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DATE: February 24, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 1837

RELATING TO: The Department of State

SPONSOR(S): Representative Prieguez

TIED BILL(S):

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

- (1) BANKING YEAS 5 NAYS 0
- (2) FISCAL POLICY & RESOURCES
- (3) COUNCIL FOR COMPETITIVE COMMERCE
- (4)
- (5)

I. SUMMARY:

This bill revises and clarifies filing and operations requirements, procedures, and information relating to trademark registrants, corporations, limited liability companies, corporations not for profit, limited partnerships, limited liability partnerships, and limited liability companies. This bill also revises the duties and authority of the Department of State relating to the Florida Secured Transaction registry. The bill amends sections of the following Chapters:

- Chapter 495, F.S. -- Registration of trademarks and service marks;
- Chapter 607, F.S. -- For-profit corporations;
- Chapter 608, F.S. -- Limited liability companies;
- Chapter 617, F.S. -- Not-for-profit corporations;
- Chapter 620, F.S. -- Partnership and limited partnership;
- Chapter 621, F.S. -- Professional Service Corporations and Limited Liability Companies; and
- Chapter 679, F.S. -- Uniform Commercial Code: Secured Transactions.

In addition, the bill revises a provision relating to surviving entities in corporate mergers to preserve the nature of asset origination, and makes conforming amendments to Chapter 679, F.S., regarding the removal of the division's (and the state's) role in administering the centralized registry for UCC (Uniform Commercial Code) secured transaction filings. The effective date is July 1, 2002.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

2. Lower Taxes Yes No N/A

This bill provides for new fees for services.

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Department of State, currently headed by an elected Secretary, is organized into seven divisions, three of which conduct programs and activities that promote tourism and economic development. One division is responsible for the filing of required corporate and other necessary business records.

The Division of Corporations collects, maintains, and makes available to the public certain information on corporations operating in Florida and certain financial transactions that take place in the state. The department makes this information available to the public via phone inquiries, mail, walk-in requests, and dial-in access to its computer databases. As a ministerial filing agency, the department must accept and process the documents that meet statutory requirements and which are accompanied by the proper fee. The Division of Corporations is responsible for recording filings of business entities, Uniform Commercial Code (UCC) financing statements, trade and service marks, and fictitious name registrations. The division is also the resource for information contained in these records.

C. EFFECT OF PROPOSED CHANGES:

The Department of State has characterized this bill as basically a "clean-up" bill geared at improving the efficiency of the ministerial functions of the department. This bill amends sections of the following Chapters: Chapter 495, F.S. -- Registration of trademarks and service marks; Chapter 607, F.S. -- For-profit corporations; Chapter 608, F.S. -- Limited liability companies; Chapter 617, F.S. -- Not-for-profit corporations; Chapter 620, F.S. -- Partnership and limited partnership; Chapter 621 -- Professional Service Corporations and Limited Liability Companies; and Chapter 679, F.S. -- Uniform Commercial Code: Secured Transactions.

Please see part II.D. SECTION-BY-SECTION ANALYSIS, for a detailed explanation.

D. SECTION-BY-SECTION ANALYSIS:

Chapter 495, F.S. -- Registration of trade marks and service marks

Present Situation: Chapter 495, F.S., provides the regulatory framework for the reservation, registration, duration of, and renewal procedures for business trademarks. Currently, an application for a trademark or service mark must be completed with the name and business address of the person applying for registration, or if a corporation it's state of incorporation. With the popularity of disparate business organization mergers, there is a need to expand the scope of the statute to include these other entities. Applications must be verified.

Section 1 amends s. 495.031, F.S., to require any entity registering for a trademark or service mark to include its state of incorporation if a corporation, or organization if another type of business entity. This section declares an executed application constitutes an affirmation that the facts are true and accurate.

Present Situation: Marks registered under this Chapter are valid for ten years. At some time prior to the expiration of the ten-year duration the department mails an expiration notification to the holder of the registration.

