REPORT OF THE LLC MODERNIZATION WORK GROUP (LC 71)

Oregon Law Commission

Commissioners: John DiLorenzo and Valerie Sasaki

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 work group 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 work group met from 2019 to 2022.

The Oregon Law Commission Revised Uniform LLC Act work group had its first meeting in March 2019. The work group 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.

In 2025, the bill was introduced as Senate Bill 164. The bill received a hearing in the Senate Judiciary Committee on February 5, 2025. The bill received a work session on February 20, 2025, was amended with the -4 amendments, and received a fiscal impact statement which required the bill to be subsequently referred to the Joint Committee on Ways and Means where it remained upon adjournment. The -4 amendment incorporated 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.

LC 71 is a comprehensive rewrite of the Oregon LLC act. The work group'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 work group prioritized consistency and following the RULLCA structure while ensuring that the existing language built into Oregon's statutory scheme stayed intact.

Work Group Participants: A diverse group of members served on this work group, including members of the bar, accountants, professors, and representatives from the Oregon Department of Revenue and Secretary of State's office. The work group 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 work group. The other members of the work group 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 work group also benefited from the contributions of many interested persons who regularly attended meetings.

Since the first introduction of the bill in 2023, the proposal received beneficial feedback from the Oregon Department of Justice, the Oregon Judicial Department, the Oregon Department of Revenue, the Uniform Law Commission, the Oregon Trial Lawyers Association, Oregon Business and Industry, and the Oregon Secretary of State's office.

Statement of the problem area and objectives of the measure

Technological and social changes have affected business practices of LLC members and managers. LC 71 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 work group decided to approach this project by using the RULLCA provisions as the baseline. The work group 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 work group also reviewed statutes from other states, critically Washington, where appropriate.

The work group 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 work group 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 work group 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 71 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 work group 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 71 which discusses events that cause dissolution.

Sign
LC 71 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 work group 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 work group 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 Unform 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 71. 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).

RULLCA Section 111 of the Revised Uniform Limited Liability Act addresses supplemental principles of law. While Section 111 was originally incorporated in the work group's proposal, it was ultimately removed after discussions between the Oregon Law Commission, the Uniform Law Commission, the Oregon Trial Lawyers Association, and Oregon Business and Industry. 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. As such, the bill does not adopt the RULLCA Section 111 and existing Oregon law should continue to govern.

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 work group 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 work group 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 71 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 23 incorporates ORS 63.032 and addresses investigations and the imposition of fines for any violations of LC 71, Sections 1- 125. The section outlines the authority of the Secretary of State and Department of Revenue and allows for rulemaking. Section 23 was updated at the request of the Oregon Judicial Department to reference "judicial review" which falls under ORS Chapter 183 rather than "appeal" which is addressed under ORS, Chapter 19.

Section 23(3)(a) and (b) was split into two subsections at the request of the Oregon Judicial Department and the Oregon Department of Revenue for accuracy and clarity of tax-related issues.

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 work group recommended substitution of ORS 63.787 language for proposed RULLCA 212.

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 71.

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 71 was adopted by the work group 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, muddied 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 71, the work group 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 work group ultimately voted on a number of aspects. The work group 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 work group 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 work group, 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 work group 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 work group believes that this may be a useful tool, its utility may only be helpful in some circumstances. However, the work group 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 work group 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 33 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 work group modified RULLCA Section 210. Section 33 was updated at the request of the Oregon Judicial Department to reference "judicial review" which falls under ORS Chapter 183 rather than "appeal" which is addressed under ORS, Chapter 19.

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 work group 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 71 is in line with the Oregon Legislature's policy decisions regarding public recording and disclosure.

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 71 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 work group 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 71, 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 work group determined that Section 37 would be an improvement over current Oregon law.

Section 38 addresses statements of denial. The work group determined that if RULLCA Section 302 (in Section 37) was incorporated into LC 71, Section 38 would also need to be adopted. The work group 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 71. 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 71 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 work group 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 71 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 work group. 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 work group discussed, value can change frequently. RULLCA 405 identifies total assets and does not explicitly state how assets should be valued. The work group 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 note 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 71, 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 work group 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 work group 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 work group 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 work group 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 work group 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 work group wished to make clear that it believes there are no major policy changes from Oregon law in Article 6. For example, the work group understands that LC 71, Section 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 work group 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 work group 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 work group 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 work group 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 work group, significantly more sophisticated than current Oregon law and should provide greater clarity. Further, while Subsection (5)(c) also addresses dissolution, the goal of the work group 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 work group 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 work group 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 work group 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 work group prioritized Oregon specific policy choices, such as HB 2191, when reviewing RULLCA

and drafting LC 71. 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 71 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 work group determined that the addition of this language would provide a positive roadmap to small LLCs in the winding up process. Of note, the work group 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 work group 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. 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 work group determined that this section could provide a mechanism to secure the debts of a LLC.. Further, if a LLC wanted additional security, it could use the process identified in Section 64. Although there was discussion regarding Section 63 to cut off all claims, the work group ultimately determined that the benefit outweighed the potential for misuse.

Section 64 was amended at the request of the Oregon Department of Justice. The language, based on HB 2377 (2021), 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).

RULLCA Section 706 of the Revised Uniform Limited Liability Company Act addresses court proceedings. After review, the work group 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 71 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 work group 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 71 adopts RULLCA 708 with the addition of language from current ORS 63.647 (3), (4), and (5) grounds for administrative dissolution. Further, the work group 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 work group 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 68 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. Section 68 was updated at the request of the Oregon Judicial Department to reference "judicial review" which falls under ORS Chapter 183 rather than "appeal" which is addressed under ORS, Chapter 19.

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 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 work group 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 work group 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 work group 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 work group 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 71. 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 work group recommends the inclusion of language from ORS 63.704(2), (3), and (4) at LC 71, Section 76 / RULLCA 902 to preserve financial neutrality. The work group 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 work group determined that the language found in RULLCA Section 901 is drafted clearly and will be easier to operate under then 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 71. The work group 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 work group 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 work group 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 71, 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 work group 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 71 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 71 at Section 68.

Section 87 provides the criteria for registration withdrawal for a registered foreign limited liability company. LC 71 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 71 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 89 addresses the Oregon Department of Revenue's taxing authority. This language has been updated since the 2023 Legislative Session with language shared with the work group 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. Section 89 was updated at the request of the Oregon Judicial Department to reference "judicial review" which falls under ORS Chapter 183 rather than "appeal" which is addressed under ORS, Chapter 19.

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 work group 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 work group believes that the addition of these tools is an improvement on current Oregon law and consistent with current Oregon policy objectives.

General Provisions

Section 90 provides definitions specific to Section 90 through Section 120 of LC 71. 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 71. The work group 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 work group, 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 71, 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 work group 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 work group'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 work group 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 work group 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 work group's intent was to incorporate similar language in LC 71 that is currently used in ORS 60.800. ORS Chapter 60 governs limited liability partnerships.

Section 122 clarifies the relationship between LC 71 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 71. 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 work group 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 71, 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 71 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 work group 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: