

House Bill 2886

Sponsored by Representatives GALIZIO, READ; Representatives BAILEY, BARKER, GARRETT, ROBLAN, J SMITH, STIEGLER, THOMPSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates low-profit limited liability company as type of limited liability company with specified business purpose. Provides that business purpose of low-profit limited liability company must be to significantly further charitable, educational or related purposes identified in Internal Revenue Code. Prohibits low-profit limited liability company from engaging in certain activities. Specifies form of name for low-profit limited liability company.

Provides that Secretary of State may administratively dissolve low-profit limited liability company for failure to meet business purpose requirement and failure to amend articles of organization to accurately describe business purpose and change name.

A BILL FOR AN ACT

1
2 Relating to low-profit limited liability companies; amending ORS 63.001, 63.074, 63.094, 63.101 and
3 63.647.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 63.001 is amended to read:

6 63.001. As used in this chapter:

7 (1) "Anniversary" means *[that]* **the** day each year **that is** exactly one or more years after:

8 (a) The date *[of filing by]* **on which** the Secretary of State *[of]* **files** the articles of organization
9 *[in the case of]* **for** a domestic limited liability company.

10 (b) The date *[of filing by]* **on which** the Secretary of State *[of an]* **files a foreign limited li-**
11 **ability company's** application for authority to transact business *[in the case of a foreign limited li-*
12 *ability company]*.

13 (2) "Articles of organization" means the document described in ORS 63.047 *[for the purpose of*
14 *forming]* **that is intended to form** a limited liability company, including articles of organization as
15 *[they]* **the articles of organization** may be amended or restated, articles of conversion and articles
16 of merger.

17 (3) "Bankruptcy" means:

18 (a) Assignment by a member for the benefit of creditors;

19 (b) Commencement of a voluntary bankruptcy case by a member;

20 (c) Adjudication of a member as bankrupt or insolvent;

21 (d) Filing by a member of a petition or answer seeking for the member *[any]* **a** reorganization,
22 arrangement, composition, readjustment, liquidation, dissolution or similar relief under *[any]* **a** stat-
23 ute, law or rule;

24 (e) Filing by a member of an answer or other pleading admitting or failing to contest the mate-
25 rial allegations of a petition filed against the member in *[any proceeding of this nature]* **a bank-**
26 **ruptcy proceeding;**

27 (f) Seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 of the member or of all or any substantial part of the member’s properties;

2 (g) Commencement of an involuntary bankruptcy case against a member that has not been dis-
 3 missed on or before the 120th day after the commencement of the case;

4 (h) Appointment, without the member’s consent, of a trustee, receiver or liquidator either of the
 5 member or of all or any substantial part of the member’s properties that is not vacated or stayed
 6 on or before the 90th day after appointment; or

7 (i) Appointment described in paragraph (h) of this subsection that is not vacated on or before
 8 the 90th day after expiration of the stay under paragraph (h) of this subsection.

9 (4) “Contribution” means anything of value [*which*] **that** a person contributes to the limited li-
 10 ability company as a prerequisite for or in connection with membership including cash, property or
 11 services rendered or a promissory note or other binding obligation to contribute cash or property
 12 or to perform services.

13 (5) “Corporation” or “domestic corporation” means a corporation for profit **that is** incorporated
 14 under ORS chapter 60.

15 (6) “Distribution” means a direct or indirect transfer of money or other property, except of a
 16 limited liability company’s own interests, or incurrence of indebtedness by a limited liability com-
 17 pany to or for the benefit of [*its*] members **of the limited liability company** in respect of [*any of*
 18 *its member’s*] **the members’** interests. A distribution may be in the form of a declaration or payment
 19 of profits, a purchase, retirement or other acquisition of interests, a distribution of indebtedness, or
 20 otherwise.

21 (7) “Domestic nonprofit corporation” means a corporation not for profit incorporated under ORS
 22 chapter 65.

23 (8) “Domestic professional corporation” means a corporation organized under ORS chapter 58
 24 for the purpose of rendering professional services and for the purposes provided under ORS chapter
 25 58.

26 (9) “Entity” includes a domestic or foreign limited liability company, corporation, professional
 27 corporation, foreign corporation, domestic or foreign nonprofit corporation, domestic or foreign co-
 28 operative corporation, profit or nonprofit unincorporated association, business trust, estate, domestic
 29 or foreign general or limited partnership, trust, two or more persons having a joint or common
 30 economic interest, [*any*] a state, the United States or [*any*] a foreign government.

31 (10) “Foreign corporation” means a corporation for profit incorporated under a law other than
 32 the law of this state.

33 (11) “Foreign limited liability company” means an entity that is an unincorporated association
 34 organized under the laws of a state other than this state, under the laws of a federally recognized
 35 Indian tribe or under the laws of a foreign country and that is organized under a statute under
 36 which an association may be formed that affords to each of [*its*] **the association’s** members limited
 37 liability with respect to the liabilities of the entity.

