LC 266 adopts RULLCA 708 with the addition of language from current ORS 63.647 (3), (4), and (5) grounds for administrative dissolution. Further, the workgroup decreased the number of days to cure or demonstrate that a LLC should not be administratively dissolved by the Secretary of State. While RULLCA 708 provides 60 days to cure, the workgroup determined that 45 days from notice was appropriate. This timeline maintains the current Oregon timeline found in ORS 63.651.

Section 67 addresses reinstatement. Section 67 adopts RULLCA Section 709 with the addition of language from ORS 63.654(4). The language, which can be found in Subsection (4), addresses the ability of the Secretary of State to waive the five-year limitation on reinstatement. The process for reinstatement for foreign limited liability companies can be found in Section 85.

Section 68⁷ addresses judicial review of a denial of reinstatement. Section 68 adopts subsection (a) of RULLCA Section 710, but not subsection (b), which addresses judicial review. In addition, Section 68 incorporates language in ORS 63.657(2) which outlines the process to appeal the denial of a reinstatement. Judicial review is addressed in Sections 58-60. The process for reinstatement for foreign limited liability companies can be found in Section 86.

Article 8: Actions by Members

Sections 69 through 73 discuss direct and derivative claims by members and for the establishment, conduct, and judicial review of special litigation committees. These provisions generally parallel similar provisions in ORS Chapter 63 and, where appropriate to reflect

⁷ See “Amendment Note” for updates on Section 68.

legislative transparency objectives or reflect current Oregon law and practice, pull in language from current Oregon Revised Statutes.

RULLCA Section 801 was not adopted. The intent of the workgroup was to direct questions related to direct action by LLC members against another member, manager, or the LLC back to the common law and maintain consistency with current Oregon law.

Section 69 adopts RULLCA Section 802 in its entirety. Section 69 defines what is known as the demand requirement and recognizes that the decision to cause a limited liability company to bring suit is presumptively a business decision.

Section 70 identifies the proper plaintiff and defines standing requirements for persons seeking to bring derivative actions. Section 70 adopts RULLCA Section 803 in its entirety.

Section 71 defines the pleading requirements for persons seeking to bring derivative actions and adopts RULLCA Section 804 in its entirety.

Section 72 addresses a stay pending an investigation and does not adopt RULLCA 805. After discussion, the workgroup adopted language from the second sentence of ORS 63.801(2) and provides that a court may stay any proceeding in a derivative action until a limited liability company completes an investigation of the charges in the complaint, even if the plaintiff did not fulfill the demand requirement. The workgroup recommends substitution of language from ORS 63.801(2) for RULLCA 805 to reflect current Oregon practice relating to stays pending investigation in a derivative proceeding and to incorporate the process of ORS 60.952(6) (of the Private Corporations Act) relating to purchases of interests during a court proceeding.

Section 73 addresses proceeds and expenses and adopts RULLCA Section 806 in its entirety with the addition of language from ORS 63.801(3). Section 73 provides that any proceeds or other benefits from a derivative action belong to the limited liability company, not the plaintiff. However, if derivative action is successful, a court may award the plaintiff reasonable expenses. Of note, the workgroup determined that the list of reasonable expenses in Subsection 2 is not intended to change current Oregon law with respect to recoverability of expert witness fees.

Section 73 also provides that a person may not voluntarily dismiss or settle a derivative action on behalf of a limited liability company without the court's approval. And where a proposed dismissal or settlement will substantially affect the interest of member(s), the court shall require notice to be given to the affected member(s).

Section 74 does not have an equivalent in RULLCA. Rather, this section incorporates the language and processes found in ORS 60.952(6) into LC 266. ORS 60.952 addresses purchases of interest during court proceedings.

Article 9: Foreign Limited Liability Companies

Sections 75 through Section 89 govern how foreign limited liability companies register to do business in Oregon, conduct business, and withdraw from doing business in Oregon. These provisions generally parallel similar provisions in ORS Chapter 63 and, where appropriate to reflect legislative transparency objectives or reflect current Oregon law and practice, pull in language from current Oregon Revised Statutes. For example, the workgroup recommends the inclusion of language from ORS 63.704(2), (3), and (4) at LC 266, Section 76 / RULLCA 902 to preserve financial neutrality. The workgroup recommended various changes and additions in this section to reflect the legislature's transparency objectives.

Section 75 adopts RULLCA Section 901 in its entirety. This section, which identifies which jurisdiction's laws govern a foreign LLC, is mainly consistent with current Oregon law. The workgroup determined that the language found in RULLCA Section 901 is drafted clearly and will be easier to operate under than the current statutory language.

Section 76 addresses the registration requirements for a foreign LLC to do business in Oregon. This section adopts RULLCA Section 902 in its entirety with the addition of language from current ORS 63.704 (Consequences of transacting business without authority), Subsections (2), (3), and (4) which are found in Section 76, Subsections 2, 3, and 4. RULLCA Section 902 is maintained in Subsections 1, 5, 6, and 7 of this section.

