

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1430

SPONSOR: Judiciary Committee and Senator Silver

SUBJECT: Partnership Filings

DATE: April 9, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Olafson</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/2 amendments</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute incorporates into Florida's Revised Uniform Partnership Act (RUPA) model language recommended by the National Conference of Commissioners on Uniform State Laws regarding registration of limited liability partnerships (LLPs). This bill also repeals Florida's existing statutory provisions on LLPs and makes multiple technical and conforming revisions to RUPA. The committee substitute also provides that a limited liability partnership that became a LLP before the effective date of this bill may waive its partners' protection from liability for certain written obligations of the LLP.

This committee substitute also specifically exempts a business formed by any corporation, partnership, or other commercial entity that is actively organized or registered with the Department of State from requirements regarding registration of fictitious names under ch. 865, F.S., unless the name under which the business is to be conducted differs from the licensed or registered name. The bill also requires businesses with fictitious names to file a cancellation and reregistration with the Department of State when the business changes location.

This committee substitute amends the following sections of the Florida Statutes: 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, 620.8904, 620.8906, 620.8907, and 865.09, F.S. This bill creates the following sections of the Florida Statutes: 620.9001, 620.9002, 620.9003, 620.9101, 620.9102, 620.9103, 620.9104, 620.9105, and 620.187, F.S. This bill redesignates sections 620.90 and 620.91, F.S. Finally, this bill repeals sections 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.

II. Present Situation:

Revised Uniform Partnership Act & Registered Limited Liability Partnership Act

In addition to traditional business entities, such as corporations and partnerships, Florida law recognizes two relatively recent hybrid formations---limited liability companies (LLC) and limited liability partnerships (LLP). 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 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 law provides a balance between the benefits that the partners receive from the partnership and the losses that may accrue, and confers on each partner a right to full benefits and liability for all 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 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 who 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 deemed to be an agent of the partnership. A partner transacting the business of the partnership generally binds the partnership, with some exceptions. As with any agent or employee, 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. Under the uniform law, which is not the current law in Florida, a partner is not personally liable for the obligations of the limited liability partnership, whether arising out of contract or tort. This limitation of liability is similar to that of a corporate shareholder and is a principal legal benefit of the LLP form of organization.

Under current Florida law, 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, or by employees, agents or representatives of the partnership. A partner is individually liable for any debts or obligations arising from the ordinary course of business of the partnership, the partner’s own errors or omissions or those committed by any person under his or her direct supervision and control, and debts for which a partner has agreed in writing to accept.

In 1995, the Revised Uniform Partnership Act (RUPA) (Part IV, ss. 620.81001-620.91, F.S.) and the Registered Limited Liability Partnership Act (RLLPA) (Part III, ss. 620.78-620.789, F.S.) were created in chs. 95-242 and 95-409, L.O.F. (The RUPA and RLLPA provisions were adopted together in ch. 95-242, L.O.F.; the RLLPA provisions also were adopted separately in ch. 95-409, L.O.F.)

RUPA revised and modernized partnership law in Florida. Beginning in the mid-1980s, the National Conference of Commissioners on Uniform State Laws (NCCUSL), the American Bar

Association, the Florida Bar, and other groups reviewed the proposed revisions to the Uniform Partnership Act and recommended revisions that were adopted in the law. The RUPA changes to partnership law included recognizing the partnership as an entity separate from the partners and allowing a partner to leave (dissociate) a partnership without causing the dissolution of the partnership.

RLLPA authorized partnerships to register with the state as limited liability partnerships (LLPs), under which a partner has individual liability protection from obligations arising from errors, omissions, negligence, malpractice, or other wrongful acts committed by another partner. These partnerships are able to cancel their registrations as limited liability partnerships, but this cancellation alone does not dissolve the partnerships. A domestic limited partnership may also register as a limited liability partnership, in which case the act's protections apply to the general partners and to any limited partners who are liable for the debts, obligations, or liabilities of the limited partnership.