Section 2 amends s. 495.071, F.S., specifying that the department will mail a mark registration expiration notice to the holder within the six months prior to a mark registration's expiration.

Present Situation: Any mark and its registration may be assigned with the good will of the business in which the mark is used. An assignment must be in writing and executed and recorded with the department along with a \$50 fee.

Section 3 amends s. 495.081, F.S., specifically requiring both the assignor and assignee's signature on the written execution presented to the department for recordation.

Present Situation: The department is required to cancel registrations from the register that have expired, that are voluntarily requested by the registrant to be removed, that have been found by a court to have been abandoned, those marks that have become a generic term for goods or services, or when a court orders the cancellation of a mark on any ground. The department does not currently charge a fee to remove a mark from the register.

Section 4 amends s. 495.101, F.S., requiring a \$50 fee to accompany a voluntary request by a registrant for the department to remove a mark from the register.

Present Situation: Any person who procures a mark by making any false or fraudulent representations is statutorily liable for actual and punitive damages sustained in consequence of such filing. Currently, however, there is no procedure for an applicant or registrant to file a corrected application.

Section 5 creates s. 495.102, F.S., to provide a procedure for an applicant or registrant to correct an application on record by filing an application of correction with a \$50 fee within 30 days after the original filing.

Chapters 607, 608, 617, 620 and 621, F.S. -- business entities

Present Situation: Florida law recognizes various types of business entities, including corporations, limited liability companies, professional associations, general partnerships, limited partnerships, and limited liability partnerships. In instances when the organizational documents of these entities are silent as to issues regarding the formation, management and dissolution of these entities, Florida law provides the missing framework.

The business entity statutes (Chapters 607, 608, 617, 620, and 621) provide the regulatory framework necessary to fulfill the public record requirement of identifying who is conducting

business under a business entity name in order to permit service of process and redress of grievances before the courts.

Chapter 607, F.S. -- For-profit corporations

Present Situation: Generally, a board of directors manages the for-profit corporation, and the officers of the corporation perform daily operations and report directly to the board. Currently, an application filed with the department must be signed by the chair or vice chair of the board or by its president or by another of its officers. According to the department, approximately 90 percent of the corporations that have filed in Florida may be described as small, with a single person operating as several officers.

Section 6 amends s. 607.0120, F.S., to provide that a single officer's signature is sufficient for filing an application with the department.

Present Situation: The department's ministerial duties include collecting fees for various corporate filings and issuing certificates for such items as articles of incorporation and amendments thereto, the registration of a name, registered agent designation, restatement of articles, annual reports, and articles of dissolution, among others. One other such filing is a registered agent's statement of resignation from a corporation that has been administratively dissolved by the department. Unless the document filed specifies a delayed effective date, the effective time and date of the document will be either (a) the actual date it was filed; or (b) the date specified on the document.

Section 7 amends s. 607.0122, F.S., broadening the circumstances in which an agent may file a statement of resignation, from a corporation that is administratively dissolved, to that of an inactive corporation. Note: the term "inactive corporation" is not defined in statute.

Present Situation: A corporation may file corrections to a previously filed document within 10 business days of filing the original.

Section 8 amends s. 607.0123, F.S., limiting the effective time and date of a filed document to the date of the filing.

Section 9 amends s. 607.0124, F.S., increasing from 10 days to 30 days the time in which a corporation may file corrections to a previously filed document. This section also provides a cross reference to clarify the fact that corrections need to be filed in accordance with s. 607.0120, F.S., including appropriate fees.

Present Situation: A corporation may appeal the department's refusal to accept and file a document delivered to its office for filing within 30 days after the return of the document in an Administrative Procedure Act appeal (pursuant to s. 120.68, F.S.), or in the circuit court of the county where the corporation's principal office (or registered office) is located. Jurisdiction for judicial review pursuant to s. 120.68, F.S., is in the appellate district where the agency maintains its headquarters or where a party resides. The Department of State is headquartered in the First District Court of Appeal, in Tallahassee, Florida.