Section 77 includes language from both RULLCA Section 903 and ORS 63.707. Section 77 addresses registration statements for foreign LLCs. ORS 63.707 is incorporated into the language in response to recent Oregon legislative policy decisions related to foreign LLCs, including the requirement of a certificate of good standing, known in Oregon as a certificate of existence. Further, the use of an "alternate name," which is allowed under RULLCA Section 903, is not included in LC 266. The workgroup determined that for transparency, an "alternate name" option would not be included. The RULLCA language found in Sections 80 and 83 reflect this policy decision as well.

Section 78 outlines the process for amending the registration statement of a foreign LLC. This section adopts both RULLCA Section 904 and current statutory language found in ORS 63.711(1)(b). Subsection (2) adds to RULLCA Section 904(2) that an amendment is necessary if the company's registry number in the jurisdiction of formation changes. While the workgroup

determined that the language in RULLCA Section 904 is more transparent than current Oregon law, the existing language found in ORS 63.711(1)(b) related to the period of time that a foreign LLC has existed and may exist into the future can be found in Section 78(3).

Section 79 identifies certain activities that do not constitute doing business in Oregon for foreign LLCs and adopts RULLCA Section 905 in its entirety and adds a catchall provision for substantially similar or related activities.

Section 80 adopts, in part, RULLCA Section 906 and addresses foreign LLCs with noncompliant names registering to do business in Oregon. Under Section 80, foreign LLCs must follow the naming conventions found in Section 13 of this Act. Subsection 2, which incorporates current ORS 63.717(4), identifies the limit on naming conventions for foreign LLCs and identifies a cure.

Section 81 addresses how a foreign LLC's registration is treated when a foreign LLC converts to either a domestic limited liability partnership or domestic entity which requires filing with the Secretary of State. Section 81 adopts RULLCA 907 in its entirety.

Section 82, which addresses the same issue as Section 81, focuses on entities other than a limited liability partnership or entities that are not required to file with the Secretary of State. Section 82 adopts RULLCA Section 908 in its entirety. In addition to the filing requirements found in RULLCA Section 908, the workgroup added registration information from the LLC's formation jurisdiction in subsections (1)(a)(A) and (1)(b)(A).

Section 83 addresses the transfer of registration for foreign LLCs in Oregon. Section 83 adopts RULLCA Section 909 with the exception of a reference to an "alternate name" which could be adopted under Section 80. Since Section 77 does not allow the use of an "alternate name" under LC 266, the reference was not included.

Section 84 provides a process for the Secretary of State to terminate the registration of a foreign LLC and adopts RULLCA Section 910. In addition, Section 84 incorporates language and concepts from ORS 63.737 grounds for revocation. This subsection directs the reader to ORS 63.714(3) which addresses the limitations on the powers of a foreign limited liability company in Oregon. The workgroup also added subsection (5) and (6) to Section 84 which adopts concepts from ORS 63.741, procedure for and effect of revocation, and addresses the loss of authority of the registered agent upon termination.

Section 85 outlines the process for the reinstatement of authority of a foreign limited liability company. This process is based on RULLCA 709 which addresses reinstatement of authority for a domestic limited liability company. RULLCA 709 is included in LC 266 at Section 67.

Section 86 addresses judicial review of a denial of reinstatement for a foreign limited liability company after termination. This process is based on RULLCA 710 which addresses reinstatement of authority for a domestic limited liability company after administrative dissolution. RULLCA 710 is included in LC 266 at Section 68.

Section 87 provides the criteria for registration withdrawal for a registered foreign limited liability company. LC 266 adopts both RULLCA 911 and ORS 63.734(1)(e). The addition of subsection (1)(e) identifies the LLC's responsibility to inform the Secretary of State of any change to its mailing address for five years after withdrawal.

Section 88 adopts RULLCA Section 912 and confirms the Secretary of State's authority to bring an action under LC 266 against any foreign limited liability company. This is an update to Senate Bill 909 (2023) which identified the Attorney General as the entity with the authority to bring an action. The requested update came from the Oregon Department of Justice.

Section 89⁸ addresses the Oregon Department of Revenue's taxing authority. This language has been updated since the 2023 Legislative Session with language shared with the workgroup in the fall of 2024 by the Oregon Department of Revenue. Since the original draft of the bill, the Oregon Department of Revenue has approved additional tax programs. The language in Section 89 references those programs and streamlines the drafting process if additional tax programs are adopted in the future.

