

**STORAGE NAME:** h1697.fs

**DATE:** February 26, 1998

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
FINANCIAL SERVICES  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1697

**RELATING TO:** Partnership filings administered by the Department of State

**SPONSOR(S):** Representative Ritter

**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)
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**I. SUMMARY:**

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 limited liability partnerships (LLPs).

HB 1697 would change Florida law governing limited liability partnerships to include recommendations adopted by the NCCUSL. First, the bill would provide "full shield" protection for LLP partners from vicarious liability. This protection would be identical to that possessed by a corporate shareholder. Currently, Florida law partially protects LLP partners from tort liability. Second, domestic and foreign limited liability partnerships would no longer be required to carry liability insurance as a condition of registration. Presently, LLPs must submit proof of insurance to the Department of State before registering.

HB 1697 further provides for technical amendments to conform to the uniform act. In addition, HB 1697 would extend the exemption from the fictitious name registration requirement, which is applicable to corporations, to include partnerships and other commercial entities.

The Department of State would be authorized to collect a \$25 fee for each of three LLP filings: a statement of qualification, a statement of foreign qualification, and a limited liability partnership annual report.

The Revenue Estimating Conference estimates a negative fiscal impact of (\$53,932) for FY 1998-99, and (\$175,932) for FY 1999-00.

## II. SUBSTANTIVE RESEARCH:

### A. PRESENT SITUATION:

Florida law recognizes traditional business entities, corporations and partnerships (general and limited). Florida law also recognizes two relatively recent hybrid formations, limited liability companies (LLC) and limited liability partnerships (LLP). Since 1982, business entities have undergone an evolution as each business type acquired aspects of the other. For instance, the Legislature authorized the formation of LLCs in 1982 and LLPs in 1995. Professional associations (PAs) are considered a "subset" entity within the LLC hybrid.

The principal difference among partnership forms is in the extent of partner liability.

In a *general partnership*, general partners are jointly and severally liable for liabilities of the partners, the partnership and the partnership employees. The general theory is that general partners are permitted to reap the full benefit of the partnership and, therefore, should be liable for partnership losses.

The *limited partnership* has two classes of partner: the general partner and the limited partner. General partners are liable in the same manner as general partners are in a general partnership. Limited partners are liable only to the extent of their capital contribution to the limited partnership. For instance, a limited partner that contributes \$100 to the partnership is held accountable only to the extent of the \$100 contribution in the event of a devaluation of partnership assets through debt or judgment.

A *limited liability partnership* (LLP) is an entity distinct from its partners. Each partner is an agent of the partnership. A partner transacting the business of the partnership generally binds 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 to or sign a written partnership agreement.

In 1995, the Legislature expanded the scope of Florida's partnership law in two ways. First, the Legislature passed the Revised Uniform Partnership Act (RUPA) which adopted uniform provisions recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL), which is a part of the American Law Institute. The NCCUSL dates back to 1892 and was organized to promote uniformity in state law. The NCCUSL is composed of Commissioners from each state, the District of Columbia, and Puerto Rico. The commissioners are appointed by state governors and are composed of judges, lawyers, legislators, and law school professors.

Second, the Legislature amended the partnership law to authorize the formation of the limited liability partnership (LLP). This allowed a general or limited partnership to register as an LLP and limit the joint and several liability of general partners as well as any liability of limited partners in a limited partnership. A partnership that registers as an LLP must file a statement of registration with the Secretary of State, pay the appropriate registration fee, and provide proof of liability insurance.

A limited liability partnership (LLP) is in essence a partnership with an additional layer of liability protection. Each partner is an agent of the partnership. A partner transacting the business of the partnership generally binds 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 to or sign a written partnership agreement.