Section 10 amends s. 607.0126, F.S., providing exclusive jurisdiction for circuit court judicial review of the department's refusal to file corporate documents to the Second Judicial Circuit, Leon County, Tallahassee, Florida. The private sector entities located in counties other than Leon County may incur additional expenses related to filing appeals of certain administrative appeals due to the exclusive jurisdiction held by the Second Judicial Circuit Court of Leon County.

Present Situation: Chapter 607, F.S., limits the words and abbreviations a corporation may use in its advertised name to “corporation,” “company,” “incorporated,” “corp.,” “Inc.,” or “Co.,” or words or abbreviations of like import. Section 607.0401, F.S., indicates that this is to delineate a corporation from a natural person or a partnership.

Section 11 amends s. 607.0401, F.S., limiting the words and abbreviations corporations may use to only “corporation,” “company,” “incorporated,” “corp.,” “Inc.,” or “Co.,” in order to delineate corporations from natural persons, partnerships, or other business entities.

Section 12 amends s. 607.0505, F.S., allowing an Alien Business Organization filing to be cancelled.

Section 13 amends s. 607.10025, F.S., clarifying the name of the amendatory document, from certificate to article of amendment.

Section 14 amends s. 607.1006, F.S., clarifying that articles of amendment must be executed in accordance with Chapter filing requirements in s. 607.0120, F.S.

Present Situation: In 1998, the Florida business statutes were amended to permit corporations, limited liability companies and partnerships to merge into one another provided all business entities that are parties to the merger consent to the merger. Among the other issues relating to assets, liabilities, creditor’s rights and shareholder interests, there has been a concern that after the effective date of the merger only the surviving entity would exist.

Chapter 617, F.S., stipulates that a not-for-profit corporation may merge with a for-profit corporation, provided that the surviving corporation is not-for-profit. Section 617.0302(16), F.S. The changes in 1998, however, provided in s. 607.1108(1), F.S., that “[n]otwithstanding the provisions of chapter 617, a domestic not-for-profit corporation acting under a plan of merger approved pursuant to s. 617.1103 shall be governed by the provisions of ss. 607.1108, 607.1109, and 607.11101.” In effect, this section permits a for-profit corporation to survive a merger with a not-for-profit corporation regardless of the circumstances under which the assets were originally generated.

Section 15 amends s. 607.1108, F.S., removing language that would permit a for-profit corporation to be the surviving entity in a merger with a not-for-profit corporation.

Section 16 amends s. 607.1403, F.S., clarifying that articles of dissolution must be filed in accordance with the filing procedures outlined in s. 607.0120, F.S.

Present Situation: A corporation that is administratively dissolved pursuant to s. 607.1421, F.S., may file with the department for reinstatement. The corporation may file an application that recites the corporation’s name and date of the dissolution, state that the ground for dissolution either did not exist or no longer exists, state that the corporation’s name complies with the chapter, and state that all fees owed by the corporation have been paid. As an alternative, the corporation may submit a current annual report, signed by the registered agent and an officer or director that substantially contains information sought by the application. The department will determine if the application contains the necessary information, and if correct, cancel the certificate of dissolution, prepare a certificate of reinstatement, file the original certificate and serve the corporation with a copy.

Section 17 amends s. 607.1422, F.S., revising the reinstatement process, removing language no longer needed by the department and removing the requirement that the department mail a certificate canceling the administrative dissolution or revocation. If the application contains the required information, the department shall reinstate the corporation.

Present Situation: A foreign corporation (one that has filed its articles of incorporation in a sister state) may file for a certificate of authority to transact business in Florida by filing with the department roughly the same information as is required of domestic corporations.

Section 18 amends s. 607.1503, F.S., providing a procedure for a foreign corporation seeking a certificate of authority to transact business in Florida to adopt an alternative corporate name if the original name is unavailable for use in the state.

Present Situation: A foreign corporation may appeal the department's revocation of its certificate of authority in the circuit court of the county where the corporation's registered office is located.