Article 10: Merger, Interest Exchange, Conversion, and Domestication

Sections 90 through Section 123 govern mergers, interest exchanges, conversions, and domestications of limited liability companies in Oregon. These provisions generally parallel similar provisions in ORS Chapter 63 and, where appropriate to reflect legislative transparency objectives or reflect current Oregon law and practice, incorporates language from current Oregon Revised Statutes. The workgroup does want to note that current Oregon statutes provide for mergers (ORS 63.481, et seq) and conversions (ORS 63.470, et seq.); however, they do not provide a clear statutory mechanism for either interest exchanges (allowing the acquisition of one or more classes of LLC interest without affecting the separate existence of the LLC) or domestications (permitting Oregon LLCs to become foreign LLCs where authorized in other jurisdictions). Oregon practitioners have been forced to find work arounds for these situations under current law. The workgroup believes that the addition of these tools is an improvement on current Oregon law and consistent with current Oregon policy objectives.

⁸ See "Amendment Note" for updates on Section 89.

General Provisions

Section 90 provides definitions specific to Section 90 through Section 120 of LC 266. Section 90 adopts RULLCA 1001 while incorporating definitions and categories from ORS 63.467. The categorization of types of entities for “entity,” “governor,” “interest,” “interest holder,” “private organic rules,” and “public organic record,” are consistent with current ORS 63.467(1)(a).

Section 91 adopts RULLCA Section 1002 which addresses the relationship of sections 90 - 120 to other sections of LC 266. The workgroup does not intend to create any rights that do not currently exist in Oregon law.

Section 92 outlines the notice provisions for both domestic and foreign entities to governmental entities. In addition, it addresses treatment of property held for a charitable purpose. The language from RULLCA was modified in Section 92 to include a notice requirement for the Attorney General as well as an opportunity for the Attorney General to address any modifications to the purpose of charitable property. At the direction of the workgroup, Section 92 was written to be consistent with current Oregon venue rules.

Section 93 states that the processes outlined in Section 90 through Section 120 are not exclusive and adopts Section 1004 in its entirety.

Section 94 allows for plans of conversion, domestication, interest exchange, or merger to refer to facts that are ascertainable outside the plan if the language of the plan identifies how the facts will operate and provides guidance on what constitutes a fact. Section 94 adopts RULLCA 1005 in its entirety.

Section 95 provides an interest holder of a LLC that is engaging in a conversion, domestication, interest exchange or a merger with a contractual right either in the operating agreement or the plan to an appraisal in connection with the transaction. This section adopts RULLCA Section 1006 in its entirety.

Section 96 RULLCA Section 1007 provides a framework to exclude specific entities and transactions. Unlike RULLCA Section 1007, Section 96 generally states that if another law prohibits, restricts, or otherwise exclusively regulates a specific transaction or participation by an entity, Sections 90 through 120 defer to the other law.

RULLCA Sections 1008 – 1020. The Revised Uniform Limited Liability Company Act does not include Sections 1008 – 1020.

Merger

Section 97 adopts RULLCA 1021 and allows for mergers for a LLC if the LLC complies with Sections 97 through 102. As explained in the RULLCA Commentary for Section 1021, (p. 196) “the merger transaction authorized by this act involves the combination of one or more domestic limited liability companies with or into one or more other domestic or foreign limited liability companies.” This process may also merge two or more foreign limited liability companies into a single domestic limited liability company.

Section 98 expands on the definition of a “plan of merger” and identifies statutory requirements for the plan. Section 98 adopts RULLCA Section 1022 in full.

Section 99 addresses the approval process for a merger and adopts RULLCA Section 1023 in its entirety. While the adoption of RULLCA 1023 changes the default rule in Oregon, similar to earlier sections of LC 266, this process may be changed in a LLC’s operating agreement.

Section 100 addresses the amendment or abandonment of a plan of merger and adopts RULLCA Section 1024.

Section 101 outlines the steps and information necessary to effectively complete a merger or plan of merger and adopts RULLCA Section 1025 with one exception. The requirement to memorialize the time that a merger becomes effective was not included in Section 101(6)(a).

Section 102 adopts RULLCA Section 1026 and delineates the effects of a merger on each entity, its property, debts and obligations, and records. In Section 102(i) a reference to ORS 67.603 was added which addresses the registration of limited partnerships. Further, additional language was added by the workgroup in Section 102(1)(k)(B) to address interest holder liability.

RULLCA Section 1027 – 1030. The Revised Uniform Limited Liability Company Act does not include Sections 1027 – 1030.

Interest Exchange

Section 103 authorizes the exchange of interest and adopts RULLCA Section 1031 in its entirety. An interest exchange is also known as an interest rate exchange and allows two parties to exchange interest payments to gain equity in each other’s entity. After discussion, the workgroup’s comment on this concept is as follows.

