

STORAGE NAME: h1697a.cjcl

DATE: April 17, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON CIVIL JUSTICE AND CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1697

RELATING TO: Partnership filings administered by the Department of State

SPONSOR(S): Representative Ritter

STATUTE(S) AFFECTED: Chapter 620 and s. 865.09, F.S.

COMPANION BILL(S): SB 1050

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON CIVIL JUSTICE AND CLAIMS YEAS 8 NAYS 0
- (2) FINANCIAL SERVICES
- (3) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

HB 1697 amends provisions of Chapter 620, Part III, F.S., relating to Registered Limited Liability Partnerships (LLPs) to incorporate provisions of the uniform act.

HB 1697 provides for "full shield" protection from vicarious liability for partners in LLPs. Additionally, the requirement for prescribed liability insurance as a condition of registration for domestic and foreign LLPs is eliminated.

Sections 620.90 and 620.91 F.S., are transferred and redesignated sections 620.9901 and 620.9902, respectively. The bill would repeal s. 620.78 - 620.789, F. S.

HB 1697 exempts from fictitious name registration requirements any corporation, partnership or other commercial entity organized or registered with the Department of State; however, if a fictitious name differs from the corporation's licensed or registered name, the corporation will not be exempt from registration.

The Department of State currently collects the following fees for LLPs: filing a statement of qualification, \$25; a statement of foreign qualification, \$25; and a limited liability partnership annual report, \$25.

This bill should result in the registration of additional LLPs, which would produce a positive fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Limited Liability Partnerships

Part III (Registered Limited Liability Partnerships) and Part IV (The Revised Uniform Partnership Act) of Chapter 620 , F.S., regulate domestic and foreign limited liability partnerships. A limited liability partnership (LLP) is an entity distinct from its partners. Each partner is an agent of the partnership when transacting the business of the partnership. Business transactions of a partner authorized to transact business are generally binding on the partnership, with some exceptions. A partner not acting in the ordinary course of business does not bind the partnership unless all other partners consent or sign a written partnership agreement. Section 620.8301, Florida Statutes.

Pursuant to section 620.783, Florida Statutes, liability of domestic LLPs is determined by Florida law. Under section 620.7885(4), Florida Statutes, liabilities of foreign LLPs are governed by the laws of the jurisdiction under which they are organized; however, in cases of conflict of laws, Florida law prevails.

All limited liability partnerships are required to register with the Department of State with the following conditions:

- * include the words "registered limited liability partnership" or "foreign limited liability partnership" or their abbreviations in a partnership name
- * state the names, addresses and number of partners and a description of the business
- * maintain an office in this state
- * maintain an agent for service of process on the limited partnership who must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.
- * record and have available for inspection the names of all partners, specific tax information of partners, a certificate of limited partnership, any effective partnership agreements, and financial statements, etc, s. 620.106, F.S.
- * state the effective date of the partnership if different from the date of filing
- * provide a statement of registration or renewal and pay all applicable fees, s. 620.78, F.S.

Liability of Limited Liability Partnerships and Partners

Liability of Limited Liability Partnerships. A partnership entity is liable for the actions of partners acting in the ordinary course of business of the partnership. Furthermore, the partnership is liable for the actions of a partner who, while acting in the authority of the partnership, misapplies money received from a non-partner. A person admitted to an

existing partnership is not personally liable for any partnership obligations incurred before the person became a partner.

Actions by and against limited liability partnerships and partners. A partnership may sue or be sued in the name of the partnership. In actions brought against a partnership, a claimant may join all partners in the same action or in separate actions. In actions resulting in a judgment against a partnership, the partners are not individually liable for damages, unless there is also a judgment against such partners. Furthermore, a judgment creditor may not proceed against, levy or execute against the assets of a partner to satisfy a judgment resulting from a partnership obligation or liability unless (1) a judgment creditor obtained a judgment based on the same claim and a writ of execution on the judgment was unsatisfied; (2) a partnership is a debtor in bankruptcy; (3) the partner agreed that the creditor should not exhaust partnership assets; (4) a court grants a judgment creditor permission to proceed against, levy or execute against the assets of a partner, with some exceptions; and (5) liability is imposed on the partners by law or contract independent of the existence of the partnership. Sections 620.782 and Sections 620.8307, Florida Statutes.

