

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 297 Ltd. Partnership/Prof. Liability Changes

SHORT TITLE: Ltd. Partnership/Prof. Liability Changes

SPONSOR(S): Senators Clodfelter, Cooper, Hartsell, Kerr, B. Miller, and Odom

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>
REVENUES	\$3,750				
EXPENDITURES	NR\$66,000				
POSITIONS:	0				

Revenues and recurring expenditures are expected to increase in the out year based on the formation of additional limited liability partnerships. However, no estimate can be made until there is some indication of the impact this bill will have on the formation of those partnerships. Assuming the same level of activity, the revenue from the annual report fee and registration fee will increase by \$150,000 and \$7,500 annual. See the Assumptions and Methodology for more explanation.

**PRINCIPAL DEPARTMENT(S) & Secretary of State
PROGRAM(S) AFFECTED:**

EFFECTIVE DATE: Sections 2, 3, and 5 become effective October 1, 1999, and apply to liabilities arising on or after that date. Sections 4, 6, 7, 8, and 9 become effective January 1, 2000, and apply to registered limited liability partnerships formed on or after that date. Section 10 becomes effective January 1, 2000, and applies to foreign limited liability partnerships transacting business in this State on or after that date. Section 27 becomes effective October 1, 1999, and applies to (i) any limited partnership formed before that date, only if validly adopted in writing by its partners or otherwise as a part of its partnership agreement, and (ii) all limited partnerships formed on or after that date. The remainder of this act becomes effective October 1, 1999.

BILL SUMMARY: *(Adopted from the April 20, 1999 summary prepared by Senate Judiciary I Committee Co-Counsel.)*

The Proposed Committee Substitute for Senate Bill 297 will amend the law related to limited partnerships and will clarify the limit of liability of professionals in limited liability companies, registered limited liability partnerships, and professional corporations. The bill also provides for registration of foreign limited liability partnerships and annual reports by registered limited liability partnerships and foreign limited liability partnerships. Specifically,

Section 1 of the bill provides that the legal residence of a limited partnership, a limited liability company, and a registered limited liability partnership are determined the same as for a corporation.

Sections 2 and 3 amend the Professional Corporation Act (Chapter 55B) and the Limited Liability Company Act (Chapter 57C), respectively, to clarify that a shareholder, director, or officer of a professional corporation, or a member of a limited liability company, is not individually liable for the professional malpractice of another person in the professional organization but would be personally liable for their own malpractice.

Section 4 adds the definition of a "foreign limited liability partnership" to the Uniform Partnership Act (Chapter 59).

Section 5 also amends the Uniform Partnership Act to clarify the liability of partners in a registered limited liability partnership (RLLP) generally, and to clarify that a partner in a RLLP is not individually liable for the professional malpractice of another partner in the RLLP but would be personally liable for their own malpractice.

Sections 6, 7, 8 create a new article for registered limited liability partnerships and makes other clarifying changes in this law for the creation, amendment, and designation of a RLLP.

Section 9 requires RLLP's and foreign limited liability partnerships to file annual reports with the Secretary of State in a fashion similar to the annual reports required of corporations, nonprofits, and limited liability companies.

Section 10 provides for the registration of a foreign limited liability partnership in a fashion similar to the registration of a foreign corporation, foreign nonprofit corporation, a foreign limited liability company, and a foreign limited partnership.

Sections 11 through 37 amend the Limited Partnership Act in Article 5 of Chapter 59 and makes numerous clarifying changes regarding limited partnerships. Section 18 deletes the liability of limited partners to third parties under certain circumstances and provides that the limited partner is not liable even if the limited partner participates in the management of the limited partnership. Section 27 allows for a limited partnership to amend the provisions for allowing a limited partner to withdraw and provides that in a limited partnership where no provisions are made for a limited partner to withdraw, the limited partner may not withdraw until the time for the dissolution and winding up of the limited partnership business.

Section 38 outlines the effective dates of the various sections of the bill.

ASSUMPTIONS AND METHODOLOGY: This bill amends and makes numerous clarifying changes to the Professional Corporation Act, the Limited Liability Company Act, the Uniform Partnership Act, and the Limited Partnership Act. It creates a new article for registered limited liability partnerships and makes other clarifying changes in this law for the creation, amendment, and designation of a registered limited liability partnership. It also creates a new article for the registration of foreign limited liability corporations. While most of the amendments and changes

in sections 1-5 and sections 11-37 have no fiscal impact, amendments and clarifying changes in sections 6-10 have an impact on the Department of the Secretary of State's revenue and expenditures. These are noted below.

Under existing law, registered limited liability partnerships (RLLP) are required to apply for registration as such and pay a \$100 fee. The registration is effective for one year and they must file an annual renewal statement along with a \$100 fee. Sections 7 and 9 of this bill eliminate the one-year registration for RLLPs and instead require those RLLPs to file an annual report with the Secretary of State. The annual report fee is \$200. The bill also increases the initial registration fee from \$100 to \$125.