Because the concept of an interest exchange is new to Oregon LLC law and was not contemplated by Oregon’s prior LLC statute, a person contracting with a domestic LLC or loaning a domestic LLC money, who drafted and negotiated special rights relating to the

transaction before the enactment of this section should not be charged with the consequences of not having dealt with the concept of an interest exchange in the context of those special rights. Similarly, when the governance structure of an entity has been negotiated before the enactment of the section, the concept of an interest exchange may not have been reflected in any special governance arrangements; for example, special approval rights may have been provided for fundamental transactions, but those rights fail to include language that would make them applicable to an interest exchange. Accordingly, this subsection provides a transitional rule that is intended to protect such special rights.

Notably, a similar transitional rule is unnecessary, and therefore, not provided for in this statute in the case of merger or conversion of a domestic LLC because mergers and conversions were expressly authorized by Oregon's prior LLC statute.

Section 104 authorizes the acquisition of a LLC through a plan of interest exchange and adopts RULLCA Section 1032 in its entirety. In addition, Section 104 outlines the information to include in the record. As referenced under Section 103, this is a new process for Oregon and there is no ORS equivalent.

Section 105 identifies the approval process for an interest exchange and adopts RULLCA 1033. As referenced under Section 103, this is a new process for Oregon and there is no ORS equivalent.

Section 106 identifies the process for the amendment or abandonment of a plan of interest exchange and adopts RULLCA 1034. As referenced under Section 103, this is a new process for Oregon and there is no ORS equivalent.

Section 107 addresses the steps necessary to effectuate an interest exchange, or a plan of an interest exchange, including materials and information to submit to the Secretary of State and adopts RULLCA 1035. As referenced under Section 103, this is a new process for Oregon and there is no ORS equivalent.

Section 108 outlines the effects of an interest exchange on both an acquired and acquiring company and adopts RULLCA Section 1036 in its entirety. Additional language was added by the workgroup in Section 108(1)(f)(B) to address interest holder liability.

Sections 1037 – 1040 The Revised Uniform Limited Liability Company Act does not include Sections 1037 – 1040.

Conversion

Section 109 authorizes a domestic LLC to convert to either a domestic entity or foreign entity that is a different type of entity. Section 109 adopts RULLCA Section 1041, Subsections (a) and (b). The workgroup did not intend to add rights that do not exist today in Oregon and as such, declined to adopt subsection (c) of Section 1041.

Section 110 enumerates the information necessary to include in a plan of conversion and adopts RULLCA Section 1042 in its entirety.

Section 111 identifies the approval process for conversion and adopts RULLCA Section 1043 in its entirety.

Section 112 outlines the process for the amendment or abandonment of a plan of conversion and adopts RULLCA Section 1044 in its entirety.

Section 113 addresses the steps necessary to effectuate conversion, including materials and information to submit to the Secretary of State and adopts RULLCA Section 1045. Similar to Section 102, a reference to ORS 67.603 was added to this Section which addresses the registration process if a converted entity is a limited partnership.

Section 114 addresses the effects of conversion and adopts RULLCA Section 1046 with additional language from current ORS 63.479(1)(g) and (h). Section 114(1)(k)(B) enumerates situations where a person may have personal liability. The language from ORS 63.479(1)(h) can be found in Subsection (1)(L) and addresses assumed names under ORS Chapter 648.

Section 1047 – Section 1050 The Revised Uniform Limited Liability Company Act does not include Section 1047 – Section 1050.

Domestication

Section 115 authorizes a domestic LLC to convert to a foreign LLC or a foreign LLC to convert to a domestic LLC. This is a new process for Oregon, and Section 115(c) identifies the process for addressing protected agreements, defined in Section 91(30), that reference mergers but not domestication. Section 115 adopts RULLCA Section 1051 in its entirety.

Section 116 enumerates the information necessary to include in a plan of domestication and adopts RULLCA Section 1052 in its entirety.

Section 117 identifies the approval process and adopts RULLCA Section 1043 in its entirety.

Section 118 outlines the process for the amendment or abandonment of a plan of domestication and adopts RULLCA Section 1044 in its entirety.

Section 119 addresses the steps necessary to effectuate domestication, including materials and information to submit to the Secretary of State and adopts RULLCA Section 1055 with the removal of “and time” from Section 119(6)(b).

Section 120 addresses the effects of domestication and adopts RULLCA Section 1056 and incorporates language from current ORS 63.479 and ORS 63.497.

Section 121 addresses uniformity of application and adopts RULLCA Section 1101. The workgroup’s intent was to incorporate similar language in LC 266 that is currently used in ORS 60.800. ORS Chapter 60 governs limited liability partnerships.

Section 122 clarifies the relationship between LC 266 and the Electronic Signatures in Global and National Commerce Act. Section 122 incorporates language from RULLCA Section 1102 and in subsection 2, directly ties to ORS Chapter 84, the Uniform Electronic Transactions Act.

Section 123 incorporates the language from current ORS 63.990 which identifies the penalty for signing a false document.

Section 124 was deleted from LC 266. Subsequent sections were not renumbered.

