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Limited Liability in Registered Limited Liability Partnerships: How Does the Florida RLLP Measure Up?

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I. GENERAL, LIMITED, AND LIMITED LIABILITY PARTNERSHIPS

A "registered limited liability partnership ("RLLP")," also known as a "limited liability partnership"¹ or LLP, represents the most recent item on the roster of possible partnership structures in Florida.² Before passage of the Florida Registered Limited Liability Partnership Act in June 1995, persons desiring to do business in the state as a partnership had only two choices: the general partnership and the limited partnership.³

In a general partnership all partners have joint and several, unlimited personal liability for their own acts, for those of the other partners and of the employees acting within the scope of their employment, and for the debts of the partnership. In a limited partnership, which consists of two classes of partners, limited and general, only the limited partners enjoy some protection from liability. The general partners in a limited partnership are personally liable for all the debts of the partnership, of the partners, and of the employees. In contrast, the limited partners are only liable for the amount contributed to the business, unless they participate in the management, or take control, of the business.⁴ In short, a general partnership provides no protection for the partners' assets. A limited partnership leaves the general partner fully exposed and provides limited liability for the limited partner at the cost of lack of control of the business.

Mirroring the limited liability provisions of other states that have enacted similar legislation, the Florida RLLP Act allows general and limited partnerships to limit the exposure of their partners to liability for their own negligent acts and those of the persons whom they supervise and shields them from liability for the acts of their partners.⁵ The Florida RLLP fits

1. The two terms are generally considered interchangeable. Martin I. Lubaroff, *Registered Limited Liability Partnerships—the Next Wave*, INSIGHTS, May 1994, at 23, 23 n.1.

2. FLA. STAT. §§ 620.78-.789 (1995) (creating a "registered limited liability partnership").

3. FLA. STAT. ch. 620 (1993).

4. Florida's partnership laws provide "safe harbors" for limited partners, allowing them to control the business to the extent specified in the statute without forfeiting their limited liability. FLA. STAT. § 620.129(2) (1995).

5. See discussion *infra* part II.B.2.

into the parameters of the LLP structure as defined in prior legislation and contains many of the same advantages and disadvantages.

II. DEFINING AN LLP

As a new twist on partnership law, the LLP structure has sparked the interest of legislators and gained recognition in a majority of states since 1991, the year that Texas passed the first LLP legislation.⁶ Its popularity stems from the statutory protection it provides to partners. In an LLP, partners are shielded from vicarious liability for the negligence and malpractice of other partners.

A. Hybrid Liability

By definition, an LLP is a general partnership for all purposes except as modified by statute.⁷ Because it falls within the framework of a partnership, and is not a distinct legal entity,⁸ an LLP is subject to all the laws governing general partnerships in each state, except for the liability provisions which in most cases have replaced the joint or joint and several liability provisions of the partnership statutes.⁹ Of the thirty-nine legisla-

6. See, e.g., Lubaroff, *supra* note 1, at 23 & n.2; see also TEX. REV. CIV. STAT. ANN. art. 6132b-3.08(a) (West Supp. 1995); *infra* note 10 (listing the 39 states that enacted LLP statutes by Jan. 1996).

7. Lubaroff, *supra* note 1, at 23; see also Robert R. Keatinge et al., *Limited Liability Companies and Limited Liability Partnerships: Operations and Drafting After Rev. Proc. 95-10*, Q236 A.L.I.-A.B.A. 1, 9 (Mar. 16, 1995) (defining an LLP).

A registered limited liability partnership (LLP) is a general partnership which has been registered with the secretary of state. [sic] [by] filing an appropriate document. . . . The statutes vary on the filing requirements, and some statutes require that the partnership maintain insurance. The statutes go to some length to confirm that an LLP is not only a general partnership, but is also the same general partnership that existed prior to the filing of the registration with the secretary of state. The benefit of being a general partnership rather than a separate and distinct entity is that the LLP . . . is able to take advantage of the rules developed for general partnerships.

Id.

8. Robert R. Keatinge et al., *Limited Liability Partnerships and Other Entities Authorized in Colorado*, 24 COLO. LAW. 1525, 1525 (1995) (defining an LLP).

9. Most states have adopted amendments to their version of the Uniform Partnership Act ("UPA") to include the LLP as an option under the partnership umbrella. See, e.g., Uniform Partnership Act (1994), P.A. 95-341, § 18, 1995 Conn. Legis. Serv. 1252, 1257 (West) (replacing CONN. GEN. STAT. ANN. §§ 34-53) (effective July 1, 1997).

tures that have passed LLP statutes to date,¹⁰ most have altered their preexisting partnership laws and some, including Florida, have created separate sections within the partnership statute to govern LLPs.

In those states which have altered existing partnership statutes, the resulting hybrid of an unlimited and a limited liability partnership exhibits the duality to be expected in an entity that is both a creature of statute and a creature of the common law. First, LLP statutes restrict the rights of injured third parties to collect from all the partners of the partnership and thus affect indemnity and contribution among the partners.¹¹

Second, although the statutes limit liability among general partners under some circumstances, they do not eliminate the liability of one partner to another for which the partnership agreement expressly provides.¹² Because it remains a partnership, the partnership agreement governs the new LLP just as it did the general partnership. Consequently, before registering as an LLP, the partners should review and amend their agreement to avoid inadvertent contradiction of the statutory limited liability through prevailing contractual provisions.¹³

Third, the statutory alterations to the partnership format do not act as a panacea to cure all the ills of unlimited liability exposure. The partnership itself remains jointly and severally liable to injured third parties along with

10. The 39 legislatures that have enacted LLP legislation as of January 1996 are Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

Unlike other states, the Ohio Legislature has recognized the legal existence of a "registered partnership having limited liability," rather than the usual LLP or RLLP. See OHIO REV. CODE ANN. §§ 1775.14, .61-.63 (Anderson Supp. 1995).

