Oregon Business Lawyer

Oregon State Bar Business Law Section Newsletter • Sepember 2023

FTC Proposes New Rule on Non-Compete Agreements

By Timothy J. Resch, Samuels Yoelin Kantor LLP

In January 2023 the Federal Trade Commission (FTC) proposed a new rule that would functionally ban non-compete clauses in employment contracts because, as the agency argues, non-compete clauses "prevent workers from leaving jobs . . . decrease competition for workers" and lower wages for all workers, regardless of whether they are bound by a non-compete agreement.

The proposed rule can be found at https://www.ftc.gov/legal-library/browse/federal-register-notices/non-compete-clause-rulemaking.

The public comment period closed on April 19, 2023, and the FTC is expected to vote on promulgating a final version of the rule in 2024.

Oregon law on noncompetition agreements

Oregon law governs noncompetion agreements. ORS 653.295. The statute, which was most recently amended effective January 1, 2022, has limits on which employees (those covered by the "white collar" salary exemption, and special rules for broadcasters) can be subject to such an agreement.

There are requirements to inform employees of the noncompetition provisions prior to their start date of employment or upon a "bona fide advancement." Employees must earn at least $100,553, and the duration of the noncompetition provision is now limited to 12 months.

Washington and California also have statutes that limit the scope of such agreements. Other states have more permissive laws or no statutory restrictions regarding the limitations on enforceable noncompete agreements.

Federal regulation

The proposed federal rule is broad. It would effectively prohibit all non-compete provisions by defining them as an "unfair method of competition" under the FTC Act.

The proposed rule also pre-empts any state laws that are inconsistent with the proposed rule, allowing only state laws that offer greater worker protections to remain effective

Finally, the proposed rule, if adopted, will have retroactive effect. Employers with existing non-compete agreements are required to rescind all such agreements by a date of compliance specified in the rule, in addition to providing individualized notice to all workers who were subject to non-compete agreements. That notice of recission requirement extends to former employees, to the extent the employer has the former employee's contact information readily available.

The proposed rule has only one limited exception for agreements related to sales of businesses. The exception would apply to an agreement "entered into by a person who is selling a business entity or otherwise disposing of all of the person's ownership interest in the business entity."

Continued on page 2

In this Issue

Articles

Plus

Non-compete

Continued from page 1

Timothy J. Resch is the managing partner at Samuels Yoelin Kantor. His practice emphasizes employment law advice and litigation, primarily for small businesses. He has experience litigating cases involving the Americans with Disabilities Act and sexual harassment under Title VII, as well as state law wrongful discharge cases. He also advises clients on responses to claims filed with the Equal Employment Opportunity Commission and the Oregon Bureau of Labor and Industries. Resch routinely deals with non-competition agreements and trade secrets matters for employers.

However, the exception applies only to a person with a minimum 25% ownership interest in the business at the time the person makes the non-compete agreement. The proposed rule does not specify whether the exception would apply to non-compete agreements made in anticipation of future sales or solely those agreements made at the time of sale.

The employees (current or former) who would have continuing non-compete restrictions would be those subject to the exception—for a non-compete in connection with the sale of a business. The proposed rule doesn't require notice to current or former employees who fall within the exception.

Response to proposed rule

In addition to tens of thousands of public comments, the FTC's proposed rule has attracted threats of litigation.

The U.S. Chamber of Commerce has indicated it will bring a legal challenge should the FTC promulgate the proposed rule. The Chamber co-signed a public comment criticizing the proposed rule and claiming the FTC "lacks legal authority to issue [it]." That public comment put forward two theories to support its claim that the proposed rule is beyond the FTC's authority to promulgate. Both arguments draw on doctrines the current Supreme Court has demonstrated an interest in considering: the major questions doctrine and the recently resurrected nondelegation doctrine. Both theories are grounded in separation-of-powers concerns, essentially charging that executive agencies must have explicit congressional authorization to act.

Other groups—the American Medical Association, for example—have adopted resolutions opposing noncompete agreements, as limiting access to care and disrupting continuity of care.

Conclusion

One of the primary criticisms of the proposed rule seems to be that its breadth and lack of carve-outs or exceptions for specific industries or types of worker risk would undermine businesses that rely on trade-secret protections and invest in training highly skilled employees. There is no provision in the proposed rule that would limit the use of non-compete agreements to certain highly compensated individuals, or jobs with access to confidential information and trade secrets. The proposed rule would also invalidate existing non-compete agreements which are valid under current state law.