38 (12) “Foreign limited partnership” means a limited partnership formed under the laws of any
 39 jurisdiction other than this state and having as partners one or more general partners and one or
 40 more limited partners.

41 (13) “Foreign nonprofit corporation” means a corporation not for profit organized under the laws
 42 of a state other than this state.

43 (14) “Foreign professional corporation” means a professional corporation organized under the
 44 laws of a state other than this state.

45 (15) “Incompetency” means the entry of a judgment by a court of competent jurisdiction adju-

1 dicating the member incompetent to manage the member’s person or estate.

2 (16) “Individual” means a natural person.

3 (17) “Limited liability company” or “domestic limited liability company” means an entity that
4 is an unincorporated association having one or more members that is organized under this chapter.

5 (18) “Limited partnership” or “domestic limited partnership” means a partnership formed by two
6 or more persons under ORS chapter 70 and having one or more general partners and one or more
7 limited partners.

8 **(19) “Low-profit limited liability company” means a limited liability company that speci-**
9 **fies in the articles of organization a business purpose that satisfies the requirements set**
10 **forth in ORS 63.074 (1)(b).**

11 [(19)] **(20)** “Manager” or “managers” means a person or persons, who need not be members,
12 designated by the members of a manager-managed limited liability company to manage the limited
13 liability company’s business and affairs.

14 [(20)] **(21)** “Manager-managed limited liability company” means a limited liability company that
15 is designated as a manager-managed limited liability company in [its] **the** articles of organization
16 or [whose] **for which the** articles of organization otherwise expressly provide that the limited li-
17 ability company will be managed by a manager or managers.

18 [(21)] **(22)(a)** “Member” or “members” means a person or persons with both an ownership in-
19 terest in a limited liability company and all the rights and obligations of a member specified under
20 this chapter.

21 **(b)** “Member” does not include an assignee of an ownership interest who has not also acquired
22 the voting and other rights appurtenant to membership.

23 [(22)] **(23)** “Member-managed limited liability company” means a limited liability company other
24 than a manager-managed limited liability company.

25 [(23)] **(24)** “Membership interest” or “interest” means a member’s collective rights in a limited
26 liability company, including the member’s share of profits and losses of the limited liability company,
27 the right to receive distributions of the limited liability company’s assets and any right to vote or
28 participate in management.

29 [(24)] **(25)** “Office,” when used to refer to the administrative unit directed by the Secretary of
30 State, means the office of the Secretary of State.

31 [(25)] **(26)** “Operating agreement” means [any] **a** valid agreement, written or oral, of the member
32 or members as to the affairs of a limited liability company and the conduct of [its] **the** business **of**
33 **the limited liability company.**

34 [(26)] **(27)** “Organizer” means one of the signers of the initial articles of organization.

35 [(27)] **(28)** “Party” [includes] **means** an individual who was, is or is threatened to be made a
36 named defendant or respondent in a proceeding.

37 [(28)] **(29)** “Person” means an individual or entity.

38 [(29)] **(30)** “Proceeding” means [any] **a** threatened, pending or completed action, suit or pro-
39 ceeding whether civil, criminal, administrative or investigatory and whether formal or informal.

40 [(30)] **(31)** “State,” when referring to a part of the United States, includes a state, common-
41 wealth, territory or insular possession of the United States and [its] **the** agencies and governmental
42 subdivisions **of the state, commonwealth, territory or insular possession.**

43 [(31)] **(32)** “United States” includes a district, authority, bureau, commission, department or any
44 other agency of the United States.

45 **SECTION 2.** ORS 63.074 is amended to read:

1 63.074. (1)(a) Except as otherwise provided by the laws of this state and in this section, a limited
 2 liability company formed under this chapter may conduct or promote any lawful business or purpose
 3 [which] **that** a partnership, corporation or professional corporation as defined in ORS 58.015 may
 4 conduct or promote, unless a more limited purpose is set forth in the articles of organization.

5 **(b) A low-profit limited liability company formed under this chapter conducts or pro-**
 6 **motates a lawful business or purpose only if:**

7 **(A) The business or purpose significantly furthers the accomplishment of a purpose**
 8 **identified in 26 U.S.C. 170(c)(2)(B); and**

9 **(B) The low-profit limited liability company would not have been formed but for the**
 10 **low-profit limited liability company's relationship to the accomplishment of the identified**
 11 **purpose.**

12 **(c) A low-profit limited liability company may not:**

13 **(A) Have as a significant purpose the production of income or the appreciation of prop-**
 14 **erty, except that in the absence of other evidence the low-profit limited liability company's**
 15 **production of significant income or capital appreciation is not conclusive evidence that a**
 16 **significant purpose of the low-profit limited liability company is the production of income or**
 17 **appreciation of property; or**

18 **(B) Accomplish a political or legislative purpose identified in 26 U.S.C. 170(c)(2)(D).**

19 (2) Subject to the laws of this state, the rules and regulations of the regulatory board of the
 20 profession, if any, and the standards of professional conduct of the profession, if any, a limited li-
 21 ability company or [its] members **of the limited liability company** may render professional service
 22 in this state. Notwithstanding any other law, members, including members who are managers, of a
 23 limited liability company who are also professionals, as defined in ORS 58.015, [shall be] **are** per-
 24 sonally liable as members of the limited liability company to the same extent and in the same man-
 25 ner as provided for shareholders of a professional corporation in ORS 58.185 and 58.187 and as
 26 otherwise provided in this chapter.

