

HOUSE BILL REPORT

SSB 5374

As Reported By House Committee On:
Law & Justice

Title: An act relating to registered limited liability partnerships.

Brief Description: Creating registered limited liability partnerships.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Smith and Roach).

Brief History:

Committee Activity:

Law & Justice: 3/24/95, 3/31/95 [DPA].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended. Signed by 16 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Smith; Thibaudeau and Veloria.

Staff: Edie Adams (786-7180).

Background: Business organizations in the state of Washington have four general organizational forms to choose from: (1) corporate; (2) general partnership; (3) limited partnership; and (4) limited liability company.

Corporations are formed by filing articles of incorporation with the Secretary of State. A corporation must file annual reports to the Secretary of State's office. Corporations have centralized management consisting of a board of directors that supervises management, officers that carry out the policies of the board of directors, and shareholders who have no active role in the day-to-day management of the corporation. Corporations have perpetual existence regardless of what happens to shareholders, directors, or officers. Generally, corporate shares are freely transferable and shareholders are liable for corporate debts and obligations only to the extent of their investment in the corporation. Corporations are taxed at the entity level.

General partnerships are created whenever two or more persons create an association to carry on business and share in profits and ownership control. No legal documentation is required to form a partnership, and the partnership dissolves upon the death, bankruptcy, or withdrawal of any partner, unless otherwise agreed. Each partner has unlimited personal liability for the debts and obligations of the partnership. A partnership is not taxed at the entity level.

Limited partnerships consist of limited partners and at least one general partner. General partners run the business and are fully liable for the partnership's debts and obligations. Limited partners are liable only to the extent of their contributions, as long as they do not participate in control of the business. A limited partnership is formed when a document is filed with the Secretary of State and it exists for as long as the parties agree or until a general partner withdraws. The interests of general partners cannot be transferred unless all general and limited partners agree, while limited partners' interests are freely assignable. Limited partnerships are not taxed at the entity level unless they are operated like a corporation.

Limited liability companies are created by filing a certificate of formation with the Secretary of State. A limited liability company may be managed either by the members or by managers. Members of a limited liability company are not personally liable for the debts and obligations of the company except to the extent of their contributions. A member's interest in a limited liability company is assignable, unless otherwise provided in the company agreement, but the assignee may not participate in management unless all other members approve. Limited liability companies are not taxed at the entity level because of limitations on transferability of interests, limited existence, and the possibility of owner management.

Summary of Amended Bill: A new form of business organization is authorized: the registered limited liability partnership.

A registered limited liability partnership is formed by filing an application with the Secretary of State and paying a \$175 application fee. The application must indicate the name of the partnership, its principal office, the name and address of the registered agent, the address of its registered office, the number of partners, and the business of the partnership. The name of the partnership must contain the words "registered limited liability partnership" or the abbreviation "LLP" as the last words or letters of its name.

Rights and duties of partners as to contributions and indemnification are provided. Procedures and obligations upon dissolution are provided, including partner responsibility for the partnership's liabilities and the settling of the partnership's accounts.

A partner in a registered limited liability partnership is not liable directly or indirectly for any debts, obligations, and liabilities of the partnership arising from omissions, negligence, wrongful acts, misconduct, or malpractice committed in the course of the partnership business by another partner or an employee or agent of the partnership. All partners are personally liable for all other obligations of the partnership.

If a registered limited liability partnership, including a foreign limited liability partnership, does not maintain professional liability insurance in an amount of at least \$1,000,000 for the policy year, the partners will be personally liable to the extent that the liability in question would have been covered had the insurance been maintained.

Foreign registered limited liability partnerships organized under the laws of another jurisdiction may do business in this state and are not required to register with the Secretary of State under this chapter. Foreign limited liability partnerships are governed by the laws of the jurisdiction under which they are formed.

Amended Bill Compared to Substitute Bill: The amended bill restructures the bill, placing the bill's provisions in a subchapter of the chapter governing general partnerships.

The amended bill adds that a deposit in trust, bank escrow of cash, bank certificate of deposit, United States Treasury obligation, bank letter of credit, or insurance company bond constitute evidence of financial responsibility for purposes of the \$1,000,000 insurance requirement.

The substitute bill did not require foreign limited liability partnerships to register with the Secretary of State in the same manner as a limited liability partnership.

The substitute bill did not limit the amount of professional liability insurance that may be required by the insurance commissioner and provided that the insurance commissioner could consider the nature of an individual business in setting the liability insurance amount.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The limited liability partnership is a flexible business organization that is more attractive than other business forms. Partnerships are easy to form and operate and do not restrict membership to residents of the state. Limited liability partnerships limit the vicarious liability of partners for the negligent or wrongful acts

of other partners. The public is better protected under a limited liability form because the individual partner responsible for the obligation is still liable, the partnership capital is available, partners are still liable for contractual obligations, and the limited liability partnership will have a \$1,000,000 insurance policy.

Testimony Against: None.

Testified: Jim Boldt and Bob Underhill, Washington Society of Certified Public Accountants (pro).