The two measures were separately introduced in 1995. During the closing days of the legislative session, the RLLPA and the RUPA provisions were amended onto another measure, which was adopted without necessary cross-references being made between the two acts. Legislation was introduced, but not adopted, during the 1996 session of the Florida Legislature that would have made technical changes to the two laws in order to ensure that a partnership operating under RUPA is able to attain the registered LLP status. Meanwhile, in 1996 the NCCUSL, which is a nonprofit association of state commissions on uniform laws, adopted model act language regarding filing of limited liability partnerships. The NCCUSL amendments are designed to be incorporated into states' uniform partnership laws.

According to the Florida Department of State, there are approximately 273 LLPs registered in the state. As of the last count in 1996, approximately 70% are domestic LLPs and 30% are foreign LLPs. The majority of the registered LLPs are professional organizations whose members generally carry some type of malpractice or professional liability insurance. Lawyer groups represented a 29% share, accountants a 27% share, real estate groups an 11% share and doctors a 9% share of the registered LLPs. It is the department's position that the bill will increase the number of LLPs registered in the state.

Fictitious Names Statute

Section 865.09, F.S., is Florida's "Fictitious Name Act." A fictitious name is any name under which a person transacts business in Florida, other than the person's legal name (s. 865.09(2)(a), F.S.). Under this statute, a person may not engage in business under a fictitious name unless the person first registers the name with the Division of Corporations. The statute currently requires the subject entities to reregister when there is a change in ownership of the entity. The statute currently exempts a business formed by an attorney licensed to practice in Florida, or formed by a person licensed by the Department of Business and Professional Regulation, from the fictitious name registration requirements, provided the business was formed for the purpose of practicing the person's licensed profession (s. 865.09(7), F.S.).

A registered fictitious name may not contain the words "corporation" or "incorporated," or the respective abbreviations for those words, unless the business is in fact incorporated or has

obtained a certificate of authority to transact business in Florida pursuant to ch. 607 or ch. 617, F.S. A business that is incorporated or authorized under ch. 607 or ch. 617, F.S., however, is not required to register its corporate name under the fictitious names statute unless the name the business plans to conduct business under is different from its official corporate name (s. 865.09(14), F.S.).

III. Effect of Proposed Changes:

This bill repeals Florida's existing statutory provisions on registered limited liability partnerships, ss. 620.78-620.789, F.S., and amends Florida's Revised Uniform Partnership Act (RUPA) of 1995 to incorporate model act language on limited liability partnerships (LLPs) into RUPA. The model language was developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

The model language and Florida's existing LLP provisions are substantially similar. One significant difference is that the model act provides a "full shield" from personal liability, by protecting LLP partners against all vicarious liability. The existing Florida statute provides a "partial shield," by protecting an LLP partner against obligations arising from negligence or malpractice by another partner, but not against personal liability for partnership obligations arising in other contexts. Another significant difference is that the model language does not require an LLP to carry any prescribed liability insurance, while the existing Florida statute requires liability insurance as a condition for registration as an LLP. Both of these significant differences would be eliminated as the bill's provisions would conform with the provisions in the model language.

The bill also makes corrective and conforming changes in order to ensure that Florida's RUPA mirrors the uniform law where possible.

The following is a section-by-section analysis of the bill.

Section 1 amends s. 620.8101, F.S., relating to definitions under RUPA, to add definitions for the terms "foreign limited liability partnership" and "limited liability partnership," and to incorporate LLP provisions into the definition of a "statement."

Section 2 amends s. 620.8103(2), F.S., relating to partnership agreements, to specify that such an agreement may not negate the applicability of Florida law to the internal affairs of an LLP or to the liability of its partners. This section also makes conforming and corrective cross-reference changes.