27 (3) A business that is subject to regulation under another statute of this state may not be or-
 28 ganized under this chapter if the business is required to be organized only under the other statute.

29 **SECTION 3.** ORS 63.094 is amended to read:

30 63.094. (1)(a) The name of [the] **a** limited liability company [shall] **must** contain the words
 31 "limited liability company" or the abbreviation "L.L.C." or "LLC."

32 **(b) The name of a low-profit limited liability company must contain the words "low-profit**
 33 **limited liability company" or the abbreviation "L3C."**

34 (2) A limited liability company name [shall] **may** not contain the word or abbreviation "cooper-
 35 ative," "corporation," "corp.," "incorporated," "Inc.," "limited partnership," "L.P.," "LP," "Ltd.,"
 36 "limited liability partnership," "L.L.P.," "LLP" or "partnership" or any derivation of any of the
 37 foregoing.

38 (3) A limited liability company name [shall] **must** be written in the alphabet used to write the
 39 English language and may include Arabic and Roman numerals and incidental punctuation.

40 (4) A limited liability company name [shall] **must** be distinguishable upon the records of the
 41 office from any other limited liability company name, corporate name, professional corporate name,
 42 nonprofit corporate name, cooperative name, limited partnership name, business trust name, re-
 43 served name, registered corporate name or assumed business name of active record with the office.

44 (5) The limited liability company name need not satisfy the requirement of subsection (4) of this
 45 section if the applicant delivers to the office a certified copy of a final judgment of a court of com-

1 petent jurisdiction that finds that the applicant has a prior or concurrent right to use the limited
 2 liability company name in this state.

3 (6) The provisions of this section do not prohibit a limited liability company from transacting
 4 business under an assumed business name.

5 (7) The provisions of this section do not:

6 (a) Abrogate or limit the law governing unfair competition or unfair trade practices; or

7 (b) Derogate from the common law, the principles of equity or the statutes of this state or of the
 8 United States with respect to the right to acquire and protect trade names.

9 **SECTION 4.** ORS 63.101 is amended to read:

10 63.101. (1) A foreign limited liability company, **including a low-profit limited liability com-**
 11 **pany**, may apply to the office to register [*its*] **the name of the company**.

12 (2) The application must set forth the limited liability company name, the state or country of
 13 [*its*] organization, the date of [*its*] organization, [*and*] a brief description of the nature of the business
 14 in which [*it*] **the limited liability company** is engaged and a statement that [*it*] **the limited liability**
 15 **company** is not carrying on or doing business in the State of Oregon. The application must be ac-
 16 companied by a certificate of existence or a document of similar import current within 60 days of
 17 delivery, duly authenticated by the official having custody of the limited liability company records
 18 in the state or country under whose law [*it*] **the limited liability company** is organized.

19 (3) If the Secretary of State finds that the name conforms to ORS 63.094, the Secretary of State
 20 shall register the name effective for one year.

21 **SECTION 5.** ORS 63.647 is amended to read:

22 63.647. The Secretary of State may commence a proceeding under ORS 63.651 to administratively
 23 dissolve a limited liability company if:

24 (1) The limited liability company does not pay when due any fees imposed by this chapter;

25 (2) The limited liability company does not deliver [*its*] **an** annual report to the Secretary of State
 26 when due;

27 (3) The limited liability company is without a registered agent or registered office in this state;

28 (4) The limited liability company does not notify the Secretary of State that [*its*] **the** registered
 29 agent or registered office **of the limited liability company** has been changed, that [*its*] **the** regis-
 30 tered agent has resigned or that [*its*] **the** registered office has been discontinued; [*or*]

31 (5) The limited liability company's period of duration stated in [*its*] **the** articles of organization
 32 expires; **or**

33 **(6) The limited liability company is a low-profit limited liability company that:**

34 **(a) Does not meet the requirements set forth in ORS 63.074 (1)(b); and**

35 **(b) Failed to file an amendment to the articles of organization that accurately described**
 36 **the company's business purpose and that changed the company's name to conform with the**
 37 **requirements set forth in ORS 63.094 within 60 days after the date on which the low-profit**
 38 **limited liability company ceased to meet the requirements set forth in ORS 63.074 (1)(b).**