Article 11: Miscellaneous Provisions

Sections 124a through Section 128 contain some final miscellaneous provisions including transition rules. These provisions generally parallel similar provisions in ORS Chapter 63 and, where appropriate to reflect legislative transparency objectives or reflect current Oregon law and practice, pull in language from current Oregon Revised Statutes. The workgroup did not recommend adoption of RULLCA 1104, relating to severability, as it determined ORS 174.040 sufficiently addressed that concern.

Section 124a identifies for a LLC formed or created before the effective date of LC 266, the language in a LLC’s articles of organization, specifically with respect to the determination of management structure, acts as if the language is in the limited liability company’s operating agreement for two purposes: designating whether a LLC is a member-managed LLC and determining what to do if a record delivered to the Secretary of State is in conflict with a provision of the LLC’s operating agreement.

Section 124b reserves the power to amend or repeal any part of LC 266 and provides guidance on how to treat actions taken prior to the passage of the Act.

Section 125 incorporates language from ORS 63.965 and addresses the effect of subsequent amendments and repeals on the Act.

Section 126: Of particular interest to the workgroup was the application date of the Act. Limited liability companies created after the effective date of the Act should be in compliance with the bill requirements. LLC's created prior to the passage of the Act can elect to be subject to the Act using processes identified within the Act.

Sections 127 and 128 amends Section 126 which provides an effective date for new LLC's and a transition timeline for existing LLCs to apply the Act to all LLCs. Section 127 goes into effect on January 1, 2028.

Conforming Amendments:

Section 129 – Section 240 These sections contain technical amendments for statutes that cross-reference or are otherwise affected by statutes being amended or repealed.

Repeals:

Section 241 repeals ORS Chapter 63.

Amendment Notes:

SB 164 -4 Amendment

Section 12 in Senate Bill 164 as introduced was 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).

Program Committee Selection Criteria

In addition to the guidance of ORS 173.338, the Oregon Law Commission approved the following criteria for the selection of law reform projects for development by the Commission:

Selection of Issues for Study/Development of Legislation

The Commission should select issues for study/development of legislation based on the following criteria:

- A. Source of Work Proposals (Priorities)
 - 1. Legislative Assembly proposals approved by resolution, legislative leadership or committee chair;
 - 2. Judicial branch proposals approved by the Chief Justice of the Supreme Court, Judicial Conference or State Court Administrator;
 - 3. Legislative Counsel proposals;
 - 4. Law school proposals;
 - 5. Oregon State Bar section proposals;
 - 6. Commission member proposals; and
 - 7. Other sources
- B. Nature of Issues

The Commission should give highest priority to private law issues that affect large numbers of Oregonians and public law issues that fall outside particular regulatory areas administered by state agencies.
- C. Resource Demands

The Commission should select issues that available staff and the Commission can finish within the time set for study/development of legislation.
- D. Probability of Approval by Legislature/Governor

The Commission should select issues that can lead to legislative proposals with a good prospect of approval by the legislature and Governor.
- E. Length of Time Required for Study/Development of Legislation

The Commission should select issues that include both those permitting development of proposed legislation for the next legislative session and those requiring work over more than one biennium.

Program Committee: Project Proposal Outline

Do you (or does your organization) have a law reform project that is well-suited for study by the Oregon Law Commission?

A written law reform proposal seeking involvement of the Oregon Law Commission should be addressed to the Oregon Law Commission Program Committee for consideration and contain the following preferred sections:

1. **PROBLEM:** Identify the specific issue to be studied or addressed by the Law Commission and explain the adverse consequences of current law. An illustration from real life might be helpful.
2. **HISTORY OF REFORM EFFORTS:** Explain past efforts to address the problem and the success or limits of those efforts.
3. **SCOPE OF PROJECT:** Explain what needs to be studied, evaluated or changed to fix the problem.
4. **LAW COMMISSION INVOLVEMENT:** Explain why the issue is a good subject for law reform of broad general interest and need (as opposed to an issue likely to be advanced by a single interest group or lobby).
5. **PROJECT PARTICIPANTS:** Identify individuals who are willing to serve on a Work Group, and a Reporter who is willing to work with the Chair of the Work Group to draft a Report and Comments. The Chair of the Work Group should be a Commissioner. The Proposal may state a preference for a chair.

Mailing Address:

Oregon Law Commission
Attn: Oregon Law Commission
University of Oregon School of Law
University of Oregon – Portland Campus
2800 NE Liberty Street
Portland, OR 97211

Phone: (541) 346-3298

Illustrative Outline of a Report to the Oregon Law Commission

All Commission recommended legislation should be accompanied by a report that among other things explains the need for the bill and the details of the bill. The following is an outline of a report to the Oregon Law Commission for Work Groups to consider when preparing their own reports to the Commission. Of course, each Work Group's issues are unique and certain sections outlined below may not be necessary for every report. Therefore, the following outline is only a guide and actual reports may differ.

I. Introductory summary

This section briefly identifies the problem area, the reason why it needs attention, and the overall objective of the bill. The introductory summary may be followed by the actual text of the proposal's scope section, if the text is quite brief, otherwise by a summary of its provisions.

II. History of the project

This section recounts when the OLC undertook the project, who led it, who was on the Work Group, who participated in the research and the design of the proposal, the process of consultation with experts in or outside Oregon, and interested persons outside the Commission.

III. Statement of the problem area

This section explains in some detail what in the existing state of the law is problematic, either by reason of uncertainty and lack of clear standards, or because apparently clear standards are inconsistent or self-contradictory, or are outmoded, inefficient, inadequate, or otherwise unsatisfactory.

IV. The objectives of the proposal

The preceding sections set the stage for now identifying the objectives of the proposal concretely (as distinct from general goals like "clarification," "simplification," or "modernization") in advance of explaining the choice of legal means to achieve those concrete objectives. This section would identify propositions that are uncontroversial and others on which different interests have competing objectives. If one objective of the proposal is to craft an acceptable compromise among competing interests, this section would candidly state what opposing positions were argued in the consultations, and why the proposal represents the best and most principled accommodation of those that have merit. This section would also note any issues that were discussed but were deferred, complete with an explanation of the deferral.

V. Review of legal solutions existing or proposed elsewhere

The report here or later should describe models of existing or proposed legal formulations that were examined in preparing the proposal. An explanation of how Oregon compares with the rest of the states would be helpful.

VI. The proposal

In this section, the report should set forth the whole proposal verbatim, except for revisions of a lengthy statute that is better attached as an appendix. The report would then proceed by setting out significant parts of the bill section by section (or by multi-section topics), followed by explanatory commentary on each item. American Law Institute statutory projects offer an illustrative model.

On occasion, the Commission may choose to offer alternative drafts. This can be appropriate when the Commission considers it important that a statute (or rule) provide clear and consistent guidance on a legal problem while leaving to the political decision-makers the choice of which among competing policy objectives should prevail.

VII. Conclusion

The conclusion summarizes the reasons why the bill should be adopted.

VIII. Appendices

These would include a bibliography of sources, and perhaps relevant statutory texts or excerpts from other relevant documents or published commentary bearing on the proposal.

IX. Form of publication

A formal report to the Oregon Law Commission should be reproduced in a format suitable for preservation by the Commission, Legislative Counsel, the Department of Justice, and for distribution to libraries and other interested subscribers, perhaps by one of the state's academic law reviews.

Apart from the formal report, the experts who worked on the project should be encouraged to publish their own articles analyzing and commenting on the subject of the report in more detail. Publication in these two different forms was the common practice for scholarly reports to the Administrative Conference of the United States.

MEMORANDUM

To: Commissioners of the Oregon Law Commission

From: David Kenagy

Date: September 6, 2001

Re: Managing Mid-Session Amendments to Law Commission recommended bills

Our experience in the 2001 Legislative Session taught that even the most carefully drafted Law Commission legislative recommendations will be amended during the legislative process. We also learned that the amendments may be proposed from many sources for reasons some of which may not even be known or revealed until after an amendment has been adopted.

Other Law Commissions around the country have faced the same issue. In general they favor maximum flexibility for those charged with guiding the legislation on behalf of the Commission. They do not adopt policy constraining the process but follow understood practices that have developed over their years of experience. I suggest that we do the same. This memo displays the broad outlines of the approach used by the Executive Director's office, which we intend to use in the future, subject to further guidance from the Commission.

You will recall that in light of the experiences of the 2001 Session, the Commission discussed at its July 13, 2001 meeting how to best process the inevitable amendments to Law Commission bills. This discussion included a desire to see Commission recommendations enacted, unless the content of the final enactment departs fundamentally from the original recommendation.

The Commission's Executive Director is responsible for guiding the Commission's recommendations through the legislative process. In that capacity the Executive Director is expected to exercise an initial judgment when faced with a proposed legislative amendment to a Law Commission bill. That initial judgment is to distinguish between amendments that make either "material" or "immaterial" changes to the Law Commission bill. Technical text changes and corrections which do not alter the purpose and function of a bill are examples of immaterial changes.

In the exercise of this initial judgment concerning materiality, the Executive Director will resolve doubts in favor of assuming materiality in order to engage the wider consultation and discussion about the amendment as detailed below. Consultation with either the Commission Chair, Vice Chair or others usually would be a part of the Executive Director's initial decision making process.

If an amendment is immaterial, the Executive Director will continue to guide the amended Law Commission bill as would be the case without amendment. Making clear, however, that the amendment does not carry formal Law Commission approval.