Texas was the first state to pass LLP legislation in 1991. Lubaroff, *supra* note 1 (discussing the original five LLP statutes enacted in Texas, followed by Louisiana in 1992, and Delaware, D.C., and North Carolina in 1993); see also Act effective August 26, 1991, ch. 901, § 84, 1991 Tex. Sess. Law Serv. (Vernon).

Connecticut first passed LLP legislation in 1994 effective January 1, 1996. See CONN. GEN. STAT. ANN. § 34-53 historical notes (West Supp. 1995). Before the new law could take effect, the legislature reworked the statute to include it in its revised Uniform Partnership Act (1994). See P.A. 95-341, §18, 1995 Conn. Legis. Serv. at 1257.

11. John R. Marquis, *Creating a Michigan Limited Liability Partnership*, 74 MICH. B.J. 698, 699 (1995).

12. *Id.*

13. *Id.*

the negligent partner.¹⁴ Under the majority of LLP statutes, the partners are still accountable for business debts of the partnership.¹⁵ In addition, the partners continue to be individually responsible for their own wrongdoing.¹⁶ As a result, while the new entity provides a measure of relief from some types of liability exposure, the partnership's assets, and to the extent of its contractual debts and the partners' own negligence, the partners' individual assets are still at risk.

B. *Limited Liability*

1. Lateral Liability

All the LLP statutes purport to protect innocent partners from liability for the wrongdoing of other partners by reducing exposure to "lateral" or "horizontal" vicarious liability.¹⁷ For example, the Delaware statute, the third LLP statute to be enacted by a state legislature, uses the words, "negligence, wrongful acts or misconduct" to describe the excused conduct.¹⁸ The term "negligence" in section 1515 was intended to include acts generally considered negligent and the addition of the terms "wrongful acts" and "misconduct" was meant to encompass tortious conduct generally beyond the scope of "negligence" as a legal term.¹⁹

The legislative history of Delaware's LLP law indicates that it was intended to be "broadly protective" but only for specific conduct.²⁰ By confining the resulting liability shield to tortious conduct, the drafters hoped to prevent the creation of "a magic, ever expanding list of excused conduct" under the aegis of an LLP.²¹ In attempting to provide broad protection

14. David B. Rae, *Limited Liability Partnership: The Time to Become One Is Now*, HOUS. LAW., Jan.-Feb. 1993, at 47, 47.

15. See *infra* part VI.B (discussing LLP statutory provisions which shield a partner from personal liability for the partnership's contractual debts, as well as from claims arising from negligence or malpractice).

16. See generally Thomas W. Van Dyke & Paul G. Porter, *Limited Liability Partnerships: The Next Generation*, J. KAN. B. ASS'N, Nov. 1994, at 16 (providing an overview of the LLP structure). "The LLP is not an entirely new business entity; rather, it is a general partnership that statutorily limits the liability of general partners without changing the partnership mode of operation." *Id.* at 20.

17. See Keatinge et al., *supra* note 8, at 1525.

18. DEL CODE ANN. tit. 6, § 1515(b) (Supp. 1994); see Lubaroff, *supra* note 1, at 23.

19. Lubaroff, *supra* note 1, at 24.

20. *Id.*

21. *Id.*

while narrowly defining the type of conduct protected, the Delaware statute served as the model for most of the subsequently enacted LLP legislation.²²

2. Vertical Liability

Most LLP statutes expressly sanction "vertical" vicarious liability by making each partner responsible for the tortious acts of the persons whom the partner supervises.²³ Again using the Delaware statute as an example, a partner in a Delaware LLP is liable for the "negligence, wrongful acts, or misconduct . . . of any person under his direct supervision and control."²⁴ The statute apparently requires active supervision and control but does not state that they are prerequisites to liability. The inference may be drawn that a partner is not responsible for another partner's wrongdoing when the supervision is casual or cursory.²⁵ Because the degree and quality of supervisory involvement necessary for liability is unclear, vertical liability will undoubtedly be the subject of litigation. Despite this definitional ambiguity, the verbatim borrowing of the quoted language by many states proves that Delaware's interpretation of vertical liability has set the standard in subsequently enacted LLP statutes across the nation.

This paper will first discuss the advantages and disadvantages of the LLP as a business structure. It will then examine in detail both the newly enacted Florida version of the LLP statute and the individual liability provisions of the LLP statutes of other states. Because the nature of a partner's liability is "at the heart of what it means to be an [LLP],"²⁶ such an examination will serve to illuminate its essential elements.

III. ADVANTAGES OF LLPS

Although professional partnerships of accountants and lawyers were the first entities to take advantage of the limited liability offered by LLPs, the statutes in most states do not restrict the type of partnership that may

22. See *infra* part VI.A (discussing the statutes, including the Florida RLLP Act, that list excused tortious conduct).

23. See, e.g., IOWA CODE ANN. § 486.15(2) (West Supp. 1995); KAN. STAT. ANN. § 56.315(c) (1994); Act of May 11, 1995, ch. 337, § 7, 1995 Wash. Legis. Serv. (West).

24. DEL. CODE ANN., tit. 6, § 1515(c) (1993).

25. Lubaroff, *supra* note 1, at 25. "An intimate involvement in supervision and control in connection with what is going on with respect to a matter appears to be required as a precursor to the imposition of liability." *Id.*

26. 15 PA. CONS. STAT. ANN. § 8204 committee cmt. (Supp. 1995).

register as an LLP.²⁷ Any partnership, whether of architects, engineers, or plumbers, whether professional or service organization, may become an LLP.²⁸ An LLP provides an attractive modification of the unlimited liability of a general partnership because it is easy to form, it benefits from partnership pass-through taxation, and it enjoys an uncomplicated structure.²⁹ The question of suitability of the structure for a particular business, however, should be considered on the basis of the specific needs of the business and its participants.

