

**Enrolled**  
**Senate Bill 398**

Sponsored by Senator WESTLUND

CHAPTER .....

AN ACT

Relating to foreign limited liability companies; creating new provisions; and amending ORS 60.001, 62.015, 63.001, 65.001 and 70.005.

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

**SECTION 1.** ORS 60.001 is amended to read:

60.001. As used in this chapter:

(1) "Anniversary" means that day each year exactly one or more years after:

(a) The date of filing by the Secretary of State of the articles of incorporation in the case of a domestic corporation.

(b) The date of filing by the Secretary of State of an application for authority to transact business in the case of a foreign corporation.

(2) "Articles of incorporation" include amended and restated articles of incorporation, articles of conversion and articles of merger.

(3) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(4) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface or contrasting color, typing in capitals or underlined is conspicuous.

(5) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(6) "Delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

(7) "Distribution" means a direct or indirect transfer of money or other property, except of a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or otherwise.

(8) "Domestic limited liability company" means an entity that is an unincorporated association having one or more members and that is organized under ORS chapter 63.

(9) "Domestic nonprofit corporation" means a corporation not for profit incorporated under ORS chapter 65.

(10) "Domestic professional corporation" means a corporation organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.

(11) "Electronic signature" has the meaning given that term in ORS 84.004.

(12) "Electronic transmission" means any process of communication that does not directly involve the physical transfer of paper and that is suitable for the retention, retrieval and reproduction of information by the recipient.

(13) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(14) "Entity" includes a corporation, foreign corporation, nonprofit corporation, profit and nonprofit unincorporated association, business trust, estate, partnership, trust, two or more persons having a joint or common economic interest, any state, the United States and any foreign government.

(15) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(16) "Foreign limited liability company" means an entity that is an unincorporated association organized under the laws of a state other than this state, **under the laws of a federally recognized Indian tribe** or under the laws of a foreign country and that is organized under a statute under which an association may be formed that affords to each of its members limited liability with respect to liabilities of the entity.

(17) "Foreign nonprofit corporation" means a corporation not for profit organized under the laws of a state other than this state.

(18) "Foreign professional corporation" means a professional corporation organized under the laws of a state other than this state.

(19) "Governmental subdivision" includes an authority, county, district and municipality.

(20) "Includes" denotes a partial definition.

(21) "Individual" means a natural person. "Individual" includes the estate of an incompetent individual or a deceased individual.

(22) "Means" denotes an exhaustive definition.

(23) "Office," when used to refer to the administrative unit directed by the Secretary of State, means the office of the Secretary of State.

(24) "Person" includes individual and entity.

(25) "Principal office" means the office, in or out of this state, where the principal executive offices of a domestic or foreign corporation are located and designated in the annual report or application for authority to transact business in this state.

(26) "Proceeding" includes civil, criminal, administrative and investigatory action.

(27) "Record date" means the date established under this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(28) "Shares" means the units into which the proprietary interest in a corporation are divided.

(29) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(30) "Signature" includes any manual, facsimile, conformed or electronic signature.

(31) "State," when referring to a part of the United States, includes a state, commonwealth, territory and insular possession of the United States and its agencies and governmental subdivisions.

(32) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(33) "United States" includes a district, authority, bureau, commission, department and any other agency of the United States.

(34) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

**SECTION 2.** ORS 62.015 is amended to read:

62.015. As used in this chapter, unless the context requires otherwise:

(1) "Anniversary" means that day each year exactly one or more years after:

(a) The date of filing by the Secretary of State of the articles of incorporation in the case of a domestic cooperative.

(b) The date of filing by the Secretary of State of an application for authority to transact business in the case of a foreign cooperative.

(2) "Articles" means articles of incorporation, articles of conversion and articles of merger.

(3) "Board" means board of directors.

(4) "Cooperative" means a cooperative corporation which is subject to the provisions of this chapter.

(5) "Corporation" means a corporation which is not a cooperative.

(6) "Domestic limited liability company" means an entity that is an unincorporated association having one or more members and that is organized under ORS chapter 63.

(7) "Domestic nonprofit corporation" means a corporation not for profit incorporated under ORS chapter 65.

(8) "Domestic professional corporation" means a corporation organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.

(9) "Foreign cooperative" means a cooperative corporation organized under laws other than the laws of this state.

(10) "Foreign corporation" means a corporation for profit incorporated under the laws of a state other than this state.

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

(12) "Foreign nonprofit corporation" means a corporation not for profit organized under the laws of a state other than this state.

(13) "Foreign professional corporation" means a professional corporation organized under the laws of a state other than this state.

(14) "Member" means a person who has been qualified and accepted for membership in a cooperative.

(15) "Membership stock" means any class of stock, continuous ownership of which is required for membership in a cooperative.

(16) "Negotiate" means to confer with another in order to come to terms.

