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****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
FINAL ANALYSIS**

BILL #: CS/HB 361

RELATING TO: Uniform Limited Liability Partnerships

SPONSOR(S): Committee on Judiciary and Representative Ritter

COMPANION BILL(S): SB 1430 (S)

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

- (1) JUDICIARY YEAS 8 NAYS 0
- (2) FINANCIAL SERVICES YEAS 8 NAYS 0
- (3) FINANCE & TAXATION (W/D)
- (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS (W/D)
- (5)

I. FINAL ACTION STATUS:

CS/HB 0361 was approved by the Governor on June 8, 1999. (Chapter# 99-285)

II. SUMMARY:

The bill amends the Florida Revised Uniform Partnership Act of 1995, Chapter 620, Part IV, F.S., to include amendments adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) relating to limited liability partnerships (LLP). The NCCUSL, a non-profit association of state commissions on uniform laws, met in July 1996 and adopted model language which the bill would insert into the Florida Act. See *Limited Partnership Liability Act: Amendments to Uniform Partnership Act (1994)*, *National Conference of Commissioners on Uniform State Laws (1996)*.

The bill will implement the general LLP regulatory regime adopted by the NCCUSL in 1996. Importantly, the bill will provide "full shield" protection for LLP partners from vicarious liability, effectively conferring on such partners the same shield that corporate shareholders have.

The bill provides for filing requirements and registration documents which will be managed by the Department of State. In this regard, the bill also provides technical amendments to conform the Florida Act to the uniform act.

The bill repeals section 620.7851, F.S., which requires domestic and foreign limited liability partnerships to carry liability insurance as a condition of registration. In addition, the bill will exempt partnerships and other commercial entities from the fictitious name registration law.

The Department of State will be authorized to collect a \$25 fee for the following LLP filings which are not currently required under Florida law: a statement of qualification, a statement of foreign qualification, and a limited liability partnership annual report.

The bill has not been subject to revenue estimation; however the 1998 Revenue Estimating Conference estimated a negative fiscal impact of (\$53,932) for FY 1998-99, and (\$75,932) for FY 1999-00.

HB 361 is identical to HB 1697, which passed the House in 1998 by a vote of 119 to 0. HB 1697 died in messages on May 1, 1998.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Limited Liability Partnership Law

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). Since 1982, business entities have undergone an evolution as each business type acquired certain 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 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 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 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, 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, 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. See s. 620.782, F.S.

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 other than the defense of a lawsuit.

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), Ch. 620, Part IV, F.S., which adopted uniform provisions recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL)¹.

¹ For description of NCCUSL and its activities, see footnote 2.

Second, the Legislature amended the partnership law to authorize the formation of the limited liability partnership (LLP). See Ch. 620, Part III, F.S. 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. Potentially, Florida's unique requirement for liability insurance could put the state at a competitive disadvantage for attracting new LLPs.

As of January 1, 1998, the Florida Revised Uniform Partnership Act (RUPA) governs all partnerships. Accordingly, provisions of the RUPA govern LLPs.

According to the Department of State, there are approximately 273 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 whose members generally carry some type of professional or malpractice insurance. 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. It is the department's position that the bill will increase the number of LLPs registered in the state.

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 to the partnership and to each other, 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.

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
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

Florida Fictitious Name Law

The state requires a business to register a fictitious business name 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 relating to limited liability partnerships.

Under the bill, LLP partners would receive a "full shield" protection from partnership debts and 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 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.

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 the following filings, which are not currently required by law: a statement of qualification, a statement of foreign qualification, and a limited liability partnership annual report.

The bill contains various technical amendments to conform the Florida Act 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. The Department of State will be required to send renewal notices to each registered LLP.

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

Yes. The Department of State will be required to send renewal notices to each registered LLP.

- 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?

The bill does not eliminate or reduce any agency or program.

- (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?

No.

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

Yes. The bill authorizes three new \$25 fees for filing LLP documents.

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

No.

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

No.

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

No.

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?

Domestic and foreign limited liability partnerships, to the extent that they benefit from the bill, will share a portion of the costs generated by the bill through the \$25 filing fees collected by the Department of State.

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 unless voluntarily assumed by the partner. Thus, by choosing the LLP form of doing business, partners will obtain "full shield" protection from vicarious liability. In addition, the bill will eliminate the requirement that LLPs maintain liability insurance as a condition of registration.