A. *Ease of Formation*

Formation of an LLP requires the filing with the designated state authority of cursory information concerning the partnership.³⁰ The registration must include the partnership's name and address, the number of partners, and a brief description of the business, and be accompanied by a filing fee (usually \$100 per partner). The registration is effective for one year and therefore must be renewed annually, which requires an annual filing fee. The partnership must comply with the statutory insurance requirements.³¹ Compliance with these simple steps erects a statutory shield of limited liability while the partnership is registered as an LLP. The shield, however, has not been tested by the courts.

27. See, e.g., Rae, *supra* note 14, at 47 (noting that the Texas LLP statute permits any general partnership to convert to an LLP). Rae commented that restricting LLPs to professional partnerships was thought to be discriminatory. *Id.* at 47 n.1.

28. Lubaroff, *supra* note 1, at 29. "There is no reason why any partnership, particularly partnerships involved in service-related businesses should not consider electing LLP status." *Id.*

29. Van Dyke & Porter, *supra* note 16, at 16.

30. For example, in Florida, registration requires payment of a filing fee and proof of insurance. See discussion *infra* parts V.A, F.

31. See, e.g., FLA. STAT. § 620.7851 (1995).

B. *Benefits of Partnership Taxation*

An LLP retains the advantages of pass-through partnership taxation,³² so long as the LLP does not take on corporate characteristics.³³ Because an LLP is a variation on a general partnership, its tax status as a partnership is probably more certain than the tax status of the limited liability company ("LLC")³⁴ the current frontrunner in the legislative race to enact the perfect limited liability entity. The uncertainty with respect to the taxation of an LLC has caused businesses to approach it with caution. The relative certainty of the tax status of an LLP as a partnership,³⁵ on the other hand, will probably promote its use.

C. *Simplicity of Structure*

An entity created by agreement among its founders imposes fewer restrictions, is inexpensive to set up and maintain, and provides a simpler governing format than one that must comply with statutory mandates. For

32. In a partnership, the business is required to file returns with the Internal Revenue Service which allocates the profits and losses among the partners, but the business itself is not subject to tax. This type of tax treatment is known as pass-through or flow-through taxation. In contrast, corporate profits are subject to "double taxation," once as corporate income and once as shareholder income. Double taxation can lead to possible combined taxation of more than 60% for a corporation and its shareholders.

33. The Internal Revenue Service examines four indicia of corporate characteristics to determine whether an entity is essentially a corporation and should be taxed as one: limited liability; free transferability of interests; centralization of management; and continuity of life or perpetuity. Rae, *supra* note 14, at 47 n.4. Because partners of an LLP already enjoy limited liability, to maintain its tax status as a partnership, the LLP must take care not to acquire more of the cited indicia. *Id.*

34. An LLC provides every participant (known as a "member") with limited liability akin to that of a shareholder in a corporation and to date has been given partnership tax treatment under the Internal Revenue Code, so long as it lacks the majority of the corporate characteristics. See MERTENS LAW OF FEDERAL INCOME TAXATION § 35.360 (Martin M. Weinstein et al. eds., Supp. Jan. 1996) (summarizing recent Revenue Rulings classifying LLCs as partnerships for federal income tax purposes). For Florida state taxation purposes, Florida LLCs are taxed as corporations. FLA. STAT. § 608.471 (1995).

35. See Barbara C. Spudis, *LLCs: Recent Developments and the Developing Uses of Hybrid LLCs*, in TAX STRATEGIES FOR CORPORATE ACQUISITIONS, DISPOSITIONS, SPIN-OFFS, JOINT VENTURES, FINANCING, REORGANIZATIONS AND RESTRUCTURING 1995, at 1003, 1003 (PLI Tax Law & Estate Planning Course Handbook Series No. 373, 1995). "Because LLPs are partnerships for state law purposes, classification issues have not arisen for them and no private letter rulings have been published in the taxpayer requested a ruling with respect to classification of an LLP." *Id.*

these reasons, a partnership is popular as a business entity based on agreement among the partners.

To smooth the transition to an LLP from a general partnership, the original partnership agreement stays in force in an LLP and continues to govern the structure of the entity.³⁶ Unlike a professional service corporation ("PSC") or an LLC, two other limited liability entities, the limited liability registration of a partnership permits partners to carry on their business as usual. Although enjoying similar limitations on vicarious liability among its shareholders, a PSC is subject to a surfeit of state regulation and is open only to the types of professionals listed in the PSC statutes.³⁷ Similarly, an LLC must also comply with burdensome state regulations, and has been compared to those that govern a corporation.³⁸ Because the LLP is subject to minimal state interference, it constitutes an alternative format worthy of consideration.

IV. DISADVANTAGES OF LLPs

The disadvantages of LLPs as a choice of business structure center around the liability for which they do not provide a shield. Other areas of uncertainty include governing law and cultural³⁹ questions.

A. *Chinks in the LLP Liability Shield*

The following list of "horribles" is not fantastic (nor exhaustive). A business considering formation or conversion to an LLP should carefully consider the pitfalls of doing so, even as it basks in the benefits conferred by the LLP structure.

(1) A partnership which registers as an LLP has not escaped its liability for any claim, whether in tort or in contract, and each partner is still liable for his or her own wrongdoing and that of the persons the partner supervises.⁴⁰

36. See *supra* note 9 and accompanying text.

37. See, e.g., FLA. STAT. ch. 621 (1995); see also *id.* § 621.07 (using language identical to that of § 620.782 to limit the liability of the professionals in a PSC).