(17) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, trusts, estates and foreign and domestic cooperative corporations.

(18) "Shareholder" means a holder of shares of capital stock of a cooperative other than membership stock.

**SECTION 3.** ORS 63.001 is amended to read:

63.001. As used in this chapter:

(1) "Anniversary" means that day each year exactly one or more years after:

(a) The date of filing by the Secretary of State of the articles of organization in the case of a domestic limited liability company.

(b) The date of filing by the Secretary of State of an application for authority to transact business in the case of a foreign limited liability company.

(2) "Articles of organization" means the document described in ORS 63.047 for the purpose of forming a limited liability company, including articles of organization as they may be amended or restated, articles of conversion and articles of merger.

(3) "Bankruptcy" means:

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

- (b) Commencement of a voluntary bankruptcy case by a member;
  - (c) Adjudication of a member as bankrupt or insolvent;
  - (d) Filing by a member of a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or rule;
  - (e) Filing by a member of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;
  - (f) Seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties;
  - (g) Commencement of an involuntary bankruptcy case against a member that has not been dismissed on or before the 120th day after the commencement of the case;
  - (h) Appointment, without the member's consent, of a trustee, receiver or liquidator either of the member or of all or any substantial part of the member's properties that is not vacated or stayed on or before the 90th day after appointment; or
  - (i) Appointment described in paragraph (h) of this subsection that is not vacated on or before the 90th day after expiration of the stay under paragraph (h) of this subsection.
- (4) "Contribution" means anything of value which a person contributes to the limited liability company as a prerequisite for or in connection with membership including cash, property or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services.
- (5) "Corporation" or "domestic corporation" means a corporation for profit incorporated under ORS chapter 60.
- (6) "Distribution" means a direct or indirect transfer of money or other property, except of a limited liability company's own interests, or incurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of any of its member's interests. A distribution may be in the form of a declaration or payment of profits, a purchase, retirement or other acquisition of interests, a distribution of indebtedness, or otherwise.
- (7) "Domestic nonprofit corporation" means a corporation not for profit incorporated under ORS chapter 65.
- (8) "Domestic professional corporation" means a corporation organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.
- (9) "Entity" includes a domestic or foreign limited liability company, corporation, professional corporation, foreign corporation, domestic or foreign nonprofit corporation, domestic or foreign cooperative corporation, profit or nonprofit unincorporated association, business trust, estate, domestic or foreign general or limited partnership, trust, two or more persons having a joint or common economic interest, any state, the United States or any foreign government.
- (10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.
- (11) "Foreign limited liability company" means an entity that is an unincorporated association [*that is*] organized under the laws of a state other than [*of*] this state, **under the laws of a federally recognized Indian tribe** or under the laws of [*any*] a foreign country and that is organized under a statute [*pursuant to*] **under** which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity.
- (12) "Foreign limited partnership" means a limited partnership formed under the laws of any jurisdiction other than this state and having as partners one or more general partners and one or more limited partners.
- (13) "Foreign nonprofit corporation" means a corporation not for profit organized under the laws of a state other than this state.
- (14) "Foreign professional corporation" means a professional corporation organized under the laws of a state other than this state.

(15) "Incompetency" means the entry of a judgment by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or estate.

(16) "Individual" means a natural person.

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

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

(19) "Manager" or "managers" means a person or persons, who need not be members, designated by the members of a manager-managed limited liability company to manage the limited liability company's business and affairs.

(20) "Manager-managed limited liability company" means a limited liability company that is designated as a manager-managed limited liability company in its articles of organization or whose articles of organization otherwise expressly provide that the limited liability company will be managed by a manager or managers.

(21) "Member" or "members" means a person or persons with both an ownership interest in a limited liability company and all the rights and obligations of a member specified under this chapter. "Member" does not include an assignee of an ownership interest who has not also acquired the voting and other rights appurtenant to membership.

(22) "Member-managed limited liability company" means a limited liability company other than a manager-managed limited liability company.

(23) "Membership interest" or "interest" means a member's collective rights in a limited liability company, including the member's share of profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets and any right to vote or participate in management.

(24) "Office," when used to refer to the administrative unit directed by the Secretary of State, means the office of the Secretary of State.

(25) "Operating agreement" means any valid agreement, written or oral, of the member or members as to the affairs of a limited liability company and the conduct of its business.

(26) "Organizer" means one of the signers of the initial articles of organization.

(27) "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(28) "Person" means an individual or entity.

(29) "Proceeding" means any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigatory and whether formal or informal.

(30) "State," when referring to a part of the United States, includes a state, commonwealth, territory or insular possession of the United States and its agencies and governmental subdivisions.

(31) "United States" includes a district, authority, bureau, commission, department or any other agency of the United States.