Section 3 amends s. 620.8105, F.S., relating to partnership registrations, to delineate the types of statements that may be amended or canceled by an authorized person. These include: a statement of partnership authority, a statement of denial, a statement of dissociation, a statement of dissolution, a statement of merger, a statement of qualification, or a statement of foreign qualification. This section also specifies that a registration statement must include the name and address of an agent *in this state* who shall maintain information on the partners. If this agent, or any partner, is a person other than an individual, the registration statement must include the name and recorded document number in this state of that agent or partner.

Section 4 amends s. 620.81055(1), F.S., relating to Department of State filing fees, to add a \$25 fee for filing a statement of qualification, a statement of foreign qualification, and a limited liability partnership annual report.

Section 5 amends s. 620.8106, F.S., relating to the law governing partnerships, to specify that Florida law shall govern the internal affairs and the liability of partners for an obligation of an LLP.

Section 6 amends s. 620.8201, F.S., relating to the partnership as an entity, to provide that a limited liability partnership continues to be the same entity that existed before it filed a statement of qualification under s. 620.9001, F.S.

Section 7 amends s. 620.8303(2), F.S., relating to a statement of partnership authority, to correct a statutory cross-reference.

Section 8 amends s. 620.8304(3), F.S., relating to a statement of denial, to correct a statutory cross-reference.

Section 9 amends s. 620.8306, F.S., relating to a partner's liability, to provide that an obligation of a partnership incurred while the partnership is an LLP is solely the obligation of the partnership -- regardless of whether the obligation arises in contract, tort, or otherwise. The bill specifies that a partner in an LLP is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely because he or she is a partner.

Section 10 amends s. 620.8307, F.S., relating to actions by and against a partnership and partners, to conform with changes made to s. 620.8306, F.S., regarding liability in LLPs.

Section 11 amends s. 620.8701(2), F.S., relating to the purchase of a dissociated partner's interest, to clarify the wording of the statute.

Section 12 amends s. 620.8702(1), F.S., relating to a dissociated partner's power to bind and liability to a partnership, to correct a statutory cross-reference.

Section 13 amends s. 620.8703(2), F.S., relating to a dissociated partner's liability to other persons, to conform with the general provisions of the bill regarding a partner's liability in an LLP, and to correct a cross-reference.

Section 14 amends s. 620.8704(3), F.S., relating to a statement of dissociation, to correct a statutory cross-reference.

Section 15 amends s. 620.8801, F.S., relating to events causing dissolution of a partnership, to clarify the period after which a partnership may be dissolved based on a partner's wrongful dissociation.

Section 16 amends s. 620.8805, F.S., relating to a statement of dissolution, to correct statutory cross-references.

Section 17 amends s. 620.8806(1), F.S., relating to a partner's liability to other partners after dissolution, to conform with other provisions in the bill regarding a partner's liability.

Section 18 amends s. 620.8807, F.S., relating to settlement of accounts and contributions among partners, to provide that, when making distributions to a partner upon the winding up of a partnership business, a partner in an LLP shall not be responsible for account charges associated with obligations for which the partner is not personally liable. This section also adds language to conform with other provisions regarding liability of partners in an LLP.

Section 19 amends s. 620.8903(5), F.S., relating to conversion of limited partnership to partnership, to conform with the statutory provision regarding the liability of a partner in an LLP.

Section 20 amends s. 620.8904(1), F.S., to correct a statutory cross-reference.

Section 21 amends s. 620.8906(3), F.S., relating to the effect of merger, to conform with the statutory provision regarding the liability of a partner.

Section 22 amends s. 620.8907, F.S., relating to a statement of merger, to correct a statutory cross-reference and conform language. This section also eliminates a subsection in order to conform with substantive changes made in the law. The eliminated subsection (6) restates the language in subsection (5).