38. LLC statutes also restrict who may form one. See Thom Weidlich, *Limiting Lawyers' Liability; LLPs Can Protect Assets of Innocent Partners*, NAT'L L.J., Feb. 7, 1994, at 1, 1 (noting that certain states do not allow lawyers to form LLCs).

39. See *infra* part IV.C (citing examples of "cultural" issues that may arise in LLPs).

40. Marquis, *supra* note 11, at 703.

(2) Under most LLP statutes, partners in an LLP are not protected against the contract claims of third parties. This liability loophole may lead to the proliferation of suits against LLPs for breach of contract.⁴¹

(3) The assets of partners in an LLP are exposed to claims that arose before the partnership registered as an LLP.⁴²

(4) Should an LLP inadvertently forget to renew its registration on time, the partnership loses its limited liability until it refiles, pays the annual fee, and otherwise complies with the appropriate statutory provisions.⁴³ This gap period may expose the partners to vicarious liability, even if the partnership later re-registers.

(5) Because an LLP only shields non-negligent partners from the effects of catastrophic events and does not safeguard partnership assets, the partnership may have been decimated before statutory protections for individual partners take effect.⁴⁴

Such problems may still be legislatively remedied, but the LLP statutes enacted to date do not address them.

B. *Governing Law*

Many states have taken care in enacting LLP statutes to include provisions allowing LLPs formed in other states to do business within the state.⁴⁵ Florida's LLP statute takes a quantum leap ahead by expressly providing that (a) a domestic LLP be recognized in other jurisdictions and that (b) the liability of the partners in a Florida LLP doing business out of state be governed by the Florida LLP statute.⁴⁶ The issue, however, remains unresolved in the states which have not yet addressed either foreign or domestic LLPs legislatively. As a result, interstate problems may exist for an LLP that does business across state lines.⁴⁷

41. See *infra* part IV.C.

42. Marquis, *supra* note 11, at 703.

43. See, e.g., FLA. STAT. § 620.78 (mandating yearly renewal of registration for a Florida LLP).

44. Marquis, *supra* note 11, at 703.

45. Lubaroff, *supra* note 1, at 23 (citing the New Jersey and Minnesota LLP legislation as examples of jurisdictions qualifying a foreign LLP); see also FLA. STAT. § 620.7885 (1995) (citing requirements for a foreign LLP wanting to do business in Florida).

46. FLA. STAT. §§ 620.783, .789; see *infra* part V.D, G (discussing the choice of law and interstate commerce provisions of the Fla. RLLP Act).

47. An even stickier issue may be the tax implications for out-of-state partnerships who decide to register in a state as a foreign LLP. Would these business entities be liable for local taxation?

Because most LLP statutes were recently enacted, only a few courts have had the opportunity to address questions of whose law governs. Of these, in *Liberty Mutual Insurance Co. v. Gardere & Wynne, L.L.P.*,⁴⁸ the United States District Court for Massachusetts stated that the law of the state of organization governs an LLP.⁴⁹ The case was decided in December 1994, a year before the enactment of the Massachusetts LLP statute.⁵⁰ Liberty Mutual, a long-standing client of the defendant Dallas law firm, Gardere & Wynne (“G & W”), had its principal place of business in Boston and therefore chose to bring suit in a Massachusetts court. It alleged that two new members of G & W, also named as defendants, breached their fiduciary duty by continuing to represent a company against whom the insurance company had been litigating for a number of years.

The federal district court considered two defense motions to dismiss the case based on lack of personal jurisdiction and other legal theories, or alternatively, to transfer venue to Texas. Repeatedly noting that it was being called upon to decide “difficult and unsettled issues of Texas law”⁵¹ because the defendant G & W was organized as a Texas LLP, the court ruled in favor of transfer to the Northern District of Texas mainly as a result of jurisdictional concerns in Massachusetts which would become moot in Texas.⁵² In deciding to transfer, the court clarified that Texas law would apply regardless of whether the case was heard in Massachusetts or in Texas because of the Texas LLP’s right to be judged under Texas law in a foreign court.⁵³

Interestingly, the court also alluded in dicta to the “difficult issues of Texas law that will have to be addressed by whichever court decides the case on the merits,” such as the extent to which non-involved partners are liable for breaches of fiduciary duty.⁵⁴ The court explained that the list of excused conduct in the Texas LLP statute does not specifically shield a partner from liability for such contractual wrongdoing.⁵⁵ This comment

48. No. CIV.A.94-10609-MLW, 1994 WL 707133 (D. Mass. Dec. 6 1994).

49. *Id.* at *6 n.7.

50. Act of Nov. 28, 1995, ch. 281, § 7, 1995 Mass. Legis. Serv. 822, 823 (West) (amending MASS. GEN. L. ch. 108A § 15).

51. *Liberty Mut. Ins. Co.*, 1994 WL 707133, at *4; *see also id.* at *6, *7, *9 (also referring to Texas LLP law as “unsettled”).

52. *Id.* at *11.

53. *Id.* at *6 n.7.

54. *Id.* at *9.

55. *See infra* notes 105-107 and accompanying text.

echoes the concern that the limited liability shield may not protect partners from contractual liability to third parties.⁵⁶

Two other recent cases have touched on jurisdictional issues with respect to LLPs, *Lowsley-Williams v. North River Insurance Co.*⁵⁷ and *UOP v. Andersen Consulting*.⁵⁸ In the latter case, a Connecticut court ruled that the state long-arm statute governing foreign partnerships covered an Illinois LLP because it was a foreign partnership, although the foreign LLP had offices in Connecticut and several of its partners lived in-state.⁵⁹ The holding may provide guidance to other courts in determining the status of a foreign LLP.