**SECTION 4.** ORS 65.001 is amended to read:

65.001. As used in this chapter, unless otherwise specifically provided:

(1) "Anniversary" means that day each year exactly one or more years after the date of filing by the Office of the Secretary of State of the articles of incorporation in the case of a domestic corporation or the date of filing by the Office of the Secretary of State of an application for authority to transact business in the case of a foreign corporation. An event which would otherwise cause an anniversary to fall on February 29 shall be deemed to have occurred on February 28.

(2) "Approved by the members" or "approval by the members" means approved or ratified by the members entitled to vote on the issue through either:

(a) The affirmative vote of a majority of the votes of such members represented and voting at a duly held meeting at which a quorum is present or the affirmative vote of such greater proportion including the votes of any required proportion of the members of any class as the articles, bylaws or this chapter may provide for specified types of member action; or

- (b) A written ballot or written consent in conformity with this chapter.
- (3) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger, and corrections thereto.
- (4) "Board" or "board of directors" means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated, except that no individual or group of individuals are the board of directors because of powers delegated to that individual or group pursuant to ORS 65.301.
- (5) "Bylaws" means the code or codes of rules, other than the articles adopted pursuant to this chapter or the laws governing a foreign corporation for the regulation or management of the affairs of the domestic or foreign corporation, irrespective of the name or names by which such rules are designated.
- (6) "Class" means a group of memberships which have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly.
- (7) "Contact address" means a mailing address at which a person affiliated with the organization will receive and transmit to the organization notices intended for the foreign or domestic corporation when it is either not practical to send such notices to the registered agent, or a duplicate notice is desirable. The contact address may be the principal place of business, if any, or the business or residence address of any person associated with the corporation or foreign corporation who has consented to serve, but shall not be the address of the registered agent.
- (8) "Corporation" or "domestic corporation" means a nonprofit corporation that is not a foreign corporation, and that is incorporated under or subject to the provisions of this chapter.
- (9) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.
- (10) "Deliver" includes mail.
- (11) "Directors" means individuals designated in the articles or bylaws or elected by the incorporators to act as members of the board, and their successors.
- (12) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors or officers, and does not include payment of value for property received or services performed or payment of benefits in furtherance of the corporation's purposes.
- (13) "Domestic business corporation" means a for profit corporation incorporated under ORS chapter 60.
- (14) "Domestic limited liability company" means an entity that is an unincorporated association having one or more members and that is organized under ORS chapter 63.
- (15) "Domestic professional corporation" means a corporation organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.
- (16) "Effective date of notice" has the meaning given that term in ORS 65.034.
- (17) "Employee" does not include an officer or director who is not employed by the corporation with compensation for services beyond those encompassed by board membership.
- (18) "Entity" includes a corporation, foreign corporation, business corporation and foreign business corporation, profit and nonprofit unincorporated association, corporation sole, business trust, estate, partnership, trust, two or more persons having a joint or common economic interest, any state, the United States and any foreign government.
- (19) "File," "filed" or "filing" means reviewed, accepted and entered in the Office of the Secretary of State.
- (20) "Foreign business corporation" means a for profit corporation incorporated under the laws of a state other than this state.
- (21) "Foreign corporation" means a corporation organized under a law other than the law of this state which would be a nonprofit corporation if formed under the laws of this state.

(22) "Foreign limited liability company" means an entity that is an unincorporated association organized under the laws of a state other than this state, **under the laws of a federally recognized Indian tribe** or under the laws of a foreign country and that is organized under a statute under which an association may be formed that affords to each of its members limited liability with respect to liabilities of the entity.

(23) "Foreign professional corporation" means a professional corporation organized under the laws of a state other than this state.

(24) "Governmental subdivision" includes an authority, county, district and municipality.

(25) "Includes" denotes a partial definition.

(26) "Individual" means a natural person and includes the guardian of an incompetent individual.

(27) "Means" denotes an exhaustive definition.

(28)(a) "Member" means any person or persons entitled, pursuant to a domestic or foreign corporation's articles or bylaws, without regard to what a person is called in the articles or bylaws, to vote on more than one occasion for the election of a director or directors.

(b) A person is not a member by virtue of any of the following rights the person has:

(A) As a delegate;

(B) To designate or appoint a director or directors;

(C) As a director; or

(D) As a holder of an evidence of indebtedness issued or to be issued by the corporation.

(c) Notwithstanding the provisions of paragraph (a) of this subsection, a person is not a member if the person's membership rights have been eliminated as provided in ORS 65.164 or 65.167.

(29) "Membership" refers to the rights and obligations a member or members, as defined in this chapter, have pursuant to this chapter.

(30) "Mutual benefit corporation" means a domestic corporation which either is formed as a mutual benefit corporation pursuant to ORS 65.044 to 65.067, is designated a mutual benefit corporation by a statute or does not come within the definition of public benefit or religious corporation.

