

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared by: Commerce Committee

BILL: CS for SB 2148

INTRODUCER: Commerce Committee and Senator Deutch

SUBJECT: Limited Liability Companies

DATE: March 29, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Earlywine/Hinely	Cooper	CM	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

This committee substitute requires limited liability companies (LLC) registered with the Department of State (DOS) to be distinguishable on the databases maintained by the Division of Corporations within DOS, with limited exceptions. Additionally, this committee substitute will no longer permit DOS to record duplicate names.

This committee substitute substantially amends the following sections of the Florida Statutes: 608.406 and 608.407.

II. Present Situation:

A LLC is a type of business ownership combining several features of corporations and partnership business structures. Owners are called members, as opposed to partners or shareholders, and members cannot be personally liable for the LLC's debts. The LLC business structure does not require corporate meetings or resolutions and unlike corporations, a LLC is dissolved when a member dies or undergoes bankruptcy.

Chapter 608, F.S., is named the "Florida Limited Liability Company Act." Section 608.406, F.S., contains the requirements for the naming of a LLC and the requirements for filing the name with DOS. Specifically, a LLC name must contain the words "limited liability company" or "limited company."¹ However, certain abbreviations are acceptable.² An LLC name may not contain language stating or implying that the LLC is organized for a purpose other than that permitted in

¹ Section 608.406(1)(a), F.S.

² *Id.*

ch. 608, F.S., and its articles of organization.³ Further, a LLC name may not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States.⁴

The LLC name is required be filed with DOS for public notice and the recording alone does not create any presumption of ownership beyond that which is created under common law.⁵ DOS is required to record the name without regard to any other name recorded.⁶

Over the past 5 years the number of LLCs filed has steadily risen. In DOS's 2002 filings 38,639 LLCs were listed, in 2004 the filings rose to 100,070, and in 2006 LLC filings amounted to 130,251. According to DOS, there are 16,433 active corporations, LLCs and limited partnerships with duplicate names. DOS currently receives 850-1,500 complaints a year about duplicate names being issued.

III. Effect of Proposed Changes:

Section 1 amends s. 608.406, F.S., to eliminate "limited company," the designation "L.C.," or the abbreviation "LC" as an option for registration as part of the company name. The DOS reports that "limited company," "L.C.," and "LC" are archaic, that there only a few companies registered with such designations, and that these companies will be unaffected by this change.

This section also requires a LLC registered with DOS to be distinguishable on the databases maintained by the Division of Corporations within DOS. There are three exceptions:

- Fictitious name registrations filed pursuant to s. 865.09, F.S., which provides for certain conditions when a person may register a fictitious name with DOS;
- General partnerships registered under s. 620.8105, F.S.; and
- Limited liability company names which the owner entity has given written consent and the written consent is filed at the time of the registration of such name.

This section renumbers and amends subsection (2) of 608.406, F.S., to delete the requirement that DOS must record the name of a LLC regardless of any other recorded LLC name.

Finally, this section creates subsection (4) to apply the distinguishable name requirements of this section prospectively.

Section 2 amends s. 608.407, F.S., to require that the name of the limited liability company included in the articles of organization satisfies the requirements of s. 608.406, F.S.

Section 3 provides an effective date of July 1, 2007.

³ Section 608.406(1)(b), F.S.

⁴ Section 608.406(1)(c), F.S.

⁵ Section 608.406(2), F.S.

⁶ *Id.*

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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to DOS, it will incur minimal cost due to only one database being affected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