In *Lowsley-Williams*, on the other hand, the federal district court in New Jersey could do no more than note the need for congressional action to help the judiciary define diversity jurisdiction when addressing "the wide array of non-traditional legal entities which currently exist and which are continuously being created."⁶⁰ Faced with deciding the citizenship of a Lloyd's London syndicate with which the plaintiff was associated, the court concluded that the syndicate most closely resembled an LLP.⁶¹ Because of the lack of legislative guidelines on diversity jurisdiction relating to partnerships, however, the categorization proved inconclusive. Both cases illustrate the struggle that courts will continue to confront in addressing jurisdictional issues surrounding LLPs.

C. Cultural Questions

Perhaps more difficult to resolve than jurisdictional issues are the cultural questions that may arise within an LLP because these cannot be resolved through legislation. For example, partners may be reluctant to take on supervisory burdens because of potential liability if the supervised person missteps and is considered to have acted while under the partner's "direct supervision and control."⁶² The new entity may also alter relationships among the partners because limited lateral liability erects a legal barrier

56. See *supra* part IV.A (discussing the chinks in the liability shield).

57. 884 F. Supp. 166 (D.N.J. 1995).

58. No. CV 95014753S, 1995 WL 784971 (Conn. Super. Dec. 21, 1995).

59. *Id.* at *2.

60. 884 F. Supp. at 170.

61. *Id.*

62. See *supra* part I.B.2.

between negligent and non-negligent partners.⁶³ The statute might thus have an inhibiting effect on the way the partners perform.⁶⁴

Whether or not these disadvantages will eventually discourage the widespread use of LLPs, state legislatures are rallying to the LLP banner. The Florida Legislature is a recent convert.

V. THE FLORIDA RLLP ACT

The Florida Registered Limited Liability Partnership Act supplements Florida's partnership laws by creating sections 620.78 through 620.789 of the *Florida Statutes*. The Act permits a Florida partnership to register as an RLLP; specifies registration and name requirements; outlines the limitation on individual partner liability for the acts of others; and mandates that an RLLP must be insured for a minimum amount.⁶⁵ The following section-by-section analysis examines these details of the Act in full, as well as other significant provisions.

A. *Registered Limited Liability Partnerships*

Section 620.78 of the *Florida Statutes* outlines the requirements that a partnership must satisfy to become an RLLP. The partnership must file a statement of registration or a statement of registration renewal with the Department of State ("DOS"), containing, among other items, its name and address, the number of partners, and a brief description of the partnership business.⁶⁶ The statement of registration must either be executed or authorized by a "majority in voting interest of the partners."⁶⁷ Registration must be accompanied by a fee of \$100 for each resident partner, up to a limit of \$10,000 for each LLP, and is effective for one year after the date the registration statement is filed or renewed.⁶⁸

The statute mandates that the DOS shall register or renew the registration of any partnership that has complied with the registration or renewal requirements. The DOS thus may not reject a properly filed registration statement. It also provides that an RLLP can amend its

63. Marquis, *supra* note 11, at 703.

64. *Id.* But see Weidlich, *supra* note 38, at 1 (quoting a commentator that an LLP structure will increase the level of comfort for lawyers practicing together).

65. See also FLA. H.R. Comm. on Com., FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT CS for HB 717, part I *Summary* (May 9, 1995) (preliminary draft).

66. FLA. STAT. § 620.78(1).

67. *Id.* § 620.78(2).

68. *Id.* § 620.78(3), (6).

statement of registration by filing a "certificate of amendment" with the DOS.⁶⁹

B. *Cancellation of Registration*

Section 620.781 of the *Florida Statutes* provides that an RLLP may cancel its registration by filing a statement of cancellation of registration with the DOS.⁷⁰ The section specifies that the statement of cancellation must be executed or authorized by a "majority in voting interest of the partners."⁷¹ The statement of cancellation must also contain the name of the RLLP, the initial date of registration, and the effective date of cancellation if it is not effective when filed.⁷² The filing of the statement only cancels the partnership's registration as an LLP and does not dissolve the partnership itself.⁷³ Thus, an RLLP may decide to terminate its status as a limited liability entity without dissolving the partnership.

C. *Partner's Liability*

Section 620.782 of the *Florida Statutes* sanctions limited lateral liability for partners in an RLLP. In a validly registered LLP, a partner is "not individually liable for obligations, or liabilities of the partnership, whether in tort, contract, or otherwise, arising from errors, omissions, negligence, malpractice, or wrongful acts committed by another partner or by an employee, agent, or representative of partnership."⁷⁴

A partner, however, remains individually liable for (a) debts "arising from any cause other than those specified"; for (b) the wrongful acts "committed by the partner or any person under the partner's direct supervision and control in the specific activity in which errors, omissions, negligence, malpractice, or wrongful acts occurred"; or for (c) obligations "for which the partner has agreed in writing to be liable."⁷⁵ The section primarily protects a partner in an RLLP from liability for the wrongdoing of other partners "or any person" over whose acts he had no actual supervision or control, but it does not protect the partnership itself from any obligations or liabilities for the wrongful acts.

69. *Id.* § 620.78(5), (8).

70. *Id.* § 620.781(1).

71. FLA. STAT. § 620.781(1).

72. *Id.* § 620.781(2).

73. *Id.* § 620.781(3).

74. *Id.* § 620.782(1).

75. *Id.* § 620.782(2).

The section contains three additional noteworthy provisos. First, a partner forfeits his liability protection if the RLLP does not carry the specified minimum amount of insurance coverage. The insurance requirement provides some recourse for victims of a protected partner's wrongdoing.⁷⁶ Second, the cancellation of registration, dissolution, or withdrawal of a partner does not affect the limitation of an individual partner's liability while the registration of the RLLP was in effect.⁷⁷ Third, the RLLP may sue or be sued without the necessity of joining its partners in the suit, and a partner who is not liable for a wrongful act is "not a proper party" in a suit against the RLLP arising out of the wrongful acts described in section 620.782(1).⁷⁸ This provision emphasizes both the non-negligent partner's protected status and the exposure of the RLLP itself.

