

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 698

INTRODUCER: Judiciary Committee and Senator Deutch

SUBJECT: Business Entities

DATE: April 3, 2008 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------------------------|-------------------------------|
| 1. | <u>Earlywine</u> | <u>Cooper</u> | <u>CM</u> | <u>Fav/1 amendment</u> |
| 2. | <u>Treadwell</u> | <u>Maclure</u> | <u>JU</u> | <u>Fav/CS</u> |
| 3. | <u> </u> | <u> </u> | <u>FT</u> | <u> </u> |
| 4. | <u> </u> | <u> </u> | <u>TA</u> | <u> </u> |
| 5. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 6. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

This bill amends statutory provisions relating to Florida business organizations to eliminate duplicative filing requirements and to provide that the conversion or merger of two or more business entities will occur under the statute that governs the resulting or surviving entity.

The bill also includes several technical corrections to current law. For example, the bill conforms certain defined term references that were overlooked when 2005 changes in law expanded and simplified the rules governing mergers and conversion of different business entities. A specific reference to a “corporation” is included in the definition of “another business entity” that may be converted into a limited liability company. The bill also modifies the management rights of general partners in limited partnerships to require that all limited partners consent to the expulsion of a limited partner. The bill clarifies how a certificate of merger or conversion may be filed for a registered general partnership, and clarifies that a statement of cancellation is not required to be filed when a certificate of conversion has been filed for that partnership.

Finally, the bill revises terms related to qualifications of professional associations and limited liability companies to render professional services. The bill also enables mergers between

domestic professional associations/domestic limited liability companies and foreign professional associations/foreign limited liability companies.

This bill amends the following sections of the Florida Statutes: 607.1109, 607.1113, 607.1115, 608.4382, 608.439, 608.4403, 617.1108, 620.1406, 620.2104, 620.2108, 620.2204, 620.8101, 620.8105, 620.81055, 620.8911, 620.8914, 620.8918, 621.06, 621.10, 621.13, and 727.14.

II. Present Situation:

Florida Business Entities

Florida businesses are organized into general categories:

- Corporations (governed by ch. 607, F.S., which is the Florida Business Corporation Act);
- Limited Liability Companies (governed by ch. 608, F.S., which is the Florida Limited Liability Company Act);
- Not-For-Profit Corporations (governed by ch. 617, F.S., which is the Florida Not For Profit Corporation Act);
- Limited Partnerships (governed by part 1, ch. 620, F.S., which is the Florida Revised Uniform Limited Partnership Act of 2005);
- Partnerships (governed by part II, ch. 620, F.S., which is the Revised Uniform Partnership Act of 1995); and
- Professional service corporations and limited liability companies (governed by ch. 621, F.S., which is the Professional Service Corporation and Limited Liability Act).

These chapters regulate the formation, operation, merger, conversion, and dissolution of these types of Florida business entities.

Filing Requirements with the Department of State

Currently, Florida law requires multiple filings of certificates or articles of merger and certificates of conversions with the Department of State (the department) by business entities when they convert into another type of business organization. For example, if a Florida limited liability company (LLC) converts into a Florida limited partnership, the statute requires the filing of a certificate of conversion under ch. 608, F.S., (governing LLCs) and ch. 620, F.S., (governing partnerships).

According to the department, its actual practice and policy does not require multiple or double filings when only Florida business entities are involved in the transaction.

Professional Service Corporations and Professional Limited Liability Companies

The Professional Service Corporation and Limited Liability Company Act (the act) authorizes an individual or group of individuals providing professional services to incorporate or organize as a limited liability company to provide the same professional services to the public for which they

are licensed or legally authorized to provide.¹ The act mandates that professional corporations or LLCs may only perform those professional services which they are duly licensed or legally authorized to perform in this state.² Similarly, the act provides that a professional who is a member or shareholder of the professional corporation or limited liability company must sever his or her employment and any financial interest associated with the professional corporation or LLC if the professional's license is revoked or the person is otherwise disqualified from performing the professional services in this state.³

Chapters 607 (corporations) and 608 (limited liability companies), F.S., govern mergers of professional corporations and LLCs to the extent those provisions are consistent with the act.⁴ However, under the act, domestic professional corporations and domestic professional LLCs may only merge with other professional corporations and LLCs organized under ch. 621, F.S., and not any foreign corporation or foreign LLC.⁵

General Assignments

The intent of the statute governing assignments for the benefit of creditors is to provide a uniform procedure for the administration of insolvent estates and to ensure full reporting to creditors, as well as equal distribution of assets according to priorities established under the statute.⁶ Section 727.114, F.S., governs the priority of distributions in the general assignment context.⁷ Priority of claims must be distributed in the following order of priority and, with the exception of creditors with perfected liens, on a pro rata basis:

