

# HOUSE BILL REPORT

## ESSB 6168

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### As Passed House - Amended:

March 1, 1996

**Title:** An act relating to limited liability companies.

**Brief Description:** Amending the limited liability companies act.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Smith, Johnson, Newhouse and Winsley).

### Brief History:

#### Committee Activity:

Law & Justice: 2/21/96 [DP].

#### Floor Activity:

Passed House - Amended: 3/1/96, 97-0.

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## HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass. Signed by 16 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Murray; Robertson; Smith; Sterk and Veloria.

**Staff:** Edie Adams (786-7180).

**Background:** In 1994, the Legislature enacted the Limited Liability Company Act, creating a new form of business organization, the limited liability company (LLC). The Washington Bar Association reviewed the act and determined that a number of changes and clarifications are needed relating to inclusion of LLCs in provisions applicable in general to business entities, LLC names, changes of the registered office or registered agent, dissolution, member management, and registration of foreign LLCs.

Inclusion of LLCs: There are innumerable sections of the code that are made applicable to business entities in general. When the Limited Liability Company Act was passed, these sections were not amended to include the newly created form of business organization, creating ambiguity as to whether the Legislature intended to exclude LLCs from those sections.

Company Name: The name of an LLC must be distinguishable upon the Secretary of State's records from the registered name of any corporation. In addition, the name of an LLC or a professional LLC must indicate that the company has limited liability. Under current law, a company complies with this requirement if it contains either "Limited Liability Company," "Limited Liability Co.," or "L.L.C.," in the case of an LLC, or "Professional Limited Liability Company," "Professional Limited Liability Co.," or "P.L.L.C.," in the case of a professional LLC. The statute does not authorize the use of "LLC" or "PLLC."

Dissolution: An LLC is dissolved upon the occurrence of a number of conditions. One of those conditions provides that an LLC is dissolved on the date specified in the LLC agreement, or 30 years from the date of the formation of the LLC if no dissolution date is provided in the agreement. This provision precludes an LLC from having a perpetual existence.

Member Management: An LLC is managed by the members of the LLC unless the certificate of formation vests management in a manager or managers. If management of the LLC is vested in a manager or managers, no member acting solely in his or her capacity as a member is an agent of the LLC. The act does not specify whether or not a member acting alone is an agent of the LLC if management of the LLC is vested in the members.

Change of Registered Office or Registered Agent: Each LLC must maintain a registered office and a registered agent. The name of an LLC's registered agent or the address of the registered office may be changed by the registered agent by filing a certificate with the Secretary of State.

A registered agent may resign and appoint a successor registered agent by filing a certificate with the Secretary of State. If the registered agent does not appoint a successor registered agent, the resignation of the registered agent is not effective for 120 days after filing the certificate of resignation. The resigning registered agent must notify the LLC at least 30 days prior to filing a certificate of resignation, and the LLC must designate a new registered agent. These procedures are different than the procedures a corporation must follow to change the corporation's registered agent or address of the registered office.

Registration of a Foreign LLC: Foreign LLCs are required to register with the Secretary of State prior to conducting business in Washington. There are currently no grounds or procedures for revoking the registration of a foreign LLC.

Limited Liability Partnerships: In 1995, the Legislature passed the Limited Liability Partnership Act. A limited liability partnership is a type of business organization that limits the liability of a partner for any negligence, omission, or wrongful act of another partner. A person or group of persons licensed to render professional

services may form and operate as a limited liability partnership. The Act does not specifically authorize persons rendering different professional services, for example, different health care services, from forming one limited liability partnership to perform a range of health care services.

**Summary of Bill:** Provisions of the Limited Liability Company Act relating to LLC names, changes of the registered office or registered agent, dissolution, member management, and registration of a foreign LLC are amended. Clarifying amendments are made with respect to inclusion of LLCs in provisions applicable in general to business entities.

Inclusion of LLCs: The general definition of "person" applicable throughout the code is amended to include limited liability companies. The terms "association," "unincorporated association," and "person, firm, or corporation" shall be construed to include limited liability companies unless the context clearly requires otherwise.