Partners of LLPs are afforded a limited liability. A partner *is not* individually liable for obligations or liabilities arising in tort resulting from partnership actions, or liabilities arising from errors or omissions committed by another partner, by employees, by agents, or by representatives of the partnership. A partner *is* individually liable for (1) any debts or obligations arising from the ordinary course of business of the partnership; (2) the partner's own errors or omissions or those committed by any person under the partner's direct supervision and control; and, (3) debts for which a partner has agreed in writing to accept.

A partnership with an LLP status must renew that status with the Department of State annually. If the partnership allows its LLP status to lapse the partnership will continue to operate as a partnership without the LLP liability protection.

As of January 1, 1998, the Florida Revised Uniform Partnership Act (RUPA) governs all partnerships. Accordingly, provisions of the RUPA govern LLPs. With regard to mergers of partnerships (including the merger of LLPs), when real property of property interests are transferred they are transferred by deed and the surviving entity must record all deeds and pay documentary stamp tax.

In order to transact business in the state, a foreign LLP (an LLP organized under the laws of another state) must register with the Department of State. Failure to register with the Department of State will not render ineffective any contractual obligation entered into by the foreign LLP, but failure to register will prevent the LLP from maintaining any court action in this state.

According to the Department of State, there are approximately 1,100 LLPs registered in the state. As of their last count, in January 1996, approximately 70 percent are domestic LLPs, and 30 percent are foreign LLPs. The majority of the registered LLPs are professional organizations. Lawyer groups represented a 29 percent share of the registered LLPs, followed by accountant groups which represented a 27 percent share. Real estate groups held an 11 percent share and doctors held a 9 percent share.

According to the June 1997, report of the Limited Liability Guide, published by Commerce Clearing House, 48 states authorize LLPs. The two states which do not authorize LLPs -- Vermont and Wyoming -- authorize LLCs. In 1996, the NCCUSL adopted recommended uniform laws for states which allow the formation of LLPs. Florida has not yet adopted these provisions. As of February, 1998, the NCCUSL notes that 13 states have enacted legislation providing NCCUSL-adopted or "NCCUSL-equivalent" measures providing limited liability for partners in limited liability partnerships. In an additional 6 jurisdictions, legislation has been introduced to enact equivalent measures for limited liability for LLP partners.

Generally, issues such as the distribution of assets and liabilities, the liability of partners, and the formation and dissolution of partnerships are addressed in the partnership agreement. The uniform laws are designed as a system of default rules to be applied in the absence of a partnership agreement or if the partnership agreement is silent concerning a specific issue.

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

<b>Filing Fees</b>	
<b>Types of fees</b>	<b>Fee Amount</b>
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
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

With respect to fictitious name registration, the state requires a business to register a fictitious business names with the Department of State. A "fictitious name" is any name under which a person transacts business other than the person's legal name. 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, F.S. are not required to register fictitious names unless the names differ from those stated in the articles of incorporation.

**B. EFFECT OF PROPOSED CHANGES:**

The Florida Revised Uniform Partnership Act of 1995 would be amended to include changes adopted by the NCCUSL.

First, LLP partners would receive a "full shield" protection from vicarious liability (which is to say, LLP partners would be shielded from liability resulting from wrongful acts committed by the partnership, other partners or employees) similar to the protection afforded directors of corporations or managers of LLCs. Second, domestic and foreign limited liability partnerships would no longer be required to carry liability insurance as a condition of registration.

The Department of State would be required to send an annual renewal notice to each LLP.

The Department of State would be authorized to collect a \$25 fee for each of three LLP filings: a statement of qualification, a statement of foreign qualification, and a limited liability partnership annual report.

The existing rights and responsibilities of foreign LLPs would be expanded. For instance, the bill delineates which activities do not constitute the "transaction of business." A foreign LLP may engage in these activities without first having to register with the Department of State. In addition, the state Attorney General would be authorized to maintain an action against a foreign LLP that is in violation of the act.

Technical amendments would be made to conform to the uniform act. Sections 620.90 and 620.91 F.S., are transferred and redesignated ss. 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, F.S.