Section 19 amends s. 607.1532, F.S., providing exclusive jurisdiction for circuit court judicial review of the department's revocation of a foreign corporation's certificate of authority to the Second Judicial Circuit, Leon County, in Tallahassee, Florida. The private sector entities located in counties other than Leon County may incur additional expenses related to filing appeals of certain administrative appeals due to the exclusive jurisdiction held by the Second Judicial Circuit Court.

Chapter 608, F.S. -- Limited liability companies (LLCs)

Present Situation: There are two types of LLCs: (a) member-managed, which resembles partnerships in that the members participate in the control and direction of the company; and, (b) manager-managed, in which a manager directs the company and members are passive like shareholders in a corporation. An LLC is corporate in nature, but is typically not publicly traded. Only one person is needed to form an LLC.

Section 20 amends s. 608.407, F.S., clarifying the information required by the department in the LLCs articles of organization, specifically to require a statement as to whether the LLC is member-managed or manager-managed, and addresses for managers or member-managers.

Section 21 amends s. 608.408, F.S., expanding this section, regarding the execution requirements for certificates, to include any and all documents filed in accordance with the chapter.

Present Situation: As is the case with corporation statutes, Chapter 608, F.S., provides a procedure for LLCs to file corrections to its articles of organization.

Section 22 amends s. 608.4115, F.S., permitting an LLC to submit corrections to any previously filed document, rather than only articles of organization.

Present Situation: The management of a member-managed or a manager-managed LLC will be ordinarily outlined in the articles of organization or operating agreement. Florida Statutes provides some guidance on LLC management when the articles do not speak to a particular issue. For instance, the level of a manager's vestment in profits in a member-managed LLC, or how a manager in a manager-managed LLC may be designated, appointed, elected, removed or replaced.

Section 23 creates s. 608.4233, F.S., providing a procedure for managers, managing members, or officers to resign, and providing authority for members to remove any manager, member-manager, or officer at any time and without cause. [Note: This new section does not contain directory language "unless otherwise provided in its articles of organization or operating agreement" and should be read *in pari materia* with s. 608.422, F.S., which specifies that a manager may be removed by the vote, approval, or consent of a majority-in-interest of the members.]

Present Situation: Chapter 608 provides a procedure for an LLC to file articles for dissolution. The department checks the filing for legal sufficiency and, providing all fees and license taxes have been paid, will file the dissolution. After the department issues the certificate of dissolution to the LLC representatives, the company shall cease.

Section 24 amends s. 608.445, F.S., removing the specific requirement of placing the effective date of the dissolution in the articles of dissolution in favor of the date of the filing.

Present Situation: The department requires each LLC, domestic and foreign, to file a sworn annual report. The initial annual report must be delivered to the department between January 1 and May 1 of the year following the calendar year in which the LLC was either organized or authorized to transact business.

Section 25 amends s. 608.4511, F.S., requiring an LLC annual report to also contain the names and business addresses of any officers, if any, and by inclusion authorizes officers to execute the report. This section removes language providing the range of dates in which the report.

Present Situation: A foreign LLC is required to obtain a certificate of authority to transact business in the state and the name of the LLC must comply with s. 608.406, F.S., relating to acceptable wording for LLC business names. If the name of the foreign LLC does not comply with the provisions of s. 608.406, F.S., the LLC may acquire a certificate of authority by adopting a fictitious name and delivering a copy of its manger's consent to the fictitious name adoption to the department.

Section 26 amends s. 608.506, F.S., removing the language providing the option of a foreign LLC to adopt a fictitious name. A foreign LLC's business name must comply with s. 608.406, F.S., in order to acquire a certificate of authority.

Present Situation: A registered agent of a foreign LLC may be an resident individual whose business office is identical with the registered office, or: (1) a domestic corporation or LLC; or (2) a foreign corporation or LLC authorized to transact business in the state, and which the business office is identical to the registered office.