Given recent U. S. Supreme Court rulings on executive or administrative agency overreach, it seems likely that this proposed rule, even if modified in response to the comments received, has a relatively low chance of being implemented.

Perhaps the better course is the status quo in our federalist system—with non-compete agreements remaining the subject of state legislation. ◆

Oregon Will Require Data Broker Registration

A new data broker registration requirement will go into effect January 21, 2024. The Oregon Dept. of Consumer and Business Services will be implementing the registration requirement.

More information on the National Law Review website: https://www.natlawreview.com/article/2024-oregon-will-join-short-list-states-requiring-data-broker-registration

The Committee on Foreign Investment in the United States: Its Purpose, Powers, and Procedures

By Kassim Ferris, Stoel Rives LLP

Kassim Ferris has more than 27 years of experience handling matters involving patents, intellectual property, international trade regulation, and national security. He leverages his technical background as an engineer both when handling patent and IP matters and when representing clients on export compliance and CFIUS matters. He is a partner at Stoel Rives.

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee charged with overseeing national security implications of foreign investments in U.S. businesses and foreign acquisitions of certain U.S. real estate. If the committee finds that a foreign investment is a threat to national security, it can impose mitigation measures or make a recommendation to the President of the United States to prohibit the transaction, even years after a transaction has concluded. And such presidential action is not reviewable by the courts.

Filing with CFIUS

Under the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA),[1] filing with CFIUS is now **mandatory** in certain circumstances, and must be done at least 30 days before completing a transaction, subject to penalties of up to the entire value of the transaction against each party.[2] So, ruling out a mandatory CFIUS filing is an important diligence step for any transaction in which an investor or acquiring party may be a "foreign person." The regulatory definition of foreign person includes U.S. entities controlled by foreign persons.[3] And "control" is defined as "the power, direct or indirect, ... to determine, direct, or decide important matters affecting an entity," which is broader than generally understood in the corporate context, as illustrated by numerous examples in the regulations.[4] Consequently, it is not safe to assume that deal parties can forgo a CFIUS filing because the buyer or investor is a U.S.-domiciled entity or that it is not majority-owned by a foreign person.

The good news is that CFIUS filings are only mandatory for certain non-passive foreign investments in a Tech, Infrastructure, and Data (TID) U.S. business. These include a U.S. business that produces, designs, tests, manufactures, fabricates, or develops certain "critical technology" that would require regulatory authorization for export or transfer to the investor or to certain persons in their ownership, regardless of whether the technology is actually exported or even made known to the foreign investor.[5] Also included are transactions that could result in a foreign government directly or indirectly holding a substantial interest in a U.S. business that performs certain functions with respect to critical infrastructure or that collects sensitive personal data on U.S. citizens.[6] There are also several exceptions to the mandatory filing requirements.[7]

For all other foreign investment transactions within the scope of the committee's jurisdiction, a filing is voluntary. However, if not formally notified of a transaction the committee will retain the power to investigate the transaction at any time, including after it has been completed. Ultimately the decision whether to voluntarily file with CFIUS is up to the parties, in view of any national security considerations. Also factoring into this decision are the effort, cost, and delay associated with seeking review by CFIUS, as well as the risk and potential consequences of unilateral investigation by CFIUS, either before or after the transaction has closed. As one might imagine, the parties' divergent interests in making a voluntary CFIUS filing can lead to challenges in negotiating a deal.

National security review

In reviewing a transaction, CFIUS assesses evidence of the vulnerabilities of the target U.S. business in terms of its susceptibility to impairment of national security, the threat posed by the foreign acquirer or another foreign person, and the potential consequences to national security that could reasonably result from exploitation of the vulnerabilities by the threat actor.

The committee is chaired by the Secretary of the Treasury and composed of the heads of the departments of Commerce, Defense, Energy, Homeland Security, Justice, State, and Treasury, and the Office of Science and Technology Policy and the U.S. Trade Representative. The Secretary of Labor and the Director of National Intelligence are non-voting, ex-officio members of CFIUS, and there are also observers from five White House offices and a sizable permanent staff at the Department of Treasury's Office of Investment Security. Each year, CFIUS formally reviews more than 500 transactions and, with the help of its member agencies, sifts through many thousands of non-notified transactions for national security risks, and initiates formal reviews on scores of such non-notified

Continued on page 4

transactions. Expecting further growth in workload, the committee is looking to double its staff.