Section 23 creates s. 620.9001, F.S., relating to a statement of qualification, to prescribe requirements and procedures for a partnership to become an LLP. This section provides that:

- The creation of the LLP must be approved by a partnership vote.
- A statement of qualification must be filed with the Department of State, and the bill provides for the content of that statement.
- The status of the partnership as an LLP is effective on the later of the statement filing or a date specified in the statement.
- The status of a partnership as an LLP and the liability of its partners are not affected by errors or later changes in the information required to be contained in the statement of qualification.
- The filing of a statement of qualification establishes that a partnership has met all conditions precedent to the qualification of the partnership as an LLP.
- An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

Section 24 creates s. 620.9002, F.S., relating to the name of an LLP, to provide that such name must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."

Section 25 creates s. 620.9003, F.S., relating to an annual report, to require an LLP and a foreign LLP authorized to conduct business in Florida to file an annual report with the Secretary of State.

This section prescribes the contents of the report and the time frame for filing the report, and it authorizes the secretary to revoke the statement of qualification of a partnership that fails to file an annual report or pay the required filing fee. A revocation under this section affects only the partnership's status as an LLP and is not an event of dissolution of the partnership. In addition, this section provides that a partnership whose statement of qualification was revoked may apply to the secretary for reinstatement within two years after the effective date of the revocation.

Section 26 creates s. 620.9101, F.S., relating to the law governing a foreign LLP, to provide that the law under which the foreign LLP is formed governs internal affairs of the LLP and the liability of partners for obligations of the partnership. The section specifies that a foreign LLP may not be denied a statement of foreign qualification due to any difference between the laws of the state under which the partnership was formed and the laws of this state.

Section 27 creates s. 620.9102, F.S., relating to a statement of foreign qualification, to require that, prior to transacting business in this state, a foreign LLP must comply with s. 620.8105, F.S., and file a statement of foreign qualification. The status of a foreign LLP is effective on the later of the filing of the statement or a date specified in the statement.

Section 28 creates s. 620.9103, F.S., relating to the effect of a failure to qualify by a foreign LLP. A foreign LLP conducting business in Florida without a statement of foreign qualification may not maintain an action or proceeding in this state. However, the validity of contracts entered into by the LLP is not impaired, and the LLP is not precluded from defending itself in an action or proceeding in Florida. This section also provides that limitations on personal liability of partners are not waived solely by transacting business in Florida without a statement of foreign qualification.

Section 29 creates s. 620.9104, F.S., identifying activities that do not constitute transacting business within the meaning of the provisions of the act governing foreign LLPs.

Section 30 creates s. 620.9105, F.S., relating to actions by the attorney general, to authorize the attorney general to maintain an action to restrain a foreign LLP from transacting business in Florida in violation of the provisions of the act governing foreign LLPs.

Section 31 creates s. 620.187, F.S., relating to a limited liability limited partnership, to prescribe terms under which a limited partnership may become an LLP. Such conditions include:

- Securing voter approval from the limited partnership;
- Filing a statement of qualification; and
- Complying with the name requirements of an LLP.

Section 32 amends s. 865.09, F.S., relating to fictitious name registration. The section adds a business formed by any corporation, partnership, or other commercial entity actively organized or registered with the Department of State to the list of entities exempt from the fictitious name filing requirements in subsection (7) of s. 865.09, F.S. The statute currently exempts certain businesses formed by an attorney licensed to practice in Florida or by a person licensed by the Department of Business and Professional Regulation. This section adds language providing that the exemption does not apply if the name by which the organization will conduct its business

differs from its licensed or registered name. This section also clarifies that the licensed attorney or person licensed by the department must be *actively* licensed.

This section also amends subsection (4) of s. 865.09, F.S., relating to reregistration. Subsection (4) is changed to require a business registered with a fictitious name to file a cancellation and reregistration with the Department of State whenever the location of the business changes. This requires the business to pay a \$50 processing fee to the Department of State. The change will require businesses to comply with publication requirements in subsection (3)(d) of s. 865.09, F.S., each time the business changes its location. Failure to do so subjects the owner of the business to the penalty provisions in subsection (9) of s. 865.09, F.S.