(31) "Nonprofit corporation" means mutual benefit corporations, public benefit corporations and religious corporations.

(32) "Notice" has the meaning given that term in ORS 65.034.

(33) "Office" when used to refer to the administrative unit directed by the Secretary of State, means the Office of the Secretary of State.

(34) "Person" includes any individual or entity.

(35) "Principal office" means the place, in or out of this state, so designated in the most recent annual report filed pursuant to ORS 65.787 or if no annual report is on file, as designated in the articles of incorporation, or the application for authority to transact business in this state, which shall be the place where the principal executive offices of a domestic or foreign corporation are located, or if none, the contact address.

(36) "Proceeding" includes civil, criminal, administrative and investigatory action.

(37) "Public benefit corporation" means a domestic corporation which:

(a) Is formed as a public benefit corporation pursuant to ORS 65.044 to 65.067, is designated as a public benefit corporation by a statute, is recognized as tax exempt under section 501 (c) (3) of the Internal Revenue Code of 1986 or is otherwise organized for a public or charitable purpose;

(b) Is restricted so that on dissolution it must distribute its assets to an organization organized for a public or charitable purpose, a religious corporation, the United States, a state or a person which is recognized as exempt under section 501 (c) (3) of the Internal Revenue Code of 1986; and

(c) Does not come within the definition of "religious corporation."

(38) "Record date" means the date established under ORS 65.131 to 65.177 or 65.201 to 65.254 on which a corporation determines the identity of its members and their membership rights for the purposes of this chapter. The determinations shall be made as of the time of close of transactions on the record date unless another time for doing so is specified at the time the record date is fixed.

(39) "Religious corporation" means a domestic corporation which is formed as a religious corporation pursuant to ORS 65.044 to 65.067, is designated a religious corporation by a statute or is organized primarily or exclusively for religious purposes.

(40) "Secretary," when used in the context of a corporate officer, means the corporate officer to whom the board of directors has delegated responsibility under ORS 65.371 for preparing the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(41) "State" when referring to a part of the United States, includes a state, commonwealth, territory and insular possession of the United States and its agencies and governmental subdivisions.

(42) "Uncompensated officer" means an individual who serves in an office without compensation for personal service. Payment solely for actual expenses in performing duties of the officer or a stipend which is paid only to compensate the average expenses incurred over the course of a year shall not be deemed to be compensation.

(43) "United States" includes district, authority, bureau, commission, department and any other agency of the United States.

(44) "Vote" includes authorization by written ballot and written consent, where permitted.

(45) "Voting power" means the total number of votes entitled to be cast on the issue at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event which has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

**SECTION 5.** ORS 70.005 is amended to read:

70.005. As used in this chapter:

(1) "Certificate of limited partnership" means the certificate referred to in ORS 70.075, and the certificate as amended, articles of conversion and articles of merger.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, that a partner contributes to a limited partnership in the capacity as a partner.

(3) "Corporation" or "domestic corporation" means a corporation for profit incorporated under ORS chapter 60.

(4) "Domestic limited liability company" means an entity that is an unincorporated association having one or more members and that is organized under ORS chapter 63.

(5) "Domestic nonprofit corporation" means a corporation not for profit incorporated under ORS chapter 65.

(6) "Domestic professional corporation" means a corporation organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.

(7) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in ORS 70.180.

(8) "Foreign corporation" means a corporation for profit incorporated under the laws of a state other than this state.

(9) "Foreign limited liability company" means an entity that is an unincorporated association organized under the laws of a state other than this state, **under the laws of a federally recognized Indian tribe** or under the laws of a foreign country and that is organized under a statute under which an association may be formed that [*provides*] **affords** to each of its members limited liability with respect to liabilities of the entity.

(10) "Foreign limited partnership" means a partnership formed under the laws of any jurisdiction other than this state and having as partners one or more general partners and one or more limited partners.

(11) "Foreign nonprofit corporation" means a corporation not for profit organized under the laws of a state other than this state.



(12) "Foreign professional corporation" means a professional corporation organized under the laws of a state other than this state.

(13) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(14) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(15) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(16) "Partner" means a limited or general partner.

(17) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(18) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(19) "Person" means an individual, partnership, limited partnership (domestic or foreign), trust, estate, association or corporation.

**SECTION 6. The amendments to ORS 60.001, 62.015, 63.001, 65.001 and 70.005 by sections 1 to 5 of this 2005 Act apply to limited liability companies organized under the laws of a federally recognized Indian tribe prior to, on or after the effective date of this 2005 Act.**

**Passed by Senate March 30, 2005**

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Secretary of Senate

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President of Senate

**Passed by House May 18, 2005**

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Speaker of House

**Received by Governor:**

.....M.,....., 2005

**Approved:**

.....M.,....., 2005

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Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2005

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Secretary of State