- Creditors with liens on assets of the estate, which liens are duly perfected;
- Expenses incurred during the administration of the estate, except expenses associated with disposing of collateral to benefit creditors with perfected liens, including allowed fees and reimbursements of all expenses of the assignee and professional persons employed by the assignee pursuant to s. 727.108(7), F.S.;
- Unsecured claims of governmental units for taxes that accrued three years before the filing date;
- Claims for wages, salaries, or commissions;
- Allowed unsecured claims, to the extent of \$2,225 for each individual, arising from the deposit with the assignor before the filing date of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by such individuals that were not delivered or provided; and
- Unsecured claims.⁸

Currently, there is no provision authorizing payment of any residue to the assignor.

¹ Section 621.01, F.S.

² Section 621.06, F.S.

³ Section 621.10, F.S.

⁴ Section 621.13(1), F.S.

⁵ Section 621.13(3), F.S.

⁶ Section 727.101, F.S.

⁷ Section 727.114, F.S.

⁸ *Id.*

III. Effect of Proposed Changes:

The bill simplifies business entity filings and reduces the overall number of filings required for a conversion or merger by corporations, limited liability companies, not-for-profit corporations, limited partnerships, and partnerships. Additionally, the bill makes changes to certain laws governing professional corporations and professional limited liability companies (LLCs). Following is a section-by-section analysis of the bill.

Corporations

Section 1 amends s. 607.1109, F.S., which relates to articles of merger for corporations, to eliminate duplicative filing requirements and to provide that the merger of two or more domestic entities will occur under the statute that governs the surviving entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

Section 2 amends s. 607.1113, F.S., which relates to certificates of conversion for corporations, to eliminate duplicative filing requirements and to provide that the conversion of a domestic corporation will occur under the statute that governs the resulting entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

Section 3 amends s. 607.1115, F.S., which relates to conversion of another business entity to a corporation, to require the “other business entity” in the conversion to also execute the certificate of conversion.

Limited Liability Companies

Section 4 amends s. 608.4382, F.S., which relates to certificates of merger for LLCs, to eliminate duplicative filing requirements and to provide that the merger of two or more entities will occur under the statute that governs the surviving entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

Section 5 amends s. 608.439, F.S., which relates to conversion of entities to an LLC, to require the “other business entity” to execute the certificate of conversion.

This section also adds “a corporation” to the definition of “other business entity” or “another business entity” that may be converted into a limited liability company. This proposed change is necessary because the term was inadvertently left out of the definition when changes were made to this section in 2005.

Section 6 amends s. 608.4403, F.S., which relates to certificates of conversion for LLCs, to eliminate duplicative filing requirements and to provide that the conversion will occur under the statute that governs the resulting entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

Not-For-Profit Corporations

Section 7 amends s. 617.1108, F.S., which relates to merger of a not-for-profit corporation and other business entities, to eliminate duplicative filing requirements and to provide that the merger of two or more entities will occur under the statute that governs the surviving entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

This section also provides that the articles or certificate of merger filed to comply with the Florida merger requirements may be filed by the not-for-profit corporation involved in the merger with the recording officer of each county where real property that does not belong to the surviving entity is located.

Limited Partnerships

Section 8 amends s. 620.1406, F.S., which relates to management rights of general partners, to require that the expulsion of a limited partner have the consent of all other limited partners.

Section 9 amends s. 620.2104, F.S., which relates to filings required for conversions for limited partnerships, to eliminate duplicative filing requirements and to provide that the conversion will occur under the statute that governs the resulting entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

This section also requires that each general partner in a limited partnership must sign the certificate of conversion as well as the converting organization.

Section 10 amends s. 620.2108, F.S., which relates to filings required for mergers with limited partnerships, to eliminate duplicative filing requirements and to provide that the merger of two or more entities will occur under the statute that governs the surviving entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

Section 11 amends s. 620.2204, F.S., which relates to application to existing limited partnership relationships, to provide that limited partners that dissociate from a limited partnership before January 1, 2006, have the same rights that existed before January 1, 2006. This proposed change is necessary because when this section was last amended, the incorrect date was referenced. To address this, statutory revision included the following as a footnote in this section of law:

Section 1206 of RE-RULPA (2001), as adopted by the National Conference of Commissioners on Uniform State Laws, provides for a date of “the effective date of this act.” The Florida Bar drafting committee that prepared the bill containing this act has reported that the “July 1, 2005” date (instead of the effective date of the act referenced in the uniform law per the National Conference of Commissioners on Uniform State Laws) was the result of a clerical oversight and that it will attempt to correct this reference in future legislation.

