

HOUSE BILL REPORT

SB 5148

As Passed Legislature

Title: An act relating to limited partnerships.

Brief Description: Making multiple revisions concerning limited partnerships.

Sponsor(s): Senators Nelson, A. Smith and Newhouse.

Brief History:

Reported by House Committee on:
Judiciary, April 2, 1991, DPA;
Passed House, April 17, 1991, 95-0;
Passed Legislature, 95-0.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass as amended.* Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Broback; Hargrove; Inslee; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Susan Kirkpatrick (786-7192).

Background: The Legislature adopted the Uniform Limited Partnership Act in 1981. The act was subsequently modified in 1987 to incorporate several substantive revisions recommended by the Partnership Law Committee of the Washington State Bar Association.

Under current law:

(1) Limited partnerships do not have the authority to merge with another limited partnership or with a corporation;

(2) Limited partners are liable to third parties for the obligations of the limited partnership if the limited partners participate in the control of the business and the third party believes that the limited partner is a general partner, subject to certain safe harbor rules that limit what kinds of conduct can be considered participation in the control of the business;

(3) Limited partners are given the right to vote on a per capita or other basis upon any matter, subject to the provisions regarding the liability of a limited partner to third parties;

(4) Limited partnerships are prohibited from making distributions which leave the partnership with liabilities in excess of assets. Nonrecourse liabilities and assets are not given special treatment. Partners are liable to the partnership for a period of one year for the amount of contributions received that do not violate the partnership agreement or the statute, to the extent necessary to discharge the partnership's liabilities to creditors who extended credit to the partnership during the period the contribution was held by the partnership. Partners are liable to the partnership for a period of six years for the amount of contributions received in violation of the partnership agreement or the statute;

(5) The name of a limited partnership must not be deceptively similar to the name of another limited partnership or corporation. A limited partnership name can be reserved for a 180-day period, which can be renewed once;

(6) A limited partnership which is dissolving and winding up is required to follow a two-step procedure of filing a certificate of dissolution upon commencement of the winding up and a certificate of cancellation upon conclusion of the winding up;

(7) A limited partner's agent or attorney is not given express authority to inspect and copy records;

(8) The secretary of state does not have the authority to administratively dissolve limited partnerships;

(9) The secretary of state does not have the authority to deregister foreign limited partnerships; and

(10) The secretary of state maintains limited partnership records transmitted to it by the county clerks.

Summary of Bill: SB 5148 amends both the Washington Uniform Limited Partnership Act and the Washington Business Corporation Act. However, it primarily changes provisions regarding limited partnerships.

1. Mergers of Limited Partnerships

A limited partnership is expressly authorized to merge with another limited partnership or with a corporation. A merger may be accomplished in accordance with the statutory

requirements or the partnership agreement. The rights of dissenting partners and the procedures through which such rights may be exercised are provided.

2. Limited Liability of Limited Partners

A new rule regarding the liability of limited partners to third parties for the obligations of the limited partnership is established. A limited partner is not liable for the obligations of a limited partnership by reason of being a limited partner and does not become liable for the obligations of the limited partnership by participating in the management or control of the business of the limited partnership.

3. Powers of Limited Partners

The partnership agreement may authorize any one or more limited partners to exercise all or any part of the other rights and powers a general partner has. The ability of a limited partner to vote is no longer subject to the provisions regarding the liability of a limited partner to a third party.

4. Liability for Return of Distributions

Guidelines regarding the standards under which a limited partnership may make distributions to its partners and the circumstances under which distributions that violate those standards are recoverable are provided. A distribution may not be made if it will leave the partnership with liabilities in excess of assets. Nonrecourse liabilities and the assets which secure them are given special treatment when comparing liabilities and assets. In addition, a distribution may not be made if the partnership would not be able to pay its debts as they become due in the usual course of business.

A limited partner who receives a distribution in violation of the statute and who knew at the time of the distribution that the distribution violated the statute is liable to the partnership for the amount of the distribution. A limited partner who receives a distribution in violation of the statute but did not know the distribution was in violation of the statute is not liable for the amount of the distribution, unless liable under a partnership agreement or other applicable law. A three-year statute of limitations for recovery of distributions violating the standards is created, except that a limited partner may agree in writing to extend liability for recovery beyond the three-year statutory period.

5. Reservation of Names

The name of each limited partnership must be distinguishable from other limited partnerships and corporations authorized to transact business in Washington. A limited partnership name can be reserved for one, non-renewable 180-day period.

6. Cancellation of Certificate

A limited partnership that is dissolving and winding up is required to follow a one-step procedure of filing a certificate of cancellation upon the completion of the winding up of the limited partnership.

7. Inspection of Records

A limited partner's agent or attorney can inspect and copy records.

8. Administrative Dissolution of Domestic Limited Partnerships

The secretary of state is given authority to administratively dissolve limited partnerships upon specified grounds. The secretary of state is required to send written notice of the existence of grounds for dissolution to the limited partnership, and the limited partnership is required to take action to cure the deficiency within 60 days after the notice was sent.

9. Administrative Deregistration of Foreign Limited Partnerships

The secretary of state is given authority to deregister foreign limited partnerships upon specified circumstances. The foreign limited partnership is required to take action or demonstrate that grounds do not exist for revocation within 60 days after notice from the secretary of state.

10. Technical Changes

Technical changes in language are added for clarification purposes.

11. Repealed Statute

RCW 25.10.380, which governs when a limited partner who has received a return of his or her contribution is liable to the partnership, has been repealed.

Fiscal Note: Not requested.

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

Testimony For: Original Bill: The bill contains a number of revisions to the Limited Partnership Act. It gives limited partnerships express authority to merge with another limited partnership or a corporation. It provides that limited partners are no longer liable to a third party unless they are a general partner. The secretary of state will no longer be required to maintain county records after December 31, 1996. This bill updates the Limited Partnership Act and met with the unanimous acceptance of the Washington State Bar Partnership Law Committee.

Testimony Against: None.

Witnesses: Senator Nelson, prime sponsor (in favor of original bill); and William G. Pusch, Washington State Bar Partnership Law Committee (in favor of original bill).