- 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?

The bill does not purport to provide services to families or children.

- (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?

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?

The bill does not create or change a program providing services to families or children.

- (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. 620.9901, redesignates s. 620.91 as s. 620.9902, and repeals Chapter 620, Part III, F.S., 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 ANALYSIS:

Section 1. Amends s. 620.8101, F.S., by defining "foreign limited liability partnership" (s.101(4)), and "limited liability partnership" (s. 101(5)), and redefining "statement" (s.101(13)). 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. (s. 103(9)), and prohibits provisions that restrict the right to access to information as provided in s. 620.8403(3), 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 (s. 106).

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, F.S., 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 (s. 306(c)).

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, F.S. (s.307(b)). 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, F.S. (s.307(d)).

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, F.S., the general liability section (s. 703(b)). 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), F.S., is an additional event that causes the dissolution of a partnership (s. 801).

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, F.S., will be excluded when calculating profits and losses during a settlement of accounts between partners (s. 807(b)). 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 (s. 807(c)).

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), F.S. (s. 903(c)).

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, F.S.

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, F.S., 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 (s. 1001). 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" (s. 1002).

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 (s. 1003). The bill adds a 5 day mailbox rule to this otherwise uniform provision.

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 (s.1101).

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 (s. 1102). This section also requires the foreign limited liability partnership to comply with the registration requirements of proposed section 620.8105.

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 (s. 1103).

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 (s. 1104).

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 (s. 1105).

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, F.S., and compliance with name requirements pursuant to s. 620.9002, F.S., of the act. This section is not a part of the 1996 NCCUSL uniform partnership 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. This section is not a part of the 1996 NCCUSL uniform partnership act.

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.

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. This section will repeal section 620.7851, F.S., regarding limited liability partnership insurance requirements.

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

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Revenue Estimating Conference has not estimated the fiscal impact of the bill in 1999.

The Department of State would be authorized to collect a \$25 fee for the following filings, which are not currently required by law: a statement of qualification, a statement of foreign qualification, and a limited liability partnership annual report.

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

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See Part III. A. 2., *supra*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

There are no current estimates of the fiscal effects of the bill.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

\$25 filing fees.

2. Direct Private Sector Benefits:

Savings where cost of presently mandated insurance exceeds the real cost of self-insurance.

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

None.

D. FISCAL COMMENTS:

The fiscal impact of the bill may be estimated by the 1999 Revenue Estimating Conference.

V. 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:

N/A

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

N/A

VI. COMMENTS:

Summary published by the National Conference of Commissioners on Uniform State Laws
(<http://www.nccusl.org/summary/upa96.html>:)²

LIMITED LIABILITY PARTNERSHIPS:
THE 1996 AMENDMENTS TO THE UNIFORM PARTNERSHIP ACT (1994)

- A Summary -

The Uniform Partnership Act (UPA) was approved by the Uniform Law Commissioners in 1994. It is a complete revision of the Uniform Partnership Act of 1914, which was adopted in every state except Louisiana. UPA updates partnership law to meet the needs of modern business, clearly establishing that a partnership is an entity rather than an aggregate of partners.

The 1996 Amendments to UPA add a significant option to partnership law: limited liability for all partners in a partnership when the entity chooses the registered limited liability partnership form. A partner in a limited liability partnership has nearly the same level of limited liability as a shareholder in a business corporation.

One of the historic principles of general partnership law is that each individual partner is personally liable for all partnership obligations. This means that partners may be required to discharge partnership obligations from their own personal assets once partnership assets are exhausted.

However, limited liability for participants in a business organization can have an important economic impact. Whether an individual or entity invests in or participates in a business may very well depend upon the quality of limited liability for obvious reasons. Much of the current development in unincorporated organization law has been devoted to combining the flexibility of a partnership with limited liability for the participants in the business. The limited liability company and certain kinds of business trusts are examples.

² Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a private confederation of state commissioners on uniform laws. Its membership is comprised of more than 300 practicing attorneys, judges, and law professors, who are appointed by each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft uniform and model state laws and work toward their enactment in legislatures. Since its inception in 1892, the group has promulgated more than 200 acts, among them such bulwarks of state statutory law as the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Partnership Act.