If an amendment is material, the Executive Director will take steps from among those listed below. The steps selected will naturally depend upon the stage of the legislative process in which the amendment is proposed or made.

Generally, early in the Session there is more time for broad-based discussion, reflection and review. Later in the Session faster responses are needed, requiring a more confined and efficient

discussion. Regardless of the step chosen, the Executive Director will consult with the Chair of the Commission in order to take such other necessary steps or combinations of steps as may not be contemplated at this writing. The keys are good communication and flexibility in approach.

The hierarchy of steps in managing mid-session amendments is as follows:

1. In consultation with the Commission Chair or Vice-Chair, present the amendment to the full Law Commission for formal consideration and a vote on taking a position on the amendment. Only this first approach would authorize the Executive Director to affirmatively report support or rejection of an amendment "on behalf of the Commission." This approach, however, requires both an assessment of the time available for such action and the nature and scope of the amendment itself. Experience has shown that some amendments, while fairly judged "material," are of lesser scope and effect than others and may therefore be better addressed in a less formal manner.
2. In consultation with the Commission Chair or Vice-Chair, present the amendment to the full Work Group responsible for the Commission's draft at a meeting of the Work Group or informally by email or otherwise where necessary.
3. In consultation with the Commission Chair or Vice-Chair, present the amendment to the responsible Work Group Chair, to the Work Group Reporter, and to any members of the Work Group known to the Executive Director to be most knowledgeable on the subject raised by the amendment.
4. In consultation with the Commission Chair or Vice-Chair, present the amendment to the Work Group Chair, Reporter or other most knowledgeable Work Group member.

Following each of the above actions the Executive Director will carry out the steps next reasonably necessary to implement the guidance obtained from the process. In no case shall the views of any person or group of persons be reported by the Executive Director as the views of the Law Commission unless supported by a vote of the Commission affirming those views.

To: Commissioners of the Oregon Law Commission
Date: November 9, 2001

Re: Memorandum of Understanding: Reminding Work Group Members to Act on Their Independent Professional Judgment

The Oregon Law Commission exists to provide clarification and improvement of Oregon law. ORS 173.315; ORS 173.357. For this purpose, the Commission must rely on knowledgeable committees, known as Work Groups, to pursue the various substantive projects that are the Commission's task. ORS 173.352 (1) provides that the Commission shall determine the membership and organization of the committees and "shall appoint their members." Work groups generally are made up of Commissioners and volunteers who bring either professional expertise to the law reform project or familiarity with community interests that are particularly affected by the project.

The goal of a Commission project is to produce what the Commission, in its professional judgment, determines to be the best feasible improvement in the law, taking into account that different people and groups have divergent views on and interests in the subject matter. This goal is furthered by finding a way for knowledgeable advisors who will express those views and interests to inform the Commission's Work Groups, while leaving the decisions on the substantive issues to the disinterested professional judgment of the regularly appointed members of the Work Group. The work of these committees can only be hampered if some members subordinate their judgment of the public interest to the interests of a particular private party or client. It is recommended that the Commission accept a practice by the Executive Director's office of communicating to Work Group members that they are to speak and vote on the basis of their individual and professional convictions and experience in the exercise of independent judgment.

Other commissions and committees in Oregon and throughout the United States have addressed the issue of membership criteria in this context. Some have promulgated statutes, rules, or policies to require or encourage members to contribute solely on the basis of their personal experience and convictions. For example, Congress passed the Federal Advisory Committee Act in 1972. A section of that statute speaks to membership. 5 U.S.C.A. app.2 § 5 (West 1996). That Act arose out of the growing number of advisory groups in the nation and growing concern that special interests had captured advisory committees, exerting undue influence on public programs. H.R. REP. NO. 1017, 92d Con., *reprinted in* 1972 U.S.C.C.A.N. 3491, 3495; Steven P. Croley & William F. Funk, *The Federal Advisory Committee Act and Good Government*, 14 YALE L. ON REG. 451, 462 (1997). The Act also required advisory committees to keep minutes, including a record of persons present. In short, the goal of the Act was to establish openness and balanced representation but also prevent the surreptitious use of advisory committees to further the interests of any special interest. H.R. REP. NO. 1017, 92d Con., *reprinted in* 1972 U.S.C.C.A.N. 3491, 3500.

Another example comes from the National Assessment Governing Board, appointed by the Secretary of Education, for the purpose of formulating policy guidelines for the

National Assessment; the Board has twenty-five members. 20 USCA § 9011 (West 2000). The statute establishing the Board contains the following provision limiting membership: “The Secretary and the Board shall ensure at all times that the membership of the Board reflects regional, racial, gender, and cultural balance and diversity and that the Board exercises its independent judgment, free from inappropriate influences and special interests.” *Id.* at §9011 (b)(3). Still another example is found in ORS 526.225; that Oregon statute authorizes the State Board of Higher Education to appoint a Forest Research Laboratory Advisory Committee composed of fifteen members. Composition of the Committee is to include three members from the public at large, but they may not “have any relationship or pecuniary interest that would interfere with that individual representing the public interest.”