Currently, there are 1,500 registered limited liability partnerships. The Secretary of State currently collects \$150,000 (1,500 * \$100 renewal fee) annually for the annual renewal fee. The bill would require these entities to submit a \$200 fee annually when they submit their annual reports instead of the \$100 annual renewal fee they currently must pay. With this change in law, the collections from these entities would increase by \$150,000 (1500 RLLPs * \$200 annual report fee- \$100 annual renewal fee) annually. Please note however, that over 90% of the RLLPs will file their renewal statements by December 31, 1999, prior to the January 1, 2000 effective date of the change. Therefore they would not be required to submit an annual report until April 15, 2001 -- 4 months after the end of their fiscal year, assuming they operate on a calendar year. **Thus, this bill would not affect the revenue from existing RLLPs until Fiscal Year 2000-2001.**

Section 7 of this bill also increases the initial registration fee from \$100 to \$125. For calendar year 1998 there were 300 new filings. Assuming the same level of new filings, this change in law would generate an additional \$3,750 ((300 new filings/2) * \$25 registration fee increase) in Fiscal Year 1999-2000 and \$7,500 annually thereafter. The filings during the year are fairly consistent from month to month. Thus, the first year estimate assumes that one-half of the entities would have applied for registration as an RLLP with the \$100 fee between July 1, 1999 and December 31, 1999, prior to the effective date of the change.

The above estimates assume the same level of activity. However, other provisions in sections 5 of the bill clarify and expressly limit the individual liability of partners in limited liability partnerships. The Secretary of State believes these provisions make RLLPs a more attractive entity than general partnerships and as a result, they expect that there may be a surge in the formation of LLPs. (The Secretary of State noted that there has been a 59% increase in the formation of limited liability companies since the enactment of the Limited Liability Company Act.) If there is an increase in the number of RLLPs, the annual revenue from the registration fee and the annual report fee will be greater than the projected increase of \$150,000 and \$7,500 which are based on the current level of activity. At this time, neither the Secretary of State nor the Fiscal Research Division can estimate the number of additional RLLPs, if any, that may be formed as a result of this bill or the additional revenue that may be realized beyond fiscal year 1999-2000.

Section 4 of the bill defines a foreign limited liability partnership. Section 10 of the bill amends the law governing limited liability partnerships to give recognition to foreign limited liability partnerships and it requires them to register as such. Under existing law, there is no distinction between foreign and domestic limited liability partnerships. Also as noted in the SFN0297.doc

above discussion on the bill's impact on the Department's revenue, the bill eliminates the requirement for RLLPs (both foreign and domestic) to file annual renewal statements. But it does require them to submit an annual report. These amendments would require substantial modifications to the Secretary of State's automated system for tracking RLLPs. The modifications include the need to accommodate new foreign LLP registrations, the addition of annual report filing requirements for the domestic and foreign LLPs as well as the need for additional data storage space. The annual report requirement would require the Secretary of State to provide annual report forms, send notifications if the reports are non-compliant with the reporting requirements; send notifications of the intent to revoke registrations when appropriate, etc. The Secretary of State estimates the one-time cost of making those system changes to be \$35,000. In addition to the one-time cost for modifying its computer system, the Secretary of State estimates that temporary funding would be needed for at least one additional processing assistant to help with the data entry and additional paperwork that will be generated from the annual report requirement. They cannot accurately estimate at this time the impact this bill would have on the Department's workload and the additional permanent staff that would be needed.

The Fiscal Research Division believes these estimates for the one-time cost of modifying the system are reasonable. We also believe, the limitation on the partners' individual liability will make RLLP a more attractive entity and that there will be more filings with the Secretary of State as a result. We note, however, that at least one year of experience implementing the changes of this bill is needed to determine the true level of staff required to accommodate the change in workload resulting from this bill. Therefore, we cannot estimate the cost for additional personnel and we believe the Department's estimate of \$31,000 in temporary funding for one additional person is reasonable.

The Secretary of State also estimates that the bill will result in increased cost for printing and mailing new registration forms to comply with amendments to G.S. 59-84.2, annual report forms, new registration forms for foreign limited liability partnerships, and new forms to apply for reinstatement when the RLLP registration has been revoked. They also estimate that there will be additional computer costs related to additional data usage. However, the Secretary of State cannot estimate what these cost would be at this time.

TECHNICAL CONSIDERATIONS: Section 38 of the bill provides that sections 4, 6, 7, 8, and 9 become effective January 1, 2000 **and apply to registered limited liability partnerships formed on or after that date.** Among other changes, these provisions eliminate the one-year registration period for RLLPs and require RLLPs to submit an annual report with a \$200 fee instead of an annual renewal statement with a \$100 fee. This fiscal note assumes that these provisions apply to all RLLPs regardless of when they were formed and that RLLPs formed prior to January 1, 2000 would be required to submit an annual report with a \$200 fee effective January 1, 2000 instead of an annual renewal statement.

FISCAL RESEARCH DIVISION 733-4910
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DATE: Wednesday, June 30, 1999



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