Since 1989, when CFIUS began reviewing foreign investments, only seven transactions have been prohibited by order of the President, all involving some connection to China. But numerous other transactions have been abandoned by the parties after CFIUS issued orders or threatened action, and there is also a history of non-notified cases in which the foreign acquirer has divested the U.S. business in response to pressure from CFIUS.

CFIUS is chaired by the Secretary of the Treasury and composed of the heads of the departments of Commerce, Defense, Energy, Homeland Security, Justice, State, and Treasury, and the Office of Science and Technology Policy and the U.S. Trade Representative.

Except for investigations initiated by a CFIUS member agency, review is generally initiated by the parties to a transaction who jointly file a notice or abbreviated declaration seeking review.

Notice and declaration process

The CFIUS process for a notice can take 150 days or more, including the time to assemble and submit a draft to the committee for comments before formally filing the notice. The initial statutory period for CFIUS review is 45 days, followed by a possible 45-day investigation period for any unresolved issues of national security.[8] In addition, the committee may take up to ten days to provide comments on a draft, or to accept or reject the formal notice, and sometimes takes longer.[9] If the committee is unable to conclude review of the transaction within the statutory time period, it may invite the parties to refile and restart the clock.

An abbreviated declaration filing is available as a less-expensive and potentially faster alternative to a notice when no significant national security issues are apparent. The statutory review period for a declaration is 30 days, not including the time to prepare the declaration.[10] Notably, CFIUS is not obligated to conclude its review of a transaction based on a declaration, and at the end of the 30-day review period CFIUS may invite the parties to follow up with a notice or may merely inform the parties that it is unable to conclude its review on a declaration.[11]

To facilitate the committee's work, the CFIUS regulations require a notice or declaration to include substantial detail about the activities and assets of the U.S. business, the transaction, and the foreign acquirer.[12] A notice requires much more detail than a declaration. Preparing and filing a notice or declaration is typically a collaborative process, with all parties to the transaction and their counsel playing significant roles. Much of the work of preparing a notice or declaration to CFIUS can be completed during due diligence, but a notice or declaration is not usually filed until the transaction agreements are in substantially final form, as any material changes can require the notice or declaration to be refiled and the process restarted. Thus, when a filing is made with CFIUS, the committee's review will often constitute the critical path of the transaction timeline. The committee will often ask questions or require additional information during the review process, and the parties will typically have only three business days to respond to questions (two business days on declarations), which can be challenging due to time zone differences, language barriers, and collaboration on responses.[13]

CFIUS may seek to impose or negotiate mitigation measures by agreement, such as conditions on the transaction, divestment of certain assets, compliance with security conditions, proxy boards, and oversight or auditing requirements.[14] Statistics collected by the committee indicate it has cleared transactions conditional upon mitigation measures in about 10% of cases filed since 2012.[15]

Cost

The cost of undergoing CFIUS review is highly dependent on the complexity of the transaction and the U.S. business, and whether CFIUS imposes mitigation measures, but it is not unusual for each party's attorney fees to exceed six figures. FIRRMA also imposes a government filing fee for notices (but not declarations), on a sliding scale from $0, for transactions valued under half a million dollars, to $300,000, for transactions valued at $750 million or more.[16] Due to the cost and delay associated with seeking CFIUS review, parties do not ordinarily file a notice or declaration with CFIUS unless national security issues are apparent or a filing is mandatory.

What about reverse CFIUS?

On August 9, 2023, the President signed an Executive Order (E.O.) calling for the Secretary of the Treasury to establish a program requiring U.S. parties to submit notification of certain *outbound* foreign investments to countries of concern.[17] Many commentators have referred to this forthcoming program as a *reverse CFIUS regime*, which is a bit of a

Continued on page 5

misnomer since the Treasury Department does not contemplate reviewing such notifications on a case-by-case basis. The E.O. initially lists only China (including Hong Kong and Macau) as a country of concern and calls for mandatory notification of outbound investment transactions involving certain categories of "covered national security technologies and products" in the semiconductor, microelectronics, quantum information technologies, and artificial intelligence sectors. The E.O. calls for the Treasury Department, in consultation with the Department of Commerce and other agencies, to issue regulations that identify categories of prohibited transactions involving certain covered national security technologies and products posing "a particularly acute national security threat." The E.O. also delegates to the Treasury Secretary the power under the International Emergency Economic Powers Act[18] to nullify, void, or otherwise compel the divestment of any prohibited transaction entered into after the effective date of the regulations.