Finally, the bill deletes language from s. 865.09(14), F.S., relating to a corporation's obligations under the fictitious name statute, to conform with the other changes made to this statute.

Section 33 transfers s. 620.90, F.S., relating to applicability of RUPA, and redesignates it as s. 620.9901, F.S.

Section 34 transfers s. 620.91, F.S., relating to the effect of RUPA on pre-existing rights or actions, and redesignates it as s. 620.9902, F.S.

Section 35 repeals ss. 620.78-620.789, F.S., which are the provisions enacted in 1995 regarding registered limited liability partnerships.

Section 36 provides that for the first 6 months after the effective date of this act, any LLP that became a LLP prior to the effective date of this act may waive its partners' protection from liability in certain limited circumstances. Under such waiver, LLP partners are jointly and severally liable for the partnership's contractual obligations which are the subject of the notice of waiver, but a partner under such waiver is not liable in excess of the amount for which the partner would have been liable under the laws of this state as they existed immediately prior to the effective date of this act.

Section 37 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The committee substitute imposes a \$25 fee on each of the following documents filed with the Department of State under the Revised Uniform Partnership Act: a statement of qualification, a statement of foreign qualification, and a limited liability partnership annual report. Under this bill, persons desiring to form an LLP would be required to pay an initial fee of \$75 -- \$50 for general filing under the Revised Uniform Partnership Act and \$25 for a statement of qualification under the new LLP provisions. Thereafter, there would be a \$25 LLP annual report fee. A current RUPA partnership that desired to become an LLP would have to pay \$25 for a statement of qualification and, thereafter, a \$25 LLP annual report fee.

Currently to form an LLP, a partnership must pay a registration fee, and an annual renewal of registration fee, of \$100 for each partner in the partnership who is a Florida resident. The fee payable for any one year is capped at \$10,000. (See s. 620.78(3), F.S.) The department has estimated that the average LLP registration fee is \$600. The department anticipates that this bill, by making the LLP a more attractive form of business organization, may result in annual LLP filings increasing to 5,400 from the current estimated annual filing rate of 110. To the extent annual LLP filings increase, the bill may result in an increase in annual filing revenues.

The committee substitute will subject the owner of a business with a fictitious name to reregister the business with the Department of State each time it relocates. Subsection (12)(b) of s. 865.09, F.S., correspondingly requires payment of a \$50 processing fee. Accordingly, to the extent businesses change locations there could be an increase in revenues.

B. Private Sector Impact:

This committee substitute provides that a partner in a limited liability partnership is not personally liable for an obligation of a partnership incurred while the partnership is an LLP. This bill provides such partners with greater protection from personal liability than is available under the current LLP statute. Additionally, the bill no longer requires partnerships to obtain liability insurance.

The committee substitute's provisions pertaining to reregistration requirements for businesses using fictitious names will result in increased costs for those businesses as they will be required to pay a \$50 fee every time their address changes. Businesses which change locations frequently will be subject to the publication requirements in subsection (3)(d) of s. 865.09, F.S., which will also increase the cost of doing business. Additionally, the owners of these businesses will be subject to the penalty provisions contained in s. 865.09 (9), F.S. These penalties prevent the owners from maintaining any action, suit, or proceeding in any court of this state until the business complies with this section. Furthermore, a person's failure to reregister upon change of location results in the commission of a second degree misdemeanor pursuant to subsection (9)(c) of s. 865.09, F.S.

C. Government Sector Impact:

Because the committee substitute provides partners of an LLP with greater protection from personal liability than current law, does not require liability insurance as a condition to creating an LLP, and results in lower LLP filing fees, the measure may cause the LLP to become a more popular form of business structure. The Department of State estimates that it will incur recurring annual expenses of \$13,932 associated with required printings and mailings under this bill.

The committee substitute's changes to the fictitious name statute could potentially result in increased filings. There is no information available at this time from the Department of State of any potential associated expenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.