D. *Liability—Governing Law*

Section 620.783 of the *Florida Statutes*, the choice of law provision, provides that the liability of a partner in an RLLP registered in Florida is governed solely by Florida law.⁷⁹

E. *Name of a RLLP*

Section 620.784 of the *Florida Statutes* deals with the requirements for the name of an RLLP. Among other requirements, the name must contain the words "Registered Limited Liability Partnership," or the designation "L.L.P." or "LLP" as the last words of its name.⁸⁰ This provision gives notice to third parties who have dealings with the RLLP of the limitations on liability of its partners.

F. *Insurance of RLLPs*

Section 620.7851 of the *Florida Statutes* allows an RLLP to meet the mandatory insurance requirement in one of two ways, by purchasing liability insurance or by setting aside funds to satisfy judgments.⁸¹ In either case, the "minimum coverage amount" is defined as \$100,000 multiplied by the number of general partners in excess of one, and must be at least \$200,000

76. FLA. STAT. § 620.782(3); *see also id.* § 620.7851 (1995).

77. *Id.* § 620.782(4).

78. *Id.* § 620.782(6), (7).

79. *Id.* § 620.783 (1995).

80. FLA. STAT. § 620.784(1).

81. *Id.* § 620.7851(1).

up to a limit of \$3,000,000.⁸² The insurance requirement ensures that a victim of the wrongful acts listed in section 620.782 will have recourse to a minimum amount of insurance funds for recovery of damages without limiting the amount of damages recoverable from the partnership or from an unprotected partner.⁸³

G. Professional Services

Section 620.787 addresses ethical considerations pertaining to those professionals who provide services already regulated by a state regulatory agency and who wish to register as an LLP. The section states that the appropriate regulatory agency will continue to supervise the registered partnership. Further, the partners in an LLP are "subject to disciplinary proceedings and penalties in the same manner and to the same extent as individuals"⁸⁴ in that profession. To ensure on-going oversight, the LLP must provide a certified copy of its registration to the regulatory agency.⁸⁵

Among other types of professional service providers attracted to the LLP blueprint, law firms organized as LLPs would remain within the traditional partnership framework while enjoying the advantages of limited liability. Florida law firms considering section 620.78 registration rely on compliance with section 620.787 to avoid violating the two Rules of Professional Conduct that prohibit lawyers from limiting their liability.⁸⁶ Section 620.787 directs a law firm organized as an LLP to remain under the supervision of the Florida Bar, the state agency responsible for the ethical conduct of lawyers. Section 620.782, the liability provision of Florida's LLP Act, echoes Bar Rule 4-5.1(c)(2)⁸⁷ by not relieving a partner in an

82. *Id.* § 620.7851(2).

83. *Id.* § 620.7851(4).

84. *Id.* § 620.787(1).

85. FLA. STAT. § 620.787(2).

86. See Steel, Hector & Davis Memorandum to John A. Boggs, Director Law. Reg., Fla. Bar, from Victoria L. Weber & Cathy M. Sellers, *Necessity for Florida Bar Rule Addressing Registered Limited Liability Partnerships* 5 (June 20, 1995) (reviewing the Fla. RLLP Act, Fla. Bar rules and case law, and the practice in other LLP jurisdictions to conclude that a Bar rule authorizing legal LLPs is unnecessary) (on file with authors).

87. R. REGULATING FLA. BAR 4-5.1(c)(2) (1995).

Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Profession Conduct if:

.....

(2) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails

LLP from supervisory responsibility and is subordinated to the ethical guidelines of the Bar rules as a result of section 620.787. More importantly, the Bar rules are confined to questions of ethical conduct; matters of civil or criminal liability fall outside the scope of the Rules of Professional Conduct.⁸⁸ Legal professionals wishing to register as LLPs see no conflict between the LLP statute and the Florida Bar Rules of Professional Conduct because they contend that the two are mutually exclusive.⁸⁹

Legal practitioners also argue that Bar Rule 4-1.8(h),⁹⁰ which bars lawyers from making agreements to limit their prospective malpractice liability to a client, is consistent with section 620.782. Because the limiting of a lawyer's liability under the LLP Act is self-executing and, therefore, requires no additional agreement between the lawyer and the client, the Act does not violate the prohibition on entering into liability-restricting agreements in the Bar rule.⁹¹ Moreover, by using the singular noun, "lawyer's liability," to identify whose liability may not be limited, the language of rule 1.8(h) suggests that its prohibition does not apply to vicarious liability among lawyers.⁹² The rule apparently was intended to assist a client in obtaining representation in a matter where the risk of legal malpractice was high because of the nature of the problem.⁹³ Rule 1.8(h) thus provides an exception to the general rule that lawyers are liable for their own malpractice. Because this general rule is incorporated into section 620.782(2)(b), which holds lawyers liable for their own malpractice, legal

to take reasonable remedial action.

Id.; see also Michael J. Lawrence, Note, *The Fortified Law Firm: Limited Liability Business and the Propriety of Lawyer Incorporation*, 9 GEO. J. LEGAL ETHICS 207, 214-15 (1995) (discussing MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.1 (1995)).

88. FLA. STAT. Bar Rule 4-5.1 cmt. ("Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.").

89. Weber & Sellers, *supra* note 86, at 6. *But see* Keatinge et al., *supra* note 7, at 149-50 (noting that "[a]t the least, violation of ethical rules is probative of violation of the standard of care" (footnote omitted)).

