

# SENATE BILL REPORT

## SSB 5030

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As Amended by House, April 8, 2015

**Title:** An act relating to the limited liability company act.

**Brief Description:** Addressing the limited liability company act.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Pedersen and O'Ban; by request of Washington State Bar Association).

**Brief History:**

**Committee Activity:** Law & Justice: 1/15/15, 1/20/15 [DPS].

Passed Senate: 2/25/15, 48-0.

Passed House: 4/08/15, 97-0.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5030 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** A limited liability company (LLC) is a type of business organization. LLCs have flexible structures and management. An LLC only needs one individual member – owner – but multiple business organizations may also join together as members to form an LLC. An LLC may be member managed or manager managed. An LLC organization provides its members with the benefits of both a corporation and a partnership, and is relatively easy to create. Like a corporation, the LLC structure protects the members from liability in most circumstances. Like a partnership, LLCs are not taxed as a separate business entity under federal law – no double taxation.

Washington enacted its first law governing LLCs in 1994. Under the current law, the LLC's members must file a certificate of formation with the Secretary of State to create an LLC. LLCs must comply with all other state laws and with the terms of a written LLC agreement. The written LLC agreement binds the members and governs the LLC's affairs. LLCs have the same power to conduct business that an individual has for matters not covered by state law or the LLC agreement.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Substitute Bill:** The LLC agreement governs the relations between the LLC and its members, the relations among the LLC's members, and the LLC manager's rights and duties. If the LLC agreement does not specify these internal relations, legal rights, and duties, default rules and presumptions supplement the LLC agreement as a matter of law. Some of the default rules also set minimum legal requirements that an LLC agreement cannot limit or eliminate.

An LLC agreement may be written, oral, or implied. However, like similar laws governing partnerships, the LLC must make a written record if it limits the rights of dissenters to a merger. An LLC may either be member managed or manager managed. Unless the LLC agreement provides otherwise, an LLC is presumed member managed. A majority vote is sufficient to authorize most LLC actions that require member consent. Some LLC actions, like merger or conversion, require a unanimous vote of members or additional member approval.

The LLC manager owes defined fiduciary duties of loyalty and care. Members owe the same fiduciary duties to a member-managed LLC.

As to matters in the ordinary course of an LLC's activities, each member of a member-managed LLC is the LLC's agent and has apparent authority to bind the LLC. Likewise, each manager of a manager-managed LLC is the LLC's agent and has the authority to bind the LLC. Members no longer have apparent authority to bind a manager-managed LLC.

An LLC must provide its members with any records the members request subject to reasonable limits on the use of the records. An LLC must allocate and distribute profits and losses according to specific requirements. An insolvent LLC may not make distributions to its members.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on January 1, 2016.

**Staff Summary of Public Testimony on Original Bill:** PRO: New LLC filings in Washington outnumber new corporation filings by a 7:1 ratio. Washington's current LLC law is similar to the original LLC law passed in 1994. The current LLC law should be changed to bring Washington's laws in line with similar laws in leading states and with current LLC business practices. This bill is the work of the Washington State Bar Association Partnership and LLC Law Committee in which 20 business lawyers from across the state took part in a line-by-line review of the current LLC law over several years. The proposed changes will make the LLC law more user friendly for many non-lawyers who form and operate LLCs. This bill promotes uniformity among LLCs and uniformity between Washington's LLC law and its other business entity laws. The bill creates better protection for minority members of an LLC and gives LLC members an important right to access to LLC records. It expressly

provides that LLCs can be managed by a board of directors, and that managers or members can be personally liable for unlawful distribution of LLC assets.

**Persons Testifying:** PRO: Senator Pedersen, prime sponsor; Brian Todd, WA State Bar Assn. Partnership, LLC Law Committee; Douglas Batey, Batey Business Law PLLC; Pamela Floyd, Office of the Secretary of State.

**House Amendment(s):** Makes two technical corrections by placing section 47 of the act under Article VI, rather than Article VII, and by replacing the term "commended" with "commenced" in section 106.