

SENATE BILL REPORT

SHB 1067

As Reported by Senate Committee On:
Judiciary, March 24, 2009

Title: An act relating to the uniform limited partnership act.

Brief Description: Creating the uniform limited partnership act.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Pedersen and Rodne; by request of Washington State Bar Association).

Brief History: Passed House: 3/05/09, 95-2.

Committee Activity: Judiciary: 3/20/09, 3/24/09 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles and Tom.

Staff: Brandon Roche (786-7405)

Background: Washington first adopted a Uniform Limited Partnership Act (ULPA) in 1945. In 1981 Washington enacted the Revised Uniform Limited Partnership Act (RULPA), which has since been amended a number of times. The Washington RULPA governs the formation and operation of limited partnerships.

A limited partnership is a form of business organization that consists of one or more general partners and one or more limited partners. General partners manage the business and are personally liable for the debts and obligations of the limited partnership. Limited partners are liable for the partnership's debts and obligations only to the extent of their contributions to the partnership, except in limited circumstances where the limited partner participates in control of the business. Limited partnerships are formed by filing a certificate of limited partnership with the Secretary of State.

In 2005 the Partnership and Limited Liability Company Law Committee of the Washington State Bar Association's Business Section (Committee) began a review of the 2001 ULPA to determine whether it should be adopted in Washington. The Committee recommends

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adoption of the 2001 ULPA, with changes appropriate to conform to other business entity statutes in Washington.

Summary of Bill: The Washington Uniform Limited Partnership Act (WULPA) is adopted and replaces the Washington RULPA. The WULPA contains changes to many aspects of limited partnership law to update and modernize the statute and to conform the provisions more closely to statutes governing other business entities in Washington. The WULPA is a stand-alone act that is no longer linked to and dependent on the Revised Uniform Partnership Act (RUPA). As a result, many provisions of the RUPA that applied to the current RULPA are included as new provisions in the WULPA.

Limited Partners. The circumstance under which a limited partner may incur liability for limited partnership obligations is eliminated. A limited partner is not liable for any of the limited partnership's obligations, even if the limited partner participates in the management and control of the business. Specific duties of limited partners are established. A limited partner does not have a fiduciary duty to the limited partnership or another partner. However, a limited partner does have an obligation of good faith and fair dealing in exercising rights and discharging duties under the partnership agreement or under the act.

General Partners. Provisions regarding a general partner's powers, rights, duties, and obligations are provided and are consistent with existing provisions governing these issues. A general partner in a limited liability limited partnership is not liable for the obligations of the limited liability limited partnership.

Conversions. Limited partnerships are authorized to convert their business to or from a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; a limited liability company; a business trust; a corporation; or any other entity having a governing statute. Requirements for effectuating and filing a conversion, and the effect of a conversion, are provided.

A new form of business entity is created. A limited partnership may opt to become a limited liability limited partnership by including a statement to that effect in its certificate of limited partnership. Status as a limited liability limited partnership provides general partners with a shield from liability for obligations of the limited liability limited partnership.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect ninety days after adjournment of the session in which the bill is passed, except for section 1305, relating to repealed sections, and sections 1401 through 1416, relating to conforming amendments to correct cross references to repealed sections, which take effect July 1, 2010.

Staff Summary of Public Testimony: PRO: This was promulgated in 2001. This is a major advance for us. The previous act required extensive cross references to other acts and this makes it a stand-alone statute. Second, the limited liability limited partnership makes things easier for companies; it's a simplification. In the process of all of this is that the fiscal note shows that there is about \$1 million in revenue generated by requiring annual filings as opposed to once every five years.

The idea of the general partner with unlimited liability is not the case in reality because they create elaborate structures to protect them from liability. It's worth underscoring that none of the business-entity types eliminate personal liability for a member's own conduct. But for this change, the limited partnership (LP) would be the sole type of entity that would not afford liability protection. The current statute allows a general partnership to be treated as an LP.

Persons Testifying: PRO: Representative Pedersen, prime sponsor; Brian Todd, WSBA Partnership and LLC law committee.