

# Legislative Analysis

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## REVISE LIABILITY FOR LIMITED LIABILITY PARTNERSHIPS

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**Senate Bill 841 as reported from committee w/o amendment**

**Sponsor: Sen. Jack Brandenburg**

**House Committee: Commerce and Trade**

**Senate Committee: Finance**

**Complete to 3-30-18**

Analysis available at  
<http://www.legislature.mi.gov>

*(Enacted as Public Act 131 of 2018)*

**BRIEF SUMMARY:** Senate Bill 841 would amend the Uniform Partnership Act to revise the liability for partners in a limited liability partnership (LLP).

**FISCAL IMPACT:** Senate Bill 841 would not have a fiscal impact on any unit of state or local government.

### **THE APPARENT PROBLEM:**

According to the Uniform Law Commission of the National Conference of Commissioners on Uniform State Laws, the Uniform Partnership Act allows for the creation of a limited liability partnership (LLP) as a form of business organization. An LLP is an entity in which all partners have the same limited liability protection as shareholders in a corporation. Partners are not liable for the obligations of the partnership, but are liable for their own malfeasance.<sup>1</sup>

Reportedly, in 1994 Michigan adopted and enacted the Uniform Partnership Act put forth by the National Conference of Commissioners on Uniform State Laws. The model legislation was updated in 1997, but Michigan has yet to adopt those updates; most other states have already done so. Some believe that Michigan's LLP law is not as protective of partners with regard to partnership liabilities and is not as nationally competitive for business creation as laws in other states. Legislation has been introduced to update Michigan's Uniform Partnership Act to reflect the model legislation enacted in other states.

### **THE CONTENT OF THE BILL:**

Currently under the act, except for a tax obligation of the partnership, a partner of a registered limited liability partnership is not liable for debts, obligations, and liabilities of the partnership arising from negligence, wrongful acts, omissions, misconduct, or malpractice committed while the partnership is registered and in the course of the partnership business by another partner or an employee, agent, or representative of the partnership.

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<sup>1</sup> "The Uniform Partnership Act (UPA) (1997) (Last Amended 2013)." Available online at <http://www.uniformlaws.org/Shared/Docs/Partnership/UPA%20-%20Summary.pdf>

SB 841 would remove this provision. Under the bill, a debt, obligation, or other liability of a partnership incurred while it is a registered LLP would be solely the debt, obligation, or liability of the registered LLP. A partner would not be personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the registered LLP solely by reason of being or acting as a partner. This would apply regardless of the dissolution of the registered LLP. However, the bill would not affect the personal liability of a partner for a debt, obligation, or other liability of the registered LLP incurred or arising before the effective date of the bill.

Currently under the act, the provision above for limitation of liability does not affect the liability of a partner in a registered LLP for the partner's own negligence, wrongful acts, omissions, misconduct, or malpractice or that of any other person under the partner's direct supervision.

SB 841 would revise this to state that the limitation of liability does not affect the liability of a partner in a registered LLP for the partner's own negligence, wrongful acts, omissions, misconduct, or malpractice, or that of any individual who is under the person's direct supervision, that results in a debt, obligation, or other liability of the registered LLP.

Also under the act, besides the exception for a partner's own negligence described above, a partner in a registered LLP is not a proper party to a proceeding by or against a registered LLP to recover damages or enforce the obligations arising out the negligence, wrongful acts, omissions, misconduct, or malpractice described above.

SB 841 would revise this to state that, besides the exception for a partner's own negligence, a partner in a registered LLP is not a proper party to a proceeding by or against the registered LLP to recover damages or enforce a debt, obligation, or other liability for which the partner is not liable under the act.

Finally, the bill would add a subsection to state that the failure of a registered LLP to observe any applicable formalities relating to the exercise of its power or management of its business is not a ground for imposing liability on a partner for a debt, obligation, or other liability of the registered LLP.

The bill would take effect 90 days after being enacted into law.

MCL 499.46

## ***ARGUMENTS:***

### ***For:***

According to supporters, the bill will fully shield partners in an LLP from the liabilities of the LLP and make LLPs a more attractive form of business organization in Michigan. Under current law, a partner is only shielded from liabilities of a partnership arising from

negligence, wrong acts, or malpractice committed by another partner; a partner is not shielded from a general liability of the LLP, like a lease or loan. This is different than a limited liability corporation (LLC) or business corporation, putting existing LLPs at a disadvantage. Reportedly, Michigan is one of only five states with such a partial shield.

The bill will update Michigan's law to match the law in other states and put Michigan LLPs on a level playing field with those in other states and with other forms of business organization. Michigan is competing with other states for business locations and expansions, and the bill will support Michigan's competitive business climate.

***Against:***

No arguments were presented in opposition to the bill.

***POSITIONS:***

Representatives of the Honigman Business Law Firm testified in support of the bill.  
(3-13-18)

Representatives of the following entities indicated support for the bill:  
Michigan Chamber of Commerce (3-13-18)  
Warner Norcross and Judd (3-13-18)

Legislative Analyst: Patrick Morris  
Fiscal Analyst: Marcus Coffin

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.