Partners in limited liability Partnerships. A partner is not individually liable for obligations or liabilities of the partnership in tort, or arising from errors, omissions, negligence malpractice or wrongful acts committed by another partner, employees, agents or representative of the partnership. A partner is liable for (1) any debts or obligations arising from acts in the ordinary course of business of the partnership; (2) any errors, omissions, negligence, malpractice, or wrongful acts committed by a partner or any person under a partner's direct supervision and control; and (3) any debts for which a partner has agreed in writing to accept liability. Section 620.782, Florida Statutes.

Partners in a limited liability partnership not in compliance with the state's registration laws are individually liable pursuant to s. 620.782, Florida Statutes.

Applicable Filing Fees

Currently, the Department of State collects the following fees for filing documents of domestic and foreign limited liability partnerships. Section 620.81055, Florida Statutes.

Filing Fees	
Types of fees	Fee Amount
Partnership registration statement	\$50
Statement of partnership authority	\$25
Statement of denial	\$25
Statement of dissociation	\$25
Statement of dissolution	\$25
Statement of merger for each party thereto	\$25

Filing Fees	
Amendment to any statement or registration	\$25
Cancellation of any statement or registration	\$25
Certified copy of any recording or part thereof	\$52.50
certificate of status	\$8.75
any other required or permitted document	\$25

Fictitious Name Registration

Businesses formed by attorneys and persons licensed by the Department of Business and Professional Regulation are exempt from Florida's fictitious name registration requirements. Businesses incorporated or authorized under chapters 607 and 617, Florida Statutes are not required to register any fictitious names unless the names differ from a corporation's name as stated in the articles of incorporation.

B. EFFECT OF PROPOSED CHANGES:

HB 1697 amends the Florida Revised Uniform Partnership Act of 1995 to include amendments adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The NCCUSL, a non-profit association of state commissions on uniform laws, met in July 1996 and adopted model language regarding the filing of limited liability partnerships (LLPs).

HB 1697 proposes two substantial changes to Florida's limited liability laws. First, the bill provides "full shield" protection for LLP partners from vicarious liability. This protection is identical to that of a corporate shareholder. Florida law presently provides a partial shield protecting LLP partners from tort liability. Second, domestic and foreign limited liability partnerships would no longer be required to carry any prescribed liability insurance as a condition of registration. Presently, LLPs must submit proof of insurance to the Department of State before registering as an LLP.

HB 1697 further provides for technical amendments to conform to the uniform act. Sections 620.90 and 620.91 F.S., are transferred and redesignated sections 620.9901 and 620.9902, respectively. The bill would repeal sections 620.78, 620.781, 620.782, 620.783, 620.784, 620.7851, 620.786, 620.787, 620.788, 620.7885, 620.7887, 620.789, Florida Statutes.

HB 1697 also amends the fictitious name provision to exempt from fictitious name registration requirements any corporation, partnership or other commercial entity organized or registered with the Department of State; however, if a fictitious name differs from the corporation's licensed or registered name, the corporation will not be exempt from registration.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Domestic and foreign LLPs would be required to register with the Department of State according to the guidelines set forth in this bill. The Department of State would collect filing fees for new registrations.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

NA.

- b. Does the bill require or authorize an increase in any fees?

No. The Department of State will continue to collect registration fees at the current levels.

- c. Does the bill reduce total taxes, both rates and revenues?

NA.

- d. Does the bill reduce total fees, both rates and revenues?

NA.

- e. Does the bill authorize any fee or tax increase by any local government?

NA.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

NA.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Partners of an LLP have limited liability from personal liability..

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA.

(2) Who makes the decisions?

NA.

(3) Are private alternatives permitted?

NA.

(4) Are families required to participate in a program?

NA.

(5) Are families penalized for not participating in a program?

NA.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA.

(2) service providers?

NA.

(3) government employees/agencies?

NA.

D. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

The Department of State would collect the current level of fees for the registration of limited liability partnerships filing a statement of qualification, \$25; a statement of foreign qualification, \$25; and a limited liability partnership annual report, \$25.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the state constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

This section uses a question format to stimulate debate about HB 1697, relating to limited liability partnerships.

- * Would "full shield" insulation of LLP partners provide a greater benefit to the business community of Florida?
- * Would repealing the liability insurance requirements of LLPs negatively impact those persons or entities transacting with LLPs?

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Civil Justice and Claims Committee adopted two amendments of a technical nature. Amendment 1 is a grammatical correction. Amendment 2 removes unnecessary duplicative language.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON CIVIL JUSTICE AND CLAIMS:

Prepared by:

Legislative Research Director:

Bridget Edmond