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# The Revised Uniform Limited Liability Company Act

## and Its Effect on Utah's New and Existing LLCs

by Florence M. Vincent, VAN COTT, BAGLEY, CORNWALL & MCCARTHY, P.C.

**The Utah Legislature recently enacted the Utah Revised Uniform Limited Liability Company Act (“Act”), which will affect new and existing Utah LLCs. This article is intended to provide Utah LLCs with information concerning the effective date of the Act, together with a brief explanation as to how the Act changes the existing laws governing Utah LLCs. If you are a manager or member of a Utah LLC, or are thinking of forming a Utah LLC, you should speak with your counsel about how the Act may affect your LLC.**

You have time to learn about the Act. While the Legislature enacted the Act in the 2011 legislative session, the Act does not go into effect until July 1, 2012. The July 1, 2012 date applies to LLCs that are formed on and after that date. The Act does not go into effect until July 1, 2014 with respect to LLCs that were formed on or before July 1, 2012. Existing LLCs may nevertheless opt to become subject to the Act on and after July 1, 2012

## In addition to altering duties, an operating agreement may further limit member liability by establishing methods to ratify or authorize violations of the duty of loyalty.

Under the current statute, the organizer(s) of a Utah LLC is required to file articles of organization, which include information concerning business name, business purpose, whether the LLC is member or manager-managed, the names and street addresses of the initial members or managers, the name and address of each organizer who is not a member or manager and registered agent information. This information is readily available to the public from the Utah Division of Corporations and Commercial Code (the "Division"). The Act changes this requirement. Under the Act, a certificate of organization is all that is required to be filed in order to form an LLC. The only information required to be included in a certificate of organization is the name of the LLC, registered agent information, and whether the LLC is a low-profit LLC. If the LLC is a professional services company, the certificate must also include a description of services and the name and address of each member. Existing LLCs will not be required to file a new certificate of organization, but may opt to file a certificate on and after July 1, 2012, and thereby reduce the amount of information that is publicly available from the Division.

The Act recognizes that the operating agreement agreed to by the members, i.e., the deal the members struck, should govern unless it conflicts with the statute. One example of this relates to fiduciary duties. Under the current statute, fiduciary duties are established, in print, by statute. However, under the Act, fiduciary duties may be set forth in the LLC's operating agreement. Unless the fiduciary duties described in the operating agreement are "unconscionable or against policy", the operating agreement will govern. Specifically, the Act provides that an LLC's operating agreement may: (i) restrict or eliminate several duties relating to the dissolution of the LLC, (ii) define the duty of loyalty, (iii) alter the duty of care, (iv) alter or eliminate any other fiduciary duty, and (v) establish standards by which to measure the LLC's compliance with the good faith and fair dealing requirement. In addition to altering duties, an operating agreement may further limit member liability by establishing methods to ratify or authorize violations of the duty of loyalty.

Another change relates to creditor rights. Under the existing statute, if a member loaned money to the LLC, the loan cannot be repaid to the member until all other creditors are paid. But under the Act, member-creditors may be treated on par with all other unsecured creditors. That is, member-creditors are no longer relegated to the back of the line—they may have the same standing as other unsecured creditors.



The foregoing represents a brief summary of just a few changes the Act will make to existing law governing LLCs. Because the Act replaces the existing statute governing LLCs, you should review it carefully with counsel.

This article is designed to provide general information only. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel. The author is an attorney with the law firm of Van Cott, Bagley, Cornwall & McCarthy, P.C. and member of the firm's Labor & Employment Practice Group. Ms. Vincent can be reached at 801.532.3333.

Florence M. Vincent is a shareholder and a member of Van Cott's Business Section and Labor & Employment Practice Group. Ms. Vincent's practice focuses on employee/employer matters, which include assisting clients with designing and implementing employee benefit plans, resolving employee benefit compliance issues on an internal basis as well as with the Internal Revenue Service and the Department of Labor. Ms. Vincent also advises and assists clients with Employee Retirement Income Security Act (ERISA) litigation matters.

In addition to Ms. Vincent's experience in employee benefits, she provides clients with advice in the areas of employment law, corporate law, commercial transactions, mergers and acquisitions, choice of entity planning, formation and maintenance, employment and confidentiality agreements, sales agreements and agreements for governmental entities.

Van Cott's Labor and Employment lawyers work with businesses to develop and implement effective employment strategies. They provide a wide range of legal services to owners and employers in issues related to daily employee management, employment related lawsuits, administrative claims, governmental investigations, and many other lawsuits.

The Van Cott Labor & Employment Practice Group is chaired by Florence M. Vincent and Mark A. Wagner.