Less formal examples are found in other law reform organizations. The American Law Institute, in its Rules of Council, provides guidelines for membership in the Institute. Rule 9.04, titled Members’ Obligation to Exercise Independent Judgment, was added at the December 1996, meeting of the Council. That Rule communicated that members are to “leave client interests at the door.” Finally, the Louisiana State Law Institute has a philosophical policy statement, dating back to 1940, that encourages “thorough study and research, and full, free and non-partisan discussion.” (John H. Tucker, Address at Louisiana State University on the Philosophy and Purposes of the Louisiana State Law Institute (Mar. 16, 1940)).

Instead of a formal rule or statute to express an ideal that Oregon Law Commission Work Group members should leave their client interests at the door, the Executive Director’s office suggests the Commission accept this Memorandum of Understanding and the following statement:

“To maintain the Oregon Law Commission’s professional non-partisan analysis of legal issues in support of law reform, Commissioners and those individuals appointed by the Commission to serve as Work Group members are expected to exercise independent judgment when working on Oregon Law Commission projects by speaking and voting on the basis of their individual and professional convictions and experience. Recommendations to and from the Law Commission must be the result of thoughtful deliberation by members dedicated to public service. Therefore, Work Group members are not to subject their individual and professional judgment to representation of client or employer interests when participating in the Work Group’s decisions.”

Unless otherwise directed, the Executive Director’s staff will incorporate the above statement into the Work Group letters of appointment as a means of communicating to Work Group members the Commission’s important mission and expectations.

OREGON LAW COMMISSION QUICK FACT SHEET

What does the [Oregon Law Commission](#) do?

The Commission assists the legislature in keeping the law up to date. By statute, the Commission is directed to “conduct a continuous substantive law revision program. . .” (ORS 173.315). The Commission assists the legislature in keeping the law up to date by:

- Identifying and selecting law reform projects
- Researching the area of law at issue, including other states’ laws to see how they deal with similar problems
- Communicating with and educating those who may be affected by proposed reforms
- Drafting proposed legislation, comments and reports for legislative consideration

How was the Oregon Law Commission formed?

The 1997 Legislative Assembly adopted legislation creating the Oregon Law Commission (ORS 173.315). Legislative appropriations supporting the Commission’s work began July 1, 2000.

How does the work of the Oregon Law Commission compare to the work of other groups who may have ideas about changing Oregon laws?

The Commission identifies and considers needs that are not likely to be advanced by traditional interest groups.

What projects is the Commission currently working on?

The Commission has approved the submission for two bills for the 2025 Legislative Session.

- [House Bill 2460](#): Update to the Municipal and Justice Court Appeals Process.
- [Senate Bill 164](#): Modernization of Oregon’s Limited Liability Company Act.

In addition, the Commission approved the creation of an [Electronic Wills](#) work group in January 2025. The work group will begin meeting in Spring 2025.

Who makes up the Oregon Law Commission?

In creating the Commission, the Legislative Assembly recognized the need for a distinguished body of knowledgeable and respected individuals to undertake law revision projects requiring long term commitment and an impartial approach.

[The Commissioners](#) include four members appointed by the Senate President and Speaker of the House (at least one sitting Senator and Representative), the Chief Justice of the Oregon Supreme Court (or his or her designee), the Chief Judge of the Court of Appeals, a circuit court judge, the Attorney General (or his or her designee), a Governor's appointee, the deans or representatives from each law school in Oregon and three representatives from the Oregon State Bar.

In addition to the fifteen Commissioners, there are currently approximately sixty volunteers that serve on the Commission’s work groups. Once an issue has been selected by the Commission for study and development, a work group is established. Work groups are made up of

Commissioners, volunteers selected by the Commission based on their professional areas of expertise, and volunteers selected by the Commission to represent the parts of the community particularly affected by the area of law in question. The expectation is that the Commission is able to produce the best reform solution possible by drawing on a wide range of experience and interests.

What is the role of the University of Oregon School of Law?

The University of Oregon School of Law houses the Oregon Law Commission and supports its efforts to recommend law reform, revision and improvement to the legislature while providing opportunities for student and faculty involvement in support of the Commission's work. Professor Kristen Bell is the Dean's designee on the Commission and professors from a variety of practice areas participate with work groups. The Office of the Director, housed at the University of Oregon School of Law, provides staff support to the Commission and the Commission's work groups. Undergraduate students serve as office assistants, and law students serve as Fellows for the Commission.

How do people get involved?

To apply for service as a volunteer on a work group or to receive electronic work group meeting notices, please contact the Amy Zubko at the Oregon Law Commission at (541) 346-3298 or azubko@uoregon.edu.