The Treasury Department has issued an Advance Notice of Proposed Rulemaking (ANPRM) calling for comments on rulemaking topics by September 28, 2023.[19] The ANPRM indicates Treasury is considering requiring notification within 30 days after a transaction by a U.S. person, or knowingly directed by a U.S. person, involving certain outbound foreign investments in entities that are located in or subject to the jurisdiction of countries of concern, and in certain other entities majority-owned by persons of countries of concern. Proposed rules will follow the ANPRM, with an additional notice and comment period, so final rules on outbound investment notification requirements and prohibitions are unlikely to go into effect before early 2024.

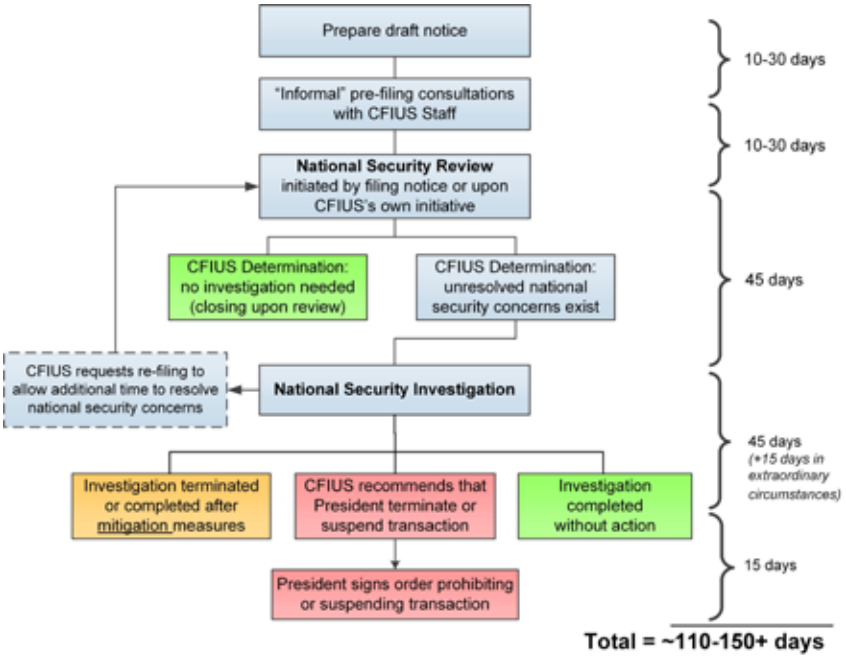
In Conclusion

In view of the stiff penalties for failing to file when mandatory, and the burden and timeline of CFIUS review, transaction parties and their corporate counsel are wise to seek CFIUS counsel early, especially for proposed transactions involving a high-tech U.S. business, direct or indirect investment by a foreign government, investors from or controlled by adversary nations such as China, or any other potential national security vulnerabilities or threats. ◆

Endnotes

1. Pub. L. 115–232, div. A, title XVII, Aug. 13, 2018, 132 Stat. 2177–2207, codified at 50 U.S.C. § 4565
2. 50 U.S.C. § 4565(b)(1)(C)(v)(IV); 31 C.F.R. §§ 800.401 & 800.901(b)
3. 31 C.F.R. § 800.224
4. 31 C.F.R. § 800.208
5. 31 C.F.R. § 800.401(c)
6. 31 C.F.R. § 800.401(b)
7. 31 C.F.R. § 800.401(b)(1), (d) & (e)
8. 50 U.S.C. § 4565(b)(1)(F) & (b)(2)(C)(i)
9. 50 U.S.C. § 4565(b)(1)(C)(i)(II)
10. 50 U.S.C. § 4565(b)(1)(C)(v)(III)(bb)
11. 50 U.S.C. § 4565(b)(1)(C)(v)(III)(aa)
12. 31 C.F.R. §§ 800.404, 800.502, 802.402 & 802.502
13. 31 C.F.R. §§ 800.406(a)(3), 800.504(a)(4), 802.404(a)(3) & 802.504(a)(4)
14. 50 U.S.C. § 4565(l)(3)
15. https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-reports-and-tables
16. 31 C.F.R. §§ 800.1101 & 802.1101
17. E.O. 14105 of August 9, 2023, *Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern*, 88 Fed. Reg. 54867 (Aug. 11, 2023)
18. 50 U.S.C. § 1701 et seq.
19. 88 Fed. Reg. 54961 (Aug. 14, 2023)

Timeline of CFIUS review and investigation based on a notice



The Further Assurances Clause

By Timothy Crippen and Jaimie Fender, Black Helterline LLP

Tim Crippen is a partner at Black Helterlline. He represents family and closely held businesses with a focus on mergers and acquisitions, contract matters, and trademarks.

