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Senate Bill 841 (as enrolled)
Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Commerce and Trade

Date Completed: 4-18-18

RATIONALE

Michigan's Uniform Partnership Act shields partners in a limited liability partnership (LLP) from debts, obligations, and liabilities of the partnership arising from negligence, wrongful acts, omissions, misconduct, or malpractice committed by another partner. Some have pointed out that Michigan is one of only five states that do not protect partners in an LLP from liabilities, debts, and other obligations of the partnership itself, such as loans. In an effort to keep Michigan competitive from a business perspective, it has been suggested that the Act should shield partners in a Michigan LLP in this manner.

CONTENT

The bill would amend the Uniform Partnership Act to do the following:

- **Revise provisions regarding the liability of a partner of a registered LLP for a debt, obligation, or other liability incurred by the partnership.**
- **Indicate that the limitation on liability would apply regardless of the dissolution of the partnership.**
- **Specify that these provisions would not affect the personal liability of a partner for a liability of the partnership incurred or arising before the bill's effective date.**
- **Specify that the failure of a registered LLP to observe any formalities related to exercising its powers or management would not be grounds for imposing liability on a partner.**

Under Section 46 of the Act, except for a tax obligation of the partnership, a partner of a registered limited liability partnership is not liable directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of or chargeable to the partnership, whether in tort or contract, arising from negligence, wrongful acts, omissions, misconduct, or malpractice committed while the partnership is a registered LLP and in the course of the partnership business by another partner or an employee, agent, or representative of the partnership. The bill would delete this provision.

Under the bill, except as otherwise provided, a debt, obligation, or other liability of a partnership incurred while it was a registered limited liability partnership would be solely the debt, obligation, or other liability of that partnership. 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 partnership. It 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.

Section 46 states that it does not affect the liability of a partner in a registered limited liability partnership for the partner's own negligence, wrongful acts, omissions, misconduct, or malpractice, or that of any person under the partner's direct supervision and control. Under the bill, instead, the proposed provisions would 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 was under the partner's direct supervision and control, that resulted in a debt, obligation, or other liability of the partnership.

Under Section 46, except as otherwise provided, a partner in a registered limited liability partnership is not a proper party to a proceeding by or against the partnership, the object of which is to recover damages or enforce the obligations arising out of the negligence, wrongful acts, omissions, misconduct, or malpractice as described above. The bill would refer to a proceeding by or against the registered LLP, the object of which was to recover damages or enforce a debt, obligation, or other liability for which a partner was not liable, as described above.

The bill also specifies that the failure of a registered limited liability partnership to observe any applicable formalities relating to the exercise of its powers or management of its business would not be a ground for imposing liability on a partner for a debt, obligation, or other liability of the partnership.

The bill would take effect 90 days after it was enacted.

MCL 449.46

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to Senate Finance Committee testimony, Michigan LLPs lag behind LLPs formed in other states in regard to shielding partners from liabilities incurred by the partnership itself. Louisiana, New Hampshire, South Carolina, and West Virginia are the only other states that do not provide statutory immunity from both partners' and the partnership's obligations.

The National Conference of Commissioners on Uniform State Law (NCCUSL) provides states with uniform legislation in an effort to promote clarity and stability across all state laws. Its Uniform Partnership Act proposes state law concerning business partnerships. The LLP provisions in Michigan's Uniform Partnership Act were enacted in 1994. The NCCUSL revised its Uniform Partnership Act in 1997 to include protection for LLP partners from all liability and obligations of the partnership.

Because Michigan law does not provide comprehensive liability protections when compared to other states, businesspeople may be discouraged from registering an LLP in Michigan, may convert an existing Michigan LLP to a different type of entity, such as a corporation or a limited liability company, or may relocate to a state that provides full liability security. These actions may carry costs for existing LLPs.

The bill would help keep Michigan's business environment competitive with other states by amending the Uniform Partnership Act to expand liability protection so it would be consistent with what the NCCUSL recommends and what most other states already have adopted.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.