Section 27 amends 608.507, F.S., expanding who may act as registered agent of a foreign LLC to include any business entity, foreign or domestic, which is authorized to transact business in the state and having a business office identical with the registered office.

Chapter 617, F.S. -- Not-for-profit corporations

Present Situation: Corporations, for-profit, and not-for-profit, share many similarities including a separate legal existence, perpetual duration, and board of director management. In a for-profit corporation, shareholders are authorized to receive stock in exchange for capital investments in the corporation. This capital investment often takes the form of money, equipment, or some other property. A nonprofit corporation, however, cannot issue shares and cannot pay dividends. In addition, under the Federal Tax code Section 501(c)(3), a tax-exempt corporation cannot pay dividends. The amendments to Florida law in these sections conform to changes made in Chapter 607, F.S., for for-profit corporations.

As with for-profit corporations, an application filed with the department must be signed by the chair or vice chair of the board or by its president or by another of its officers.

Section 28 amends s. 677.01201, F.S., to provide that a single officer's signature is sufficient for filing an application with the department.

Present Situation: The department's ministerial duties include collecting fees for various corporate filings and issuing certificates for such items as articles of incorporation and amendments thereto, the registration of a name, registered agent designation, restatement of articles, annual reports, and articles of dissolution, among others. One other such filing is a registered agent's statement of resignation from a corporation that has been administratively dissolved by the department. Unless the document filed specifies a delayed effective date, the effective time and date of the document will be either (a) the actual date it was filed; or (b) the date specified on the document.

Section 29 amends s. 617.0122, F.S., broadening the circumstances in which an agent may file a statement of resignation, from a corporation that is administratively dissolved, to that of an inactive corporation. Note: the term "inactive corporation" is not defined in statute.

Present Situation: A corporation may file corrections to a previously filed document within 10 business days of filing the original.

Section 30 amends s. 617.0123, F.S., limiting the effective time and date of a filed document to the date of the filing, unless the document specifies a delayed effective date.

Section 31 amends s. 617.0124, F.S., increasing from 10 days to 30 days the time in which a corporation may file corrections to a previously filed document.

Section 32 amends s. 617.0401, F.S., limiting the words and abbreviations corporations may use to only "corporation," "company," "incorporated," "corp.," or "Inc.," in order to delineate corporations from natural persons, partnerships, or other business entities.

Section 33 amends s. 617.1404, F.S., clarifying the procedure for a revocation of dissolution by adding a statutory cross-reference.

Present Situation: Another corporation may assume the name of a dissolved not-for-profit corporation 120 days after the effective date of the dissolution.

Section 34 amends s. 617.1405, F.S., providing for an expedited assumption of name affected by the dissolved corporation providing an affidavit permitting the immediate assumption of its name by another corporation.

Present Situation: A corporation that is administratively dissolved pursuant to s. 617.1422, F.S., may file with the department for reinstatement using procedures comparable to those utilized for for-profit corporations in s. 607.1422, F.S.

Section 35 amends s. 617.1422, F.S., clarifying the reinstatement process, removing unnecessary language and removing the requirement that the department mail a certificate canceling the administrative dissolution or revocation.

Present Situation: A foreign corporation (one that has filed its articles of incorporation in a sister state) may file for a certificate of authority to transact business in Florida by filing with the department roughly the same information as is required of domestic corporations.

Section 36 amends s. 617.1503, F.S., clarifying the procedure for a foreign corporation seeking a certificate of authority to transact business in Florida. The corporation is permitted to adopt an alternative corporate name if the original name is unavailable for use in the state.

Present Situation: Florida law recognizes three types of partnerships: general partnerships, limited partnerships and the limited liability partnerships. The principal difference among the partnership forms is in the extent of partner liability.

-- Limited partnership

Present Situation: 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 in essence a partnership with an additional layer of liability protection. A partner is not personally 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 personally 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 registered agent for a limited liability partnership must be either a resident individual, a domestic corporation, or a foreign corporation authorized to do business in the state.

