

Enrolled
House Bill 2377

Sponsored by Representatives SANCHEZ, KOTEK; Representatives HOLVEY, WITT, Senator FREDERICK (at the request of Attorney General Ellen Rosenblum) (Presession filed.)

CHAPTER

AN ACT

Relating to claims against insurance assets of dissolved business entities; creating new provisions; amending ORS 60.644, 60.645, 63.644 and 63.645; and prescribing an effective date.

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

SECTION 1. ORS 60.644 is amended to read:

60.644. (1) A dissolved corporation may *[also]* publish notice of *[its]* **the corporation's** dissolution and request that persons with claims against the corporation present *[them]* **the claims** in accordance with the notice.

(2) The notice must:

(a) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is located, or if the principal office is not in this state, where *[its]* **the dissolved corporation's** registered office is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that, **except as provided in subsection (4) of this section**, a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(3) If *[the]* **a** dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred, **except as provided in subsection (4) of this section**, unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under ORS 60.641;

(b) A claimant whose claim was sent in a timely manner to the dissolved corporation but not acted on; or

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4)(a) A claim against a dissolved corporation that may be satisfied, in whole or in part, by insurance assets held by, on behalf of or for the benefit of the dissolved corporation, including any rights, benefits or proceeds arising or derived from the insurance assets, is not subject to the time limitation set forth in subsection (3) of this section, in chapter 361, General Laws of Oregon 1917, in chapter 340, General Laws of Oregon 1927, in chapter 40, Oregon Laws 1937, in chapter 404, Oregon Laws 1939, in section 11, chapter 462, Oregon Laws 1941, in section 1, chapter 134, Oregon Laws 1947, or in ORS 57.630 (1985 Replacement Part),

but is subject to other applicable statutes of limitation. A claimant that brings a claim after the time limitation set forth in subsection (3) of this section, in chapter 361, General Laws of Oregon 1917, in chapter 340, General Laws of Oregon 1927, in chapter 40, Oregon Laws 1937, in chapter 404, Oregon Laws 1939, in section 11, chapter 462, Oregon Laws 1941, in section 1, chapter 134, Oregon Laws 1947, or in ORS 57.630 (1985 Replacement Part) may not recover from the dissolved corporation more than the rights, benefits or proceeds available from the insurance assets.

(b) Notwithstanding ORS 60.121, a claimant may serve a summons or other process upon a dissolved corporation for a claim described in paragraph (a) of this subsection by delivering the summons or process to a director or officer of the dissolved corporation, to a person that has charge of the dissolved corporation's assets or, if the claimant cannot locate the director, officer or person, to any agent who was authorized to accept service of process immediately before the corporation dissolved.

(c) If a claimant states in an affidavit to a circuit court of this state that the claimant cannot after due diligence locate any of the persons described in paragraph (b) of this subsection, the court may provide in an order that the claimant may serve process upon the dissolved corporation by personally delivering the service, together with a copy of the court's order, to the office of the Secretary of State. Service delivered as provided in this paragraph is complete on the 10th day after the delivery.

SECTION 2. ORS 60.645 is amended to read:

60.645. A claim against a dissolved corporation that is not barred under ORS 60.641 or 60.644 may be enforced:

(1) Against the dissolved corporation to the extent of *[its]* **the dissolved corporation's** undistributed assets, **including, without limitation, any insurance assets held by or for the benefit of the dissolved corporation that are available to satisfy the claim;** or

(2) If the assets have been distributed in liquidation, against the shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less. A shareholder's total liability for all claims under this section may not exceed the total value of assets distributed to the shareholder, as of the date or dates of distribution, less any liability of the corporation paid on behalf of the corporation by that shareholder after the date of the distribution.

SECTION 3. ORS 63.644 is amended to read:

63.644. (1) A dissolved limited liability company *[which]* **that** has filed articles of dissolution in accordance with ORS 63.631 may *[also]* publish notice of *[its]* **the limited liability company's** dissolution and request that persons with claims against the limited liability company present *[them]* **the claims** in accordance with the notice.

(2) The notice must:

(a) Be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office is located or, if the principal office is not in this state, where *[its]* **the dissolved limited liability company's** registered office is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that, **except as provided in subsection (4) of this section,** a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(3) If *[the]* a dissolved limited liability company publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred, **except as provided in subsection (4) of this section,** unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within five years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under ORS 63.641;

(b) A claimant whose claim was sent in a timely manner to the dissolved limited liability company but not acted on; or

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4)(a) A claim against a dissolved limited liability company that may be satisfied, in whole or in part, by insurance assets held by, on behalf of or for the benefit of the dissolved limited liability company, including any rights, benefits or proceeds arising or derived from the insurance assets, is not subject to the time limitation set forth in subsection (3) of this section, but is subject to other applicable statutes of limitation. A claimant that brings a claim after the time limitation set forth in subsection (3) of this section may not recover from the dissolved limited liability company more than the rights, benefits or proceeds available from the insurance assets.

(b) Notwithstanding ORS 63.121, a claimant may serve a summons or other process upon a dissolved limited liability company for a claim described in paragraph (a) of this subsection by delivering the summons or process to a director or officer of the dissolved limited liability company, to a person that has charge of the dissolved limited liability company's assets or, if the claimant cannot locate the director, officer or person, to any agent who was authorized to accept service of process immediately before the limited liability company dissolved.

(c) If a claimant states in an affidavit to a circuit court of this state that the claimant cannot after due diligence locate any of the persons described in paragraph (b) of this subsection, the court may provide in an order that the claimant may serve process upon the dissolved limited liability company by personally delivering the service, together with a copy of the court's order, to the office of the Secretary of State. Service delivered as provided in this paragraph is complete on the 10th day after the delivery.

SECTION 4. ORS 63.645 is amended to read:

63.645. A claim against a dissolved limited liability company that is not barred under ORS 63.641 or 63.644 may be enforced:

(1) Against the dissolved limited liability company to the extent of *[its]* **the dissolved limited liability company's undistributed assets, including, without limitation, any insurance assets held by or for the benefit of the dissolved limited liability company that are available to satisfy the claim;** or

(2) If the assets have been distributed in liquidation, against each member of the dissolved limited liability company for the amount by which such member's liquidation distributions would have been reduced if the claim had been paid by the limited liability company. A member's total liability for all claims under this section may not exceed the total value of assets distributed to the member, as of the date or dates of distribution, less any liability of the limited liability company paid on behalf of the limited liability company by that member after the date of the distribution.

SECTION 5. (1) The amendments to ORS 60.644, 60.645, 63.644 and 63.645 by sections 1 to 4 of this 2021 Act apply to claims against a dissolved corporation or dissolved limited liability company whether the claims arise before, on or after the effective date of this 2021 Act, including claims against corporations or limited liability companies that dissolved before the effective date of this 2021 Act, for which a final judgment, including the exhaustion or expiration of all rights of appeal, has not been entered as of the effective date of this 2021 Act.

(2) The amendments to ORS 60.644, 60.645, 63.644 and 63.645 by sections 1 to 4 of this 2021 Act revive and allow claims that might have become barred by the time limitations set forth in chapter 361, General Laws of Oregon 1917, in chapter 340, General Laws of Oregon 1927, in chapter 40, Oregon Laws 1937, in chapter 404, Oregon Laws 1939, in section 11, chapter 462, Oregon Laws 1941, in section 1, chapter 134, Oregon Laws 1947, or in ORS 57.630 (1985 Replacement Part), 60.644 (3) or 63.644 (3).

SECTION 6. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House April 1, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 28, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State