



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1398

PRINTERS NO. 4062

PRIME SPONSOR: A. Harris

COST / (SAVINGS)

FUND	FY 2016/17	FY 2017/18
General Fund	\$0	\$0
Corporation Bureau Restricted Account	\$0	\$0

SUMMARY: Amends Title 15 (Corporations and Unincorporated Associations and Title 54 (Names) to modernize the law on limited liability partnerships, general partnerships, limited partnerships and limited liability companies. This legislation would take effect in 90 days.

ANALYSIS: This legislation replaces existing law on general partnerships, limited partnerships and limited liability companies with the most recent revisions of three acts promulgated by the Uniform Law Commission (ULC): the Uniform Partnership Act (UPA), the Uniform Limited Partnership Act (ULPA) and the Uniform Limited Liability Act (ULLA).

General Partnerships and Limited Liability Partnerships:

- Amends the definition of “general partnership” to clarify that it is an entity; thus, making it easier for transfers of property to and from partnerships. This definition change will strengthen the partnership organization by eliminating the automatic dissolution rules triggered when a partner disassociates.
- Clarifies that the agreement among partners governs the partnership and that the rules of the UPA are generally the default rules of the partnership.
- Permits the partnership to file a “certificate of authority” with the Department of State (DOS) which gives third parties notice of authority of a partner to conduct business on the partnership’s behalf.
- Provides that each partner must have duties of loyalty and care which are consistent and customary expectations for the partnership.
- Expands the circumstances in which one partner may be sued by other partners for breach of fiduciary responsibility.

Limited Liability Partnerships:

- Provides the general partners of an LLP with the same liability protection as shareholders of a corporation and members of a limited liability company.
- Adds distribution tests, as the liability shield of general partners might interfere with the ability of creditors to recoup improper distributions.
- Provides for the satisfaction of creditors upon liquidation.

Limited Partnerships:

- De-links the limited partnership law from the general partnership law, making it a stand-alone statute.
- Removes the right of a limited partner to disassociate before the termination of the limited partnership. The power to disassociate is recognized, but may be exercised only through the partnership agreement or those reasons specifically listed in this Act.
- Changes the current written consent requirements of all partners for a dissolution to the consent of all the general partners of the limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is effective.

Limited Liability Companies:

- Clarifies that the operating agreement governs the rights and obligations of the members of the LLC. The operating agreement provides that the duty of loyalty and the duty of care may not be eliminated. However, the agreement may specify acts and transactions that do not violate the duty of loyalty, as long as they are not unreasonable.
- Permits a transfer of any right of distributions that a member of the LLC has under the operating agreement. The operating agreement may impose restrictions on a right to transfer.
- Restricts the interests of a creditor of a member to the member's transferable interest and provides a judgment creditor with a "charging order" as the only method of executing against that interest. The bill makes it clear that a purchase in a foreclosure sale does not make the purchaser a member.
- Removes the "statutory apparent authority" in current law by providing that "a member is not an agent of the LLC solely by reason of being a member".
- Permits a member (but not a transferee) to seek a court order to dissolve the company if the managers or controlling members have acted in a manner that is directly harmful to the member.
- Modernizes provisions dealing with derivative litigation, including a provision authorizing special litigation committees and subjecting their composition and conduct to judicial review.

Benefit Companies:

- Adds a Subchapter dealing with "Benefit Companies" to allow for their creation.
 - A benefit company shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under section 8818(b) (relating to characteristics of limited liability company).
- Requires benefit corporations to deliver an annual report to each shareholder.

FISCAL IMPACT: This legislation would have no adverse fiscal impact on Commonwealth funds.

PREPARED BY: Tim Rodrigo
House Appropriations Committee (R)

DATE: October 27, 2016

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.