Jaimie Fender is an associate at Black Helterlline. Her practice areas include construction law, construction litigation, and real estate transactions and financing. She is the current mayor of King City.

The further assurances clause, typically found in the boilerplate section of an agreement, requires parties to cooperate and perform tasks or actions necessary to fulfill the intention of the agreement.

The example from *Advising Oregon Business, Volume 5, Form 98*, is typical:

> "Further Assurances. Each party agrees to execute and deliver such other documents and to do and perform such other acts and things as any other party may reasonably request to carry out the intent and accomplish the purposes of this Agreement."

Often such provisions are include in merger and acquisition or real estate transactions that call for separate signing and closing dates. The purpose of the clause would be to push the parties to sign any other documents, beyond those called for in the purchase agreement, that are necessary or reasonably requested.

Such provisions might also be included in regular commercial contracts, and the parties might want a concept more like a good-faith and fair-dealing obligation. (Although confusion reigns and bad arguments are plentiful when good faith, bad faith, and further assurances intersect. See, e.g., *Liberty Prop. Ltd. P'ship v. 25 Mass. Ave. Prop. LLC*, No. 3027-VCS, 2009 Del. Ch. LEXIS 13, at *1 (Del. Ch. Jan. 22, 2009), where a party's conduct was not bad faith, not a failure of good faith, and not a breach of a further assurances clause, in the eyes of a surly court.)

Ken Adams, the renowned contract-drafting authority, thinks the further assurances clause is often overkill and prefers a clause saying more precisely, "At the written request of the other party, each party shall provide the requesting party, or sign for the requesting party, any additional documents required to consummate the transactions contemplated by this agreement." https://www.adamsdrafting.com/further-assurances/

Uses broader than what Adams prefers may be desirable, however, and they exist in any event. So what should careful drafters do—taking into account their clients' interests—and how useful will this clause be when an argument breaks out?

Drafting

Variations on the clause include a few options. The parties shall do things or the parties shall use best or commercially reasonable efforts to do things. The things might include "any other acts and things" or might be more limited to "execute all further documents." The determination of what things are required might be objective ("necessary to carry out the intent") or subjective ("as reasonably requested by another party"). Depending upon your client's position and enthusiasm about the deal itself, you may want to push one way or another on this contract language. A selection of examples of various further assurances clauses can be found at: https://contracts.justia.com/contract-clauses/further-assurance/ and of course on your subscription service of choice.

The Uniform Commercial Code includes a different provision on assurances, codified in Oregon at ORS 72.6090, which applies in the sales of goods context. ORS 72.6090(1) says:

> "A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until that party receives such assurance may if commercially reasonable suspend any performance for which that party has not already received the agreed return."

The language here is similar to the example further assurances given above, but requires "reasonable grounds for insecurity" as a predicate and asks only for assurances, not actions.

Enforcement

There are very few Oregon cases that involve further assurance clauses and fewer, if any, related to the enforcement of the clause itself. Looking outside the state, however, other jurisdictions have adjudicated these principles and provided pertinent guidance.

In L*iberty Prop. Ltd. P'ship v. 25 Mass. Ave. Prop. LLC*, No. 3027-VCS, 2009 Del. Ch. LEXIS 13, at *1 (Del. Ch. Jan. 22, 2009), cited above, the appellant attempted to use a further assurances clause to object to a counterparty's filing of a *lis pendens* that prevented exercise of

Continued on page 7

Further assurances

Continued from page 6

This article is part of a series on miscellaneous contract provisions in common business, commercial, and real-estate agreements. When disputes arise, these overlooked provisions can determine the fate of a transaction. If not closely examined in the context of every agreement, they can provide grounds for litigation or threats of litigation.

certain rights under the contract at issue. The court did not accept that argument, finding that further assurances did not apply to create a remedy when a party has done something they should not have.

In another example of a court ruling on the application of a further assurances clause, the court in *Lighthouse Behavioral Health Solutions v. Milestone Addiction Counseling*, 2023 Del. Ch. LEXIS 191, *19, distinguished between a further assurances clause and a separate obligation that creates a condition precedent. The court stated a further assurances clause "does not create a new obligation, much less one that serves the singular function of a condition precedent." In this case, the parties were disputing whether one party was required to obtain patient consents, so the other party could deliver such patients' medical records. Delivery of the medical records was required by contract, but the contract was not clear on who was to obtain the patients' consents to release.