Section 37 amends s. 620.103, F.S., increasing the permissible abbreviations that may be used by limited partnerships, both domestic and foreign. Along with "Limited" and "Ltd.," limited partnerships may use "L.P." or "LP." A domestic limited partnership may use "Limited Liability Limited Partnership" in its name, or "L.L.L.P." or "LLLLP" if it files a statement of qualification in accordance with ss. 620.187, and 620.9001(3), F.S.

Section 38 amends s. 620.105, F.S., expanding the list of acceptable registered agents for LLPs to include any domestic business entity and any foreign business entity authorized to transact business in the state.

Section 39 amends s. 620.108, F.S., clarifying the requirements for filing a certificate of limited partnership with the department to include the address of the record keeping office, the Florida street address of and the written acceptance of the agent for service of process. This section also limits the delayed date for the formation of a limited partnership to no more than 90 days after the certificate is filed with the department.

Section 40 amends s. 620.114, F.S., clarifying the procedure for executing a statement or certificate by providing applicable statutory cross-references, and expanding the list of documents requiring signatures by a general partner, a designated general partner, and registered agent, if applicable, to include articles of merger.

Section 41 amends s. 6120.169, F.S., removing the requirement that a general partner of a foreign limited partnership verify a certificate of registration. This section adds a requirement that the certificate for registration contain the written acceptance of any agent for service of process.

Section 42 amends 620.173, F.S., removing the requirement that a general partner signatory of a foreign limited partnership verify an amendment to a registration application filed with the department.

Section 43 amends s. 620.174, F.S., removing the requirement that a general partner signatory of a foreign limited partnership verify a cancellation of registration filed with the department.

Section 44 amends s. 620.177, F.S., removing the requirement that annual reports of domestic or foreign limited partnerships filed with the department be verified. This section also makes filing subsequent annual reports permissive rather than mandatory.

Section 45 amends s. 620.182, F.S., creating a new \$52.50 fee for each party listed in an articles of merger filing.

-- General Partnership

Present Situation: A major difference between a limited partnership and a general partnership is liability. 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 mechanics pertaining to the formation of partnerships, the filing of documents required by the department, the dissolution of the partnership and specifics relating to the distribution of profits or losses follow roughly those found in the limited partnership statutes.

Section 46 amends 620.8105, F.S., removing the requirement that an application for registration contain the names and mailing addresses of all the partners. The application will still require the street address of the chief executive officer and the address of the principal office in the state, as well as the name and Florida address of the registered agent.

Present Situation: A partnership may become a limited liability partnership by a vote to amend the partnership agreement and filing a statement of qualification to the department. The statement must contain the name of the partnership, the street address of the CEO and the address of the principal office, if different, the name and street address of the partnership's registered agent, and a statement that the partnership elects to be a limited liability partnership. The name of the limited liability partnership must end with "Registered Limited Liability Partnership," "limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."

Section 47 amends s. 620.9001, F.S., requiring that the statement of qualification also contain the written acceptance of the registered agent. In addition, this section expands the entities that may act as registered agent, from any other person authorized to do business in the state to a foreign or domestic entity authorized to transact business in the state.

Section 48 amends 620.9002, F.S., removing from the list of acceptable names and abbreviations in which the name must end, Registered Limited Liability Partnership," "R.L.L.P.," and "RLLP." This section also adds a requirement that a limited liability limited partnership's name end with either "Limited Liability Limited Partnership," "L.L.L.P.," or "LLLLP."

Section 49 amends s. 620.9102, F.S., conforming the section that outlines permissible names for a foreign limited liability partnership to that of s. 620.9002, F.S.

Chapter 621 -- Professional Service Corporations and Limited Liability Companies

Present Situation: Professionals who want to incorporate their practices may create what's called a professional corporation. Professional corporations provide a limit on the owners' personal liability for business debts and claims. Incorporating cannot protect a professional against liability for his or her negligence or malpractice, but it can protect against liability for the negligence or malpractice of an associate.