The exemption from the fictitious name registration requirement which is applicable to corporations would be extended to include a partnership and "other commercial entity." Commercial entities regulated by the Department of State include corporations (profit and nonprofit) partnerships (general, limited, and limited liability), limited liability companies (LLCs), and professional associations (PAs).

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 revised guidelines set forth in this bill. The Department of State would collect filing fees for new registrations.

The Department of State is required to send an annual renewal notice to each registered LLP.

(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?

N/A

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

N/A

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

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

The Department of State would be authorized to collect a \$25 fee for three separate LLP filings: a statement of qualification, a statement of foreign qualification, and a limited liability partnership annual report.

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

N/A

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

N/A

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

N/A

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?

N/A

4. Individual Freedom:

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

Yes. An obligation of the LLP, whether it arose in contract or tort, would be solely the obligation of the partnership. A partner would be provided "full shield" protection from vicarious liability.

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

N/A

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

The bill amends ss. 620.8101, 620.8103, 620.8105, 620.81055, 620.8106, 620.8201, 620.8303, 620.8304, 620.8306, 620.8307, 620.8701, 620.8702, 620.8703, 620.8704, 620.8801, 620.8805, 620.8806, 620.8807, 620.8903, 620.8906, and 620.8907, 865.09, F.S., creates ss. 620.9001, 620.9002, 620.9003, 620.9101, 620.9102, 620.9103, 620.9104, 620.9105, and 620.187, redesignates s. 620.90 as s. 620.9910, redesignates s. 620.91 as s. 620.9902, and repeals ss. 620.78, 620.781, 620.782, 620.783, 620.784, 620.7851, 620.786, 620.787, 620.788, 620.7885, 620.7887, and 620.789, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

Section 1. Amends s. 620.8101, F.S., by defining "foreign limited liability company," and "limited liability company," and redefining "statement." This section also conforms statutory cross-references.

Section 2. Amends s. 620.8103, F.S., by prohibiting partnership agreement provisions that vary from s. 620.8106, F.S. (identifies Florida law as controlling), and prohibits provisions that restrict the right to access to information as provided in s. 620.8403(2), F.S. This section also conforms statutory cross-references.



Section 3. Amends s. 620.8105., F.S., requiring that if the partnership registration statement identifies a registered agent rather than the names and addresses of all partners, that the agent so designated be located in the state. This section of the bill limits who may actually file a cancellation of or amendment to a partnership registration.

Section 4. Amends s. 620.81055 (1), F.S., establishing three additional partnership-related documents for filing with the Department of State and setting fees for each.

Section 5. Amends s. 620.8106, F.S., establishing the laws of Florida as governing the relations among partners, the relations between the partners and the partnership, and governing the liability of partners for an obligation of the limited liability partnership.

Section 6. Amends s. 620.8201, F.S., establishing that the status of an existing limited liability partnership shall not change as a result of the limited liability partnership filing a "statement of qualification" after section 620.9001 of the act becomes effective.

Section 7. Amends s. 620.8303 (2), F.S., conforming a statutory cross reference.

Section 8. Amends s. 620.8304 (3), F.S., conforming a statutory cross reference.

Section 9. Amends s. 620.8306, F.S., limiting obligations and liabilities of a partnership, while a limited liability partnership, solely to the partnership. Partners of a limited liability partnership would not be personally liable for obligations or liabilities solely by reason of being a partner of the limited liability partnership, notwithstanding any inconsistent provision in the partnership agreement existing before the vote to become a limited liability partnership.

Section 10. Amends s. 620.8307, F.S., providing that any legal action brought against the partnership and partners thereof is not inconsistent with the provisions of s. 620.8306. This section of the bill also provides that a judgment creditor of a partner may not levy against the assets of the partner to satisfy a judgment arising from a partnership obligation unless the partner is, among other things, personally liable for the claim under s. 620.8306.

Section 11. Amends s. 620.8701 (2), F.S., making grammatical changes to the text.