Review of pertinent case law outside of Oregon reflects the court's inclination to further define and confine the applicability of further assurances provisions. However, we were unable to find an example where the court enforced a further assurances clause outright.

Conclusion

As always, tailor your contract language to the facts of your deal. Also, do not rely on a further assurances clause when certain obligations would be clearer if specifically allocated among the parties to a contract. ◆

House Bill 2274 Adds New Tools to Fight Securities Fraud

From an August 10, 2023, press release by the Oregon Division of Financial Regulation

House Bill 2274, which the Oregon Legislature passed in the 2023 session, bolsters the enforcement tools of the Oregon Division of Financial Regulation (DFR) to deal with securities fraud.

Oregon securities law currently employs three core mechanisms to shield investors from potential harm:

- Mandatory registration: A security must be registered with the Department of Consumer and Business Services (DCBS), which includes DFR, before the offer or sale in Oregon, subject to specified conditions.
- Licensing requirements: Individuals engaged in selling securities or providing investment advice must be licensed by the state as a broker-dealer, salesperson, investment advisor, or investment advisor representative, unless exemptions or exclusions apply.
- Prohibition of misleading statements: The law prohibits making false or misleading statements in connection with the sale or purchase of securities in Oregon.

Provisions of the bill

HB 2274, has two key provisions:

- **Restitution:** The bill grants the division authority to order restitution to investors harmed by violations of the securities law. This enhancement enables DFR to better protect investors by ensuring that wrongdoers compensate those adversely affected.
- **Enhanced civil penalties:** The bill authorizes civil penalties for securities law violations, with a maximum penalty of $60,000 for each violation. The higher penalties apply when the victim is considered a vulnerable person, including elderly individuals and those with financial incapability, incapacitation, or specific disabilities. Given the increasing vulnerability of the elderly population to securities fraud, this bill aims to deter violations and provide stronger protection for Oregon's most susceptible investors.

HB 2274 also includes provisions to enhance DFR's oversight and enforcement authority over the securities industry, including requiring prompt and truthful responses from subjects under investigation for securities violations.

"House Bill 2274 will lead to more effective enforcement of the Oregon securities laws and contribute to a safer investment environment for consumers and investors across the state," said DFR Administrator TK Keen. "This bill is a big win in giving us the tools needed to protect vulnerable people and take on fraud." ◆

2023 Legislative Update

The 2023 session of the Oregon Legislature session adjourned sine die on June 25, 2023. For many business lawyers, the session was a disappointment in that Senate Bill 909 (SB909), the bill that would have created Oregon's version of the Revised Uniform Limited Liability Company Act (RULLCA) did not pass. It is hoped that the LLC legislation can be revived in the 2024 short session of the Oregon Legislature. A more thorough discussion of the bill can be found in Valerie Sasaki's article "The Rise and Fall of 2023 Senate Bill 909: Oregon's Revised Uniform LLC Act" in the OSB's Business Law Section's June 2023 newsletter.

However, a number of bills that may be of interest to Oregon Business Lawyers did pass during the legislative session. A list of these bills and links to the Oregon Legislature's website with more information can be found in the summaries below.

—Michael Walker, Legislative Subcommittee Chair

HB 2009
Establishes refundable income and corporate excise tax credit allowed for qualified research activities and sets increased maximum credit amount.
Effective September 24, 2023

HB 2031
Renames "board of property tax appeals" to "property value appeals board."
Effective January 1, 2024

HB 2033
Clarifies method of collecting unpaid charges against real property if instrument conveying fee title to such real property to exempt entity is recorded without certificate issued by county assessor attesting that all charges have been paid.
Effective September 24, 2023

HB 2052
Provides that data broker may not collect, sell, or license brokered personal data within this state unless data broker first registers with Department of Consumer and Business Services.
Effective September 24, 2023

HB 2058
Directs Oregon Business Development Department to develop and administer repayable award program to provide financial assistance to eligible employers to mitigate costs associated with agricultural overtime compensation requirements under section 2, chapter 115, Oregon Laws 2022 (Enrolled House Bill 4002).
Effective March 27, 2023

HB 2071
Extends sunset provisions for various tax credits.
Effective September 24, 2023

HB 2108
Removes requirement for Secretary of State to issue written notification and wait 20 days before withdrawing certificate of filing or document submitted for filing.
Effective September 24, 2023

HB 2073
Provides that if due date of corporate activity tax return falls on Saturday, Sunday, or legal holiday, return is due on next business day.
Effective September 24, 2023

HB 2080
Extends sunset dates of various property tax exemption programs.
Effective September 24, 2023