The State of Florida in s. 13.10, F.S., provides for the appointment of three commissioners to the National Conference of Commissioners on Uniform State Laws. The Commissioners are appointed by the Governor and confirmed by the Senate. They are typically professors or other experts in the areas of law in which the Conference is most active.

Uniformity is best achieved through substantial uniformity of both drafting and construction of the laws of the various states and territories. As practices develop over time and new challenges confront existing law, the various committees of the National Conference promulgates draft Codes for consideration by the National Conference and the various states. The goal of uniformity is reached when legislatures adopt identical codes, and when the state judiciaries honor the intent that the uniform codes be interpreted in a uniform way.

The "official comments" published with the draft laws officially proposed by the Conference constitute a primary source of the drafters' intent and a guide to interpreting the complex areas covered by the uniform laws promulgated by the Conference. The Conference also published summaries and historical information to assist practitioners and students of the law. The Conference has an Internet web site at www.nccusl.org.

But the search for an even simpler form has continued. Texas pioneered the concept of a limited liability partnership in 1991. The notion of a partnership that obtains limited liability for partners by a simple registration on the public record provides an even simpler form than a limited liability company, for example. The Texas experiment lead directly to the Amendments to UPA.

The 1996 Amendments to UPA provide for a limited liability partnership with complete limitation of liability. Some of the pioneer legislation posed limitation of liability only for professional malpractice. The UPA Amendments provide for immunity from personal liability for any partnership obligation. A partner who personally incurs an obligation in the conduct of partnership business is fully liable. Immunity is granted only for liability that is imputed simply because a partner is a partner, not for liability directly incurred.

Limited liability is an election that requires partners to register to become a limited liability partnership. Corporations, limited partnerships, and limited liability companies, which provide members or participants with some level of limitation of liability, all are registered entities. A limited liability partnership must also identify itself as an L.L.P. to those with whom it does business. The registration and identification requirements are to provide clear notice of its limited liability status to those who do business with a partnership. Creditors may and will adjust their assessments of credit-worthiness, accordingly.

The Amendments provide an option. The traditional partnership remains intact as the "residual" business organization for those who join to do business together. The continuity of partnership law that comes from the 1914 Uniform Partnership Act remains unsullied. A limited liability partnership is a partnership, and the rules that govern such matters as partners' obligations to each other, distributions, dissociation from the partnership, dissolution of the partnership, and the like, remain the same for limited liability partnerships as they do for traditional partnerships.

The objective of the 1996 Amendments to UPA is to increase choices for those who join to do business together. This should have a positive impact on the formation of new businesses. Tax consequences have always been a major factor in decisions about which form of business organization to choose. This impact upon choice appears likely to become less important in the future with the promulgation of new regulations by the Internal Revenue Service. Therefore, the appearance of the Amendments to UPA could not come at a more propitious time.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Judiciary Committee adopted 6 amendments and made the bill a committee substitute. Three of the amendments contain technical corrections.

The Committee adopted an amendment to section 15 of the bill, relating to events causing dissolution and winding up of the partnership business. The amendment provides that in a partnership for a definite term of particular undertaking, such partnership will be dissolved within 90 days after a partner's dissociation by death or otherwise or wrongful dissociation, the express will of at least half the remaining partners to wind up the business, for which partner's rightful dissociation constitutes the expression of that partner's will to wind up the partnership business. This amendment makes the continuation of the partnership a presumption of law, unless at least half of the remaining partners express their will to wind up that business in the face of a single partner's dissociation.

The Committee adopted an amendment to section 9 of the bill, relating to partner liability. The amendment provides an "opt-in" for existing limited liability partnerships for contractual obligations. This amendment will have the effect of maintaining joint and several partner liability for existing contractual obligations until the partnership files its statement of qualification under the new law.

The Committee adopted an amendment creating section 33 of the bill, relating to the transition of registered limited liability partnerships under the new law. The amendment provides that a limited liability partnership registered prior to the effective date of the new law will be treated as a partnership that has filed a statement of qualification under the new law for all purposes and that such partnership is not required to file an annual report under after December 31 following the effective date of the new law.

The Financial Services Committee adopted two technical amendments which corrected a reference in section 31 of the Committee Substitute (CS) and a syntax error in section 33 of the CS.

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VIII. SIGNATURES:

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