Section 12. Amends s. 620.8702, F.S., conforming a statutory cross reference.

Section 13. Amends s. 620.8703 (2), F.S., providing that a disassociated partner will be liable as a partner for claims within one year of the partner's disassociation provided that, among other things, the partner would have been liable for the obligation under s. 620.8306, which is the general liability section. This section of the bill also amends a statutory cross reference.

Section 14. Amends s. 620.8704, F.S., conforming a statutory cross reference.

Section 15. Amends s. 620.8801, F.S., providing that the expiration of a 90 day period of time following a wrongful disassociation under s. 620.8602(2) is an additional event that causes the dissolution of a partnership.

Section 16. Amends s. 620.8805, F.S., conforming statutory cross references.

Section 17. Amends s. 620.8806 (1), F.S., providing a statutory cross reference.

Section 18. Amends s. 620.8807, F.S., providing that liabilities for an obligation for which a partner is not personally liable under s. 620.8306 will be excluded when calculating profits and losses during a settlement of accounts between partners. This section of the bill provides that, in the event a partner fails to contribute all that is owed, the remaining partners shall contribute proportionately to satisfy partnership losses, with rights to seek contribution from the non-paying partner for the amount exceeding the paying partner's obligation.

Section 19. Amends s. 620.8903, F.S., providing that a limited partner who becomes a general partner is liable as a general partner for an obligation of the partnership incurred after the conversion, subject to s. 620.8306 (3).

Section 20. Amends s. 620.8906 (3), F.S., providing that after a merger, the obligations of the surviving entity are subject to the provisions of s. 620.8306.

Section 21. Amends s. 620.8907, F.S., providing that a filed statement of merger must be affirmed, rather than declared, accurate, and further provides a statutory cross reference. This section of the bill removes subsection (6) of s. 620.8906, which restates the language in subsection (5).

Section 22. Creates s. 620.9001, F.S., providing steps for a partnership to become a limited liability partnership. The change in partnership status requires an approval by vote and requires a statement of qualification to be filed with the Department of State, which establishes that a partnership has satisfied all conditions to be qualified as a limited liability partnership.

Section 23. Creates s. 620.9002, F.S., requiring that the name of each limited liability partnership end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."

Section 24. Creates s. 620.9003, F.S., requiring a domestic or foreign limited liability partnership to file an annual report between January 1 and May 1 of each year with the Department of State. The Secretary of State may revoke the statement of qualification for failure to file this annual report, but provides a 60 day "cure" period to avoid the administrative revocation of the statement of qualification.

Section 25. Creates s. 620.9101, F.S., establishing that the governing law for a foreign limited liability partnership is the law under which it was formed. Differences in the laws of a sister state and Florida may not be the basis for denying a statement of foreign qualification to a foreign limited liability partnership.

Section 26. Creates s. 620.9102, F.S., requiring a foreign limited liability partnership to file a statement of foreign qualification with the Department of State before it transacts business in the state.

Section 27. Creates s. 620.9103, F.S., describing the effect of the failure by a foreign limited liability partnership to file a statement of foreign qualification. Failing to file a statement of foreign qualification does not affect the validity of contracts entered into, does not constitute a waiver to the limitations on personal liability of partners, and does

not prohibit a foreign limited liability partnership from defending a lawsuit. Failure to file a statement, however, precludes a foreign limited liability partnership from bringing or maintaining legal action in the name of the foreign partnership.

Section 28. Creates s. 620.9104, F.S., delineating activities a foreign limited liability partnership may take which do not constitute "transacting business" for purposes of the act. For purposes of the act, ownership of income producing real property in the state constitutes the transaction of business. This section of the bill does not apply in determining minimum contacts for purposes of service of process, taxation, or other regulations.

Section 29. Creates s. 620.9105, F.S., authorizing the state Attorney General to maintain an action against a foreign limited liability partnership in violation of the provisions of the act.