HB 2083
Extends sunsets for pass-through business alternative income tax and related personal income tax credit.
Effective September 24, 2023

HB 2086
Allows correction of maximum assessed value due to new property or new improvements to property erroneously added to tax roll for current tax year and up to five preceding tax years.
Effective September 24, 2023

HB 2087
Extends biennial privilege taxes on merchantable forest products harvested on forestlands.
Effective September 24, 2023

HB 2109
Provides that corporation sole may not be reinstated in this state on or after June 8, 2015, but that corporation sole that exists before June 8, 2015, may continue to operate if corporation sole remains active and was not dissolved.
Effective September 24, 2023

HB 2161
Makes certain changes to calculation of small forestland owner tax credit.
Effective January 1, 2024

Continued on page 9

2023 Legislation *Continued from page 8*

HB 2237
Changes terms of members of board of property tax appeals from one year to two years.
Effective September 24, 2023

HB 2274
Permits Director of Department of Consumer and Business Services to make any proper inquiry of person or matter connected with offering, purchasing, or selling any security or conducting securities business and requires person to reply promptly and truthfully to inquiry.
Effective September 24, 2023

HB 2292
Provides, with respect to contract with landscape contracting business, right of rescission within three business days after contract execution.
Effective September 24, 2023

HB 2330
Redesignates Uniform Fraudulent Transfer Act as Uniform Voidable Transactions Act.
Effective January 1, 2024

HB 2426
Authorizes self-service dispensing of Class 1 flammable liquids at retail dispensary.
Effective August 4, 2023

HB 2507
Expands property tax exemption for property of industry apprenticeship or training trust that is 501(c)(3) corporation to allow for occasional use of property by another 501(c)(3) corporation for purposes for which other corporation is granted exemption from federal income tax.
Effective]September 24, 2023

HB 2576
Confers exclusive jurisdiction on Oregon Tax Court for judicial review of questions arising under local government tax laws that impose taxes on or measured by net income.
Effective September 24, 2023

HB 2759
Provides that a person who knows or consciously avoids knowing that another person is engaging in act or practice that violates laws that regulate telephone solicitations or use of automatic dialing and announcing devices and nonetheless provides substantial assistance or support for violation is liable for loss and subject to penalty to same extent as person that engaged in violation.
Effective September 24, 2023

HB 2812
Creates Oregon tax subtraction for amounts of personal casualty loss that are barred from deduction on federal tax return because loss is not attributable to federally declared disaster.
Effective September 24, 2023

HB 2915
Prohibits retail pet store from offering to sell or selling dogs or cats.
Effective September 24, 2023

HB 2965
Cancels outstanding ad valorem property taxes and interest assessed on property transferred from federal government to port district.
Effective September 24, 2023

HB 2982
Requires insurer to offer 70 percent of coverage insured previously purchased for contents of residence to insured who holds policy of personal insurance without requiring inventory of loss if total loss of contents occurs as result of major disaster.
Effective September 24, 2023

HB 3194
Increases maximum dollar amounts used to determine whether addition of real property improvements constitutes "minor construction" for purposes of property tax law.
Effective September 24, 2023

HB 3200
Repeals provision specifying fiscal year end date for credit unions.
Effective January 1, 2024

HB 3235
Creates refundable child tax credit, calculated based on number of dependents of taxpayer that are qualifying children with respect to taxpayer and are under six years of age at close of tax year.
Effective September 24, 2023

HB 3260
Authorizes self-service dispensing of Class 1 flammable liquids at retail if dispensary is in city in Marion County located in certain area and city was impacted by 2020 wildfires.
Effective July 13, 2023

HB 3362
Allows county to validate unit of land that had been approved for recognition that was later revoked after sale to innocent purchaser.
Effective January 1, 2024

Continued on page 10

2023 Legislation *Continued from page 9*

SB 1
Directs Department of Revenue to develop schedule allowing personal income taxpayers to voluntarily report taxpayers' self-identified race and ethnicity identifiers.
Effective September 24, 2023

SB 82
Establishes certain requirements for insurer that cancels or decides not to renew homeowner insurance policy, or that increases premium, for reason materially related to wildfire risk.
Effective January 1, 2024

SB 129
Advances sunset for tax credit for certified Opportunity Grant contributions.
Effective September 24, 2023

SB 141
Updates connection date to federal Internal Revenue Code and other provisions of federal tax law.
Effective on the 91st day following adjournment sine die

SB 198
Clarifies distinction between commercial and residential floating structures for purposes of personal property tax return requirement.
Effective on the 91st day following adjournment sine die