A limited liability company, commonly called an "LLC," is a business structure that fits somewhere between the corporation and the partnership or sole proprietorship. Like owners of partnerships or sole proprietorships, LLC owners report business profits or losses on their personal income tax returns; the LLC itself is not a separate taxable entity.

Like a corporation, however, all LLC owners are protected from personal liability for business debts and claims -- a feature known as "limited liability." This means that if the business owes money or faces a lawsuit for some other reason, only the assets of the business itself are at risk. Creditors can't reach the personal assets of the LLC owners, such as a home or personal automobile. Statutes specific to the purpose, powers, formation, and dissolution of LLCs may be found in Chapter 608, F.S.

Section 50 amends s. 621.051, F.S., clarifying that the LLC articles of organization, filed under the provisions of Chapter 608, F.S., must contain the specific professional service to be rendered.

Section 51 amends s. 621.12, F.S., adding "professional limited liability company," "P.L.C.," "P.P.L.C.," or the designations "PL," "PLC," or "PLLC," "limited liability company," "L.L.C.," or the designations "LLC," or "LC" to the list of acceptable words and/or abbreviations for a professional limited liability company.

Chapter 679 -- Uniform Commercial Code: Secured Transactions

Present Situation: In the 2001 Regular session, the Legislature passed HB 1157, which provided for the gradual removal of the division's (and the state's) role in administering the centralized registry for UCC secured transaction filings. A "Florida Secured Transaction Registry" is statutorily recognized by definition as a substitute for the division as the filing office and officer. The division entered into a contract with an entity named "Florida UCC," a partnership of Image API, an Information Technology consultant and applications developer, and the Florida Banker's Association.

Sections 52 through **Sections 58** amend ss. 679.1021, 679.5011, 679.519, 679.520, 679.523, 679.526, and 679.527, F.S., making conforming changes to these statute sections to reflect the diminished role of the department in the UCC Secured Transaction Registry.

Section 59 repeals paragraph (11) of subsection (1) of s. 679.1021, F.S., eliminating the definition for "filing office rule," a conforming amendment.

Section 60 provides an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the department, there will be an insignificant increase in revenue.

2. Expenditures:

According to the department, certain expenses are likely to be reduced in an indeterminate amount by vesting the Second Judicial Circuit Court in Leon County with exclusive jurisdiction for certain administrative appeals.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There may be an indeterminate increase in revenue from court filing fees in Leon county for appeals from administrative action by the department, and possibly a corresponding decrease in other counties.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector entities located in counties other than Leon County may incur additional expenses related to filing appeals of certain administrative appeals due to the exclusive jurisdiction held by the Second Judicial Circuit Court of Leon County.

The bill provides for several new fees: Under Chapter 495, F.S., a \$50 fee to accompany a voluntary request by a registrant for the department to remove a mark from the registry, and a \$50 fee to file a correction to an application. Under Chapter 620, a \$52.50 fee must be remitted for each party listed in an article of merger filing.

D. FISCAL COMMENTS:

None

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 revenue 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:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

A for-profit corporation will no longer be permitted to be the surviving entity in a merger with a not-for-profit corporation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 20, 2002, the Committee on Banking adopted six amendments offered by the bill sponsor, which are traveling with the bill, as follows:

Amendment No. 1 removes the requirement that applications be verified conforming to other filing procedures.

Amendment No. 2 provides a permissive filing procedure for subsequent annual reports filed in the same year as the initial report.

Amendment No. 3 corrects syntax.

Amendment No. 4 provides a permissive filing procedure for subsequent annual reports filed in the same year as the initial report.

Amendment No. 5 corrects syntax.

Amendment No. 6 deletes dated language relating to the removal of the division's role in administering the centralized UCC secured transactions filing registry.

VII. SIGNATURES:

COMMITTEE ON BANKING:

Prepared by:

Staff Director:

Michael A. Kliner

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Staff Director:

Douglas Pile

Lynne Overton