Section 30. Creates s. 620.187, F.S., providing steps for a limited partnership to become a limited liability limited partnership. The change in partnership status requires an approval by vote of the partners to amend the partnership agreement, requires a filed statement of qualification pursuant to s. 620.9001, and compliance with name requirements pursuant to s. 620.9002 of the act.

Section 31. Amends s. 865.09, F.S., exempting an active business entity which is registered with the Department of State from registering its business name pursuant to the fictitious name registration unless the business name differs from the registered name. This section of the bill removes an exemption for a for-profit or a non-profit corporation, excusing it from filing its corporate name pursuant to the fictitious name registration if its corporate name differs from the name as stated in the articles of incorporation.

Section 32. Transferring s. 620.90, F.S., and redesignating that section as s. 620.9901, F.S. This section deals with the applicability of the act to partnerships formed after a certain date. This section purports to affect partnerships formed prior to the projected effective date of this act. See, Part V. COMMENTS.

Section 33. Transferring s. 620.91, F.S., and redesignating that section as s. 620.9902, F.S. This is the Saving Clause for the act and states that the act does not affect any action commenced or any right accrued before January 1, 1996.

Section 34. Repeals ss. 620.78 through 620.789, F.S., which is Part III of Chapter 620, Registered Limited Liability Partnerships.

Section 35. Providing the bill shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

According to the Revenue Estimating Conference, the fiscal impact of the bill would be as follows:

	<u>FY 1998-99</u>	<u>FY 1999-00</u>
<b>Revenues</b>		
General Revenue Fund	(\$78,948)	(\$93,302)
Land Acquisition TF	(\$10,690)	(\$12,634)
Water Management Lands TF	(\$ 6,572)	(\$ 7,767)
Conservation and recreation Lands TF	(\$ 6,572)	(\$ 7,767)
State Housing TF	(\$16,191)	(\$19,135)
Local Government Housing TF	(\$ 2,027)	(\$ 2,395)
Department of State filing fees	\$ 81,000	\$ 81,000
Revenues total	(\$40,000)	(\$62,000)
<b>Expenditures</b>		
Department of State renewal notices	(\$13,932)	(\$13,932)
<b>Total Revenues and Expenditures</b>	<b>(\$53,932)</b>	<b>(\$75,932)</b>

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

See Part III. A. 2., above

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS a WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

A reduction in documentary stamp tax revenue will result in a reduced distribution to the Local Government Housing Trust Fund. See Part III. A. 2., above.

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

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

None

D. FISCAL COMMENTS:

The Revenue Estimating Conference bases its negative fiscal impact estimate on the amount of documentary stamp tax revenue that *might* have been generated as a result of recording title transfers of mergers by foreign LLPs. The estimating Conference bases this estimate on the assumption that the bill allows foreign LLPs to acquire property without being subject to taxation on deeds because the "transfer of property would be considered an activity that does not constitute transacting business."

In arriving at its fiscal impact, it is unclear how the Revenue estimating conference interpreted Section 28 of the bill. Section 28 creates s. 620.9104, F.S., and lists a number of activities that does not constitute the "transaction of business." Subsection (g) of that sections includes "[c]reating or acquiring indebtedness, mortgages, or security interests in real or personal property." This section pertains to activities that the foreign LLP may engage in without being subject to registration with the Department of State. The merger provisions of the RUPA are not affected, and title to all real property owned by each of the merged partnerships shall be transferred by deed to the surviving entity. If the surviving entity of a merger is a foreign LLP that acquires Florida property, such a transfer will be by transfer of deed as is provided in RUPA. In order for the foreign LLP to acquire a clear title in order to transfer the property at a later date, the deed must be recorded and documentary stamp taxes paid.

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 authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE AND CLAIMS:

Prepared by:

Legislative Research Director:

Bridgett Edmond/Charles R. Boning (rev)

Richard Hixson

AS REVISED BY THE COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Michael A. Kliner

Stephen T. Hogge