SB 205
Allows Department of Revenue to disclose to and give access to Employment Department employees, for purpose of detecting whether identity theft or fraud has been committed, otherwise confidential taxpayer information.
Effective September 24, 2023

SB 206
Amends and repeals statutes to eliminate conflict between certain grants of property taxation authority and constitutional requirements related to property taxation.
Effective on the 91st day following adjournment sine die

SB 305
Modifies provisions relating to special motions to strike.
Effective January 1, 2024

SB 307
Provides procedure by which party can present offer of judgment in arbitration proceeding.
Effective January 1, 2024

SB 310
Increases amount of civil penalty Attorney General may obtain for violation of antitrust statutes from $250,000 to $1 million.
Effective on the 91st day following adjournment sine die

SB 311
Modifies damages and penalties awarded for action for false claims.
Effective January 1, 2024

SB 536
Establishes best interest standard for recommendations or sales of annuities to prospective purchasers.
Effective on the 91st day following adjournment sine die

SB 569
Requires closed-captioned television receivers in public areas within places of public accommodation to display closed captioning unless exception applies.
Effective on the 91st day following adjournment sine die

SB 619
Permits consumers to obtain from controller that processes consumer personal data confirmation as to whether controller is processing consumer's personal data and categories of personal data controller is processing, list of specific third parties to which controller has disclosed consumer's personal data or any personal data and copy of all of consumer's personal data that controller has processed or is processing.
Effective January 1, 2024

SB 814
Declares intent of Legislative Assembly to displace competition under state action doctrine to allow public cargo or passenger port located in this state and any other public port, including member of Northwest Marine Terminal Association, to coordinate, reach agreements on and implement action that is within port's authority, including actions to specify rates and charges, rules, practices and procedures with respect to cargo and passenger service operations and planning, development, management, marketing, operations and uses of public port facilities.
Effective June 6, 2023

SB 864
Provides that person who voluntarily fights wildfire on private forestland is not civilly liable for injury to person or property resulting from good faith performance of firefighting efforts.
Effective January 1, 2024

SB 981
Authorizes Oregon Department of Administrative Services to exempt certain accounts that originate in Department of Revenue from general requirement to assign liquidated and delinquent account to private collection agency within one year of most recent payment on account.
Effective January 1, 2024 ◆

Professional Opportunity

BLACK HELTERLINE LLP has a diverse practice in Oregon and Washington, and we are engaged alongside and adverse to the biggest firms in the region. We represent emerging and well-established businesses and institutions, as well as high-net-worth individuals and families. We take pride in our collegial atmosphere and reasonable work-life balance. Black Helterline is an excellent fit for candidates with prior law firm experience who are looking for a long-term home to develop their skills and build a practice.

We are seeking an experienced litigation associate with two to five years of general litigation experience to join our growing litigation department. This position involves all phases of litigation, including drafting pleadings and discovery, managing files, handling hearings, depositions, and assisting with arbitrations and trials. This is an exciting opportunity to work with a group of accomplished lawyers and become part of a team.

The ideal candidate will have:

- Two to five years of litigation experience
- Solid drafting, legal research and writing, and communication skills
- Demonstrated ownership of projects and a willingness to work well with a team or independently
- Excellent academic credentials
- Oregon State Bar admission or eligibility for reciprocity

Black Helterline offers a competitive salary and bonus package.

Interested candidates should submit their resume and cover letter to Careers@bhlaw.com.

Black Helterline is an equal opportunity employer, with equal opportunity in hiring and advancement.

Save the Date

Annual Business Law Section CLE Program

Looking Forward: Trends and Changes in 2024

Friday, November 10, 2023
9:00 AM–6:00 PM

Oregon State Bar Center
16037 SW Upper Boones Ferry Road
Tigard, OR 97224

Includes luncheon, annual membership meeting, and presentation of the James B. Castles Leadership Award

Oregon State Bar Business Law Section

The mission of the Oregon State Bar Business Law Section is to provide excellent service to the diverse group of business law practitioners throughout the State of Oregon by providing regular, timely, and useful information about the practice of business law, promoting good business lawyering and professionalism, fostering communication and networking among our members, advocating improvement of business law, and supporting Oregon's business infrastructure and business community.

Articles in this newsletter are for informational purposes only, and not for the purpose of providing legal advice. The opinions expressed in this newsletter are the opinions of the individual authors and may not reflect the opinions of the Oregon State Bar Business Law Section or any attorney other than the author.