90. "Limiting Liability for Malpractice. A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement. . . ." R. REGULATING FLA. BAR 4-1.8(h).

91. *Id.*

92. Lawrence, *supra* note 87, at 216.

93. *Id.* (citing GEOFFREY C. HAZARD, JR. & WILLIAM HODES, 2 THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT § 1.8:901 (Supp. 1992)).

professionals maintain that the Florida LLP Act is consistent with Florida Bar Rule 4-1.8(h).

Beyond compliance with codified ethical regulation, however, is the troubling question of a lawyer's responsibility to the client. Lawyers are generally held to a higher standard both by the public and by the judiciary.⁹⁴ Even if the state Bar is convinced that registration as an LLP will not conflict with existing Bar rules, legal practitioners must consider the impression that an attempt to create a liability shield will make on the public. The potential for negative repercussions from limited liability among law firm partners should not be ignored. Despite the long-standing acceptance of limited vicarious liability for attorneys in Florida PSCs,⁹⁵ the public may incorrectly perceive lawyers' use of the new LLP format as unseemly.

H. *Miscellaneous Provisions*

Sections 620.786, 620.788, 620.7885, and 620.7887 of the *Florida Statutes* address the effect of registration on dissolution of an RLLP;⁹⁶ the conversion of a limited partnership into an RLLP; and the requirements for registration and cancellation of registration of a foreign (that is, out-of-state) RLLP that wants to do business in Florida.⁹⁷

I. *Applicability to Foreign and Interstate Commerce*

Section 620.789 of the *Florida Statutes* constitutes the comity provision of the Act, in which the Florida Legislature asks that other states defer to its jurisdiction over LLPs organized in Florida. The section codifies the legislative intent that the "legal existence" of Florida RLLPs doing business outside the state be recognized under the Full Faith and Credit Clause of the U.S. Constitution.⁹⁸ It also enables a domestic LLP to do business

94. See *First Bank & Trust Co. v. Zagoria*, 302 S.E.2d 674, 676 (Ga. 1983) (holding a lawyer in a PSC liable for his partner's misconduct, despite state legislation permitting lawyers organized as a PSC to limit their vicarious liability).

95. See *In re Florida Bar*, 133 So. 2d 554, 557 (Fla. 1961) (holding that Florida Bar members may practice law as PSCs).

96. FLA. STAT. § 620.786 (1995).

97. The organizational and internal affairs of a foreign LLP are to be governed by the laws of the jurisdiction under which it is organized, "including the liability of partners, solely by reason of being partners, for the debts, obligations, and liabilities of or chargeable to the partnership." *Id.* § 620.7885(4).

98. *Id.* § 620.789(2).

nationwide and internationally.⁹⁹ In enacting section 620.789, the legislature intended that the limitation on liability that non-negligent partners enjoy in a Florida RLLP will protect them wherever the entity does business.

J. *Effective Date*

The Florida RLLP Act took effect October 1, 1995, the thirtieth LLP statute to become effective.¹⁰⁰

K. *How Does the Florida RLLP Measure Up?*

Section 620.782 on the nature of a partner's liability constitutes the functional provision of the Act. A comparison of its operative language to the words that other states have chosen to limit liability in an LLP sheds light on the potential efficacy of the liability shield. Although Florida's LLP Act was recently enacted, the legislature chose to follow Delaware's 1993 narrow formulation of the liability provision. Like Delaware, Florida used a particularized list of excused conduct, rather than emulating Minnesota's choice of a broader, more protective, corporate-like liability shield. Florida's choice of a conservative approach suggests that the legislature was concerned with the potential difficulty that Florida RLLPs might encounter in doing business outside the state.¹⁰¹ Its solution was to minimize the difficulty by not placing Florida LLPs in the forefront of the movement toward enhanced liability protection. The variety of legislative approaches to creating LLPs also highlights the interstate diversity in the nature of the protection provided to a partner in a limited liability partnership.

99. *Id.* § 620.789(1).

100. Act of June 18, 1995, ch. 409, § 13, 1995 Fla. Laws 1386, 1391 (effective October 1, 1995) (codified at FLA. STAT. § 620.78 et seq.).

101. See Michael J. Bohnen, *Limited Liability Partnerships for Law Firms Proposed Massachusetts Legislation*, BOSTON B.J., Nov.-Dec. 1995, at 7, 13 (discussing comity issues for Massachusetts LLPs).

It is not clear whether the limitation on liability will be recognized in states that do not have LLP legislation. Arguably, courts of other states should recognize the liability shield of an LLP under the 'internal affairs doctrine,' which treats the laws of the state of organization as governing the liability of members of other forms of business organizations. . . . However, because . . . [some] states do not have LLP laws, the issue remains a consideration in those jurisdictions.

Id.

VI. THE NATURE OF A PARTNER'S LIMITED LIABILITY

By January 1996, thirty-nine legislatures had enacted provisions limiting a partner's liability in LLPs.¹⁰² In defining the nature of a partner's liability in the new entity, these statutes fall into two broad categories: those that contain a particularized list of excused conduct, the "list" jurisdictions, and those that do not, the "no list" jurisdictions.¹⁰³ The former category contains the majority of states and provides a narrower