Partnerships

Section 12 amends s. 620.8101, F.S., which relates to definitions for use in partnerships, to delete a statement of merger from the definition of a “statement.” This is a technical change to reflect the accurate title of a merger document.

Section 13 amends s. 620.8105, F.S., which relates to execution, filing, and recording of partnership registration and other statements, to allow partnerships to file a certificate of conversion or merger with Department of State only if the partnerships have filed a registration statement.

Section 14 amends s. 620.81055, F.S., which relates to fees for filing documents and issuing certificates for partnerships, to replace the word “Statement” of merger with “Certificate” of merger. This is a technical change to accurately reflect the title of the document.

Section 15 amends s. 620.8911, F.S., which relates to definitions used in partnerships, to make a technical change to the definition of “organization” relating to conversions and mergers. This proposed change is made for stylistic reasons.

Section 16 amends s. 620.8914, F.S., which relates to filings required for conversion for partnerships, to eliminate duplicative filing requirements and to provide that the conversion will occur under the statute that governs the resulting entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

This section also requires a general partner in a limited partnership to sign the certificate of conversion as well as the converting organization.

This section also provides that a certificate of conversion acts as a cancellation of a registration statement for a converting partnership.

Section 17 amends s. 620.8918, F.S., which relates to filings required for mergers for partnerships, to eliminate duplicative filing requirements and to provide that the merger of two or more entities will occur under the statute that governs the surviving entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

Professional Corporations and Professional Limited Liability Companies

Sections 18 and 19 amend ss. 621.06 and 621.10, F.S., respectively, which relate to professional corporations and professional LLCs. Under current law, members or shareholders of professional corporations or professional LLCs are only allowed to perform professional services when licensed or legally authorized to do so by an authority in this state. Similarly, current law provides that a member or shareholder must sever employment or financial interests associated with the corporation or LLC if the person becomes disqualified to perform those professional services in this state.

The existing statutes require members of professional corporations and professional LLCs to be licensed or legally authorized to perform professional services “within this state.” Because the statutes and rules currently governing professionals establish certain limitations on the authority of these individuals to render professional services when not lawfully licensed or authorized to do so, the phrase “within this state” is arguably redundant.⁹ The bill attempts to eliminate this redundancy by striking the words “within this state.”

Section 20 amends s. 621.13, F.S., which governs mergers of professional entities. The bill eliminates the current prohibition against mergers between domestic professional corporations or LLCs and foreign professional corporations or foreign LLCs.

General Assignments

Section 21 amends s. 727.114, F.S., which relates to general assignments. Section 727.114, F.S. (2006), provided that, in the event all creditors listed in the prior subsections of the statute had been paid in full, any residue would be paid to the assignor, usually the business entity that initiated the process. The Business Law Section of the Florida Bar has reported that, during the 2007 statutory revisions related to ch. 727, F.S., this provision was inadvertently omitted.¹⁰ The bill reinserts this language to provide for payment of any residue to the assignor.

Effective Date

Section 22 provides an effective date of July 1, 2008, except for section 21, which takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ For example, the Florida Supreme Court has authority to regulate the practice of law, which includes the power to prevent the practice of law by unauthorized persons. *The Florida Bar v. Schramek*, 616 So. 2d 979 (Fla. 1993). Moreover, Florida law prescribes penalties for the unauthorized practice of law, as well as the practice of law while disbarred or suspended. Sections 454.23 and 454.31, F.S.

¹⁰ See s. 12, ch. 2007-185, L.O.F.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill would eliminate duplicative filings for business entities.

C. Government Sector Impact:

The number of filings with the Department of State may decrease, which will decrease revenue derived from filing fees.

VI. Technical Deficiencies:**VII. Related Issues:**

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 1, 2008:

The committee substitute:

- Corrects a glitch from last year's revisions to the general assignment priority statute by reinserting into law the previously omitted provision which clarifies that, at the conclusion of the assignment process, any residue monies are paid to the debtor business entity.
- Replaces incorrect statutory citations.
- Deletes section 10 of the bill, which references a statute governing partnerships, and reinserts the section including the correct statutory citation governing limited partnerships.
- Clarifies that the elimination of duplicative requirements for conversions and mergers of partnerships applies only to *domestic* partnerships.
- Removes redundant language relating to the qualifications of members and shareholders of professional corporations and professional limited liability companies to render professional services.
- Allows mergers between domestic professional corporations/domestic limited liability companies and foreign professional corporations/foreign professional limited liability companies.
- Changes the title of the bill from "corporations" to "business entities" because the amended provisions relate to other business entities in addition to corporations.

B. Amendments:

None.

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