The statute dealing with trade-name registration is amended to include limited liability companies. Every foreign or domestic LLC that conducts or transacts business in Washington under any trade name must register the trade name with the Department of Licensing by filing a registration setting forth the LLC's name as filed with the Secretary of State.

Company Name: The name of an LLC must be distinguishable upon the Secretary of State's records from the name of any domestic or foreign limited partnership. Provisions specifying authorized indications of limited liability in the company name are amended to allow the use of "LLC" for a limited liability company or "PLLC" for a professional limited liability company.

Dissolution: Conditions of dissolution are amended to provide that an LLC is dissolved on the dissolution date specified in the LLC agreement. If the agreement does not specify a dissolution date or that the LLC has perpetual existence, the dissolution date is 30 years after the date of formation. A dissolution date specified in the LLC agreement is renewable by consent of all members. This amendment does not apply to any LLC formed after the effective date of the act, unless the LLC's certificate of formation is amended after the effective date of the act to provide that the LLC has perpetual duration.

Member Management: Provisions concerning the management of an LLC are amended to provide that, if the management of the LLC is vested in the members, each member is an agent of the LLC for the purpose of LLC business. Any act of a member that apparently is for the purpose of carrying on the business of the LLC is binding on the LLC, unless the member in fact has no authority to act for the company and the person with whom the member is dealing has knowledge that the member has no such authority.

Change of Registered Office or Registered Agent: The procedures for the resignation of a registered agent or the change of a name of a registered agent or the address of a registered office are amended to conform to the procedures provided for the change of the registered agent or registered office of a corporation. An LLC or foreign LLC may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change.

If a registered agent changes the street address of the agent's business office, the agent may change the street address of the registered office of any LLC or foreign LLC for which it acts as registered agent by notifying the LLC in writing of the change and delivering to the Secretary of State for filing a statement of change.

A registered agent may resign by delivering to the Secretary of State for filing a statement that the registered office is also discontinued. The Secretary of State must mail a copy of the statement to the LLC or foreign LLC. The registered agent is terminated and the registered office discontinued on the 31st day after the statement is filed.

Registration of a Foreign LLC: Grounds and procedures for the revocation of a foreign LLC's registration are provided. The Secretary of State may commence a proceeding to revoke registration of a foreign LLC if (1) the company is without a registered agent or registered office in this state; (2) the company does not inform the Secretary of State of a change in its registered agent or registered office within 60 days; (3) a manager or agent of the company signed a document to be delivered to the Secretary of State knowing it was false; or (4) the Secretary of State receives a certificate from the Secretary of State of the jurisdiction where the company was organized stating that the company has been dissolved.

The Secretary of State must notify the foreign LLC of the grounds for revocation of its registration, and the company has 60 days to remedy the grounds for revocation. The authority of a foreign LLC to transact business in the state ceases on the date shown on the certificate of revocation. The revocation of a foreign LLC's registration appoints the Secretary of State as the company's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign LLC was authorized to transact business in the state.

Limited Liability Partnerships: Certain licensed and certified health care professionals are specifically authorized to join and form a single limited liability partnership to render their individual professional services. The health care professions that are authorized to join together are acupuncturists, counselors, podiatrists, chiropractors, dental hygienists, opticians, hearing aid fitter/dispensers, naturopaths, midwives, optometrists, ophthalmologists, pharmacists, nurses, psychologists, respiratory care practitioners, and dietitians and nutritionists.

Physicians and osteopathic physicians are specifically authorized to join and form a limited liability partnership to render their individual professional services.

The applicability of the Uniform Disciplinary Act and other health care professional statutes are affirmed, including restrictions on persons practicing beyond the scope of their credentials.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill clarifies issues that have arisen regarding the management and dissolution of limited liability companies and the process for changing registered agents and revoking a foreign company's registration.

**Testimony Against:** None.

**Testified:** Kent Carlson, Washington State Bar Association (pro).