102. ARIZ. REV. STAT. ANN. § 29-215 (Supp. 1995); CAL. CORP. CODE § 15015 (Deering Supp. 1996); COLO. REV. STAT. ANN. § 7-60-115 (West Supp. 1995); Uniform Partnership Act (1994), P.A. 95-341, 1995 Conn. Legis. Serv. § 18 (West) (amending CONN. GEN. STAT. ANN. § 34-53) (effective July 1, 1997); DEL. CODE ANN. tit. 6, § 1515 (1993 & Supp. 1994); D.C. CODE ANN. § 41-146 (Supp. 1995); FLA. STAT. §§ 620.78-.789 (1995); GA. CODE ANN. § 14-8-15 (Supp. 1995); IDAHO CODE § 53-315 (Supp. 1995); ILL. ANN. STAT. ch. 805, para. 205/15 (Smith-Hurd Supp. 1995); IND. CODE § 23-4-1-15 (Supp. 1995); IOWA CODE ANN. § 486.15 (West Supp. 1995); KAN. STAT. ANN. § 56-315 (1994); KY. REV. STAT. ANN. § 362.220 (Michie/Bobbs-Merrill Supp. 1994); LA. REV. STAT. ANN. § 9:3431 (West Supp. 1996); MD. CODE ANN., CORPS. & ASS'NS § 9-307 (Supp. 1995); Act of Nov. 28, 1995, ch. 281, 1995 Mass. Legis. Serv. § 7 (West) (amending MASS. GEN. L. ch. 108A, § 15); MICH. COMP. LAWS ANN. § 449.46 (Supp. 1995); MINN. STAT. ANN. § 323.14 (West 1995 & Supp. 1995); Act of Mar. 14, 1995, ch. 353, 1995 Miss. Laws § 3 (amending MISS. CODE ANN. § 79-12-29); MO. REV. STAT. § 358.150 (Supp. 1996); MONT. CODE ANN. § 35-10-307 (1995); Act of July 1, 1995, ch. 465, 1995 Nev. Stat. § 12 (amending NEV. REV. STAT. § 87.150); Ch. 96, § 3 1995 N.J. Sess. Law Serv. 302, 302-03 (West) (amending N.J. STAT. ANN. § 42:1-15); Ch. 185, § 13 1995 Adv. Leg. Serv. 1534, 1552-53 (Michie) (to be codified at N.M. STAT. ANN. § 54-1-48); N.Y. PARTNERSHIP LAW § 26 (McKinney Supp. 1995); N.C. GEN. STAT. § 59-45 (Supp. 1994); N.D. CENT. CODE § 45-22-08 (Supp. 1995); OHIO REV. CODE ANN. § 1775.14 (Anderson Supp. 1994); Act of July 19, 1995, ch. 689, 1995 Or. Laws § 3 (amending OR. REV. STAT. § 68.270); 15 PA. CONS. STAT. ANN. § 8204 (Supp. 1995); S.C. CODE ANN. § 33-41-370 (Law. Co-op. Supp. 1994); S.D. CODIFIED LAWS ANN. § 48-2-15 (Supp. 1995); TENN. CODE ANN. § 61-1-114 (Supp. 1995); TEX. REV. CIV. STAT. ANN. art. 6132b-3.08(a) (West Supp. 1996); UTAH CODE ANN. § 48-1-12 (Supp. 1995); VA. CODE ANN. § 50-15 (Michie 1994); WASH. REV. CODE § 25.04.730 (Supp. 1995); Act of Dec. 1, 1995, 1995 Wis. Legis. Serv. Act 97, § 9 (West) (to be codified at WIS. STAT. § 178.12(2)-(4)); see also *supra* note 10 and accompanying text (listing states that have enacted LLP statutes).

103. Cf. Jennifer J. Johnson, *Limited Liability for Lawyers: General Partners Need Not Apply*, 51 BUS. LAW. 85, 107-09 (1995) (categorizing LLP statutes into three groups immunizing partners from vicarious liability for "tort only," "tort or contract," and "tort, contract, or otherwise" types of wrongdoing); Robert R. Keatinge et al., *Limited Liability Partnerships: The Next Step in the Evolution of the Unincorporated Business Organization*, 51 BUS. LAW. 147, 175-80 (1995) (dividing LLP acts chronologically into first, second, and third generation statutes, with the original group providing protection for negligence claims, the next group addressing negligence and other misconduct, whether in tort, contract, or otherwise, and the most recent enactments providing full vicarious liability protection).

type of protection for partners choosing to do business as an LLP. The latter category protects partners who register from the tortious conduct of fellow partners, in some states even for supervisory liability,¹⁰⁴ and has extended statutory protection to liability for debts chargeable to the partnership.

A. *The "List" Jurisdictions*

Twenty-three legislatures have passed LLP statutes that attempt to restrict the type of conduct for which an innocent partner can be liable by listing specific acts of others from which the partner is shielded.

The District of Columbia, Louisiana, North Carolina, and Texas passed one-of-a-kind statutes between 1991 and 1993. In Texas, for instance, a partner is not liable for another partner's "errors, omissions, negligence, incompetence, or malfeasance," a fairly typical list of excused conduct.¹⁰⁵ The shield is not qualified, however, by the usual provision providing for vertical liability for the conduct of a person under the partner's "direct supervision and control."¹⁰⁶ Instead, a partner in a Texas LLP is exposed to risk if the partner is "directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner," or the partner "had notice or knowledge" of the culpable conduct and according to the 1993 amendment of the earlier liability provision, "failed to take reasonable steps to prevent or cure" the wrongdoing.¹⁰⁷ Although North Carolina's statute similarly provides that to incur liability the partner must have been "directly involved in the specific activity,"¹⁰⁸ the notice or knowledge provision does not appear in its liability provisions or that of any other state's LLP laws.

104. *See, e.g.*, COLO. REV. STAT. ANN. § 7-60-115(2)(a) (stating that partner in an LLP is liable for own misconduct but omitting mention of liability for misconduct of person under partner's supervision or control); GA. CODE ANN. § 14-8-15(c).

105. TEX. REV. CIV. STAT. ANN. art. 6132b-3.08(a). The Texas LLP statute was amended in 1993, but the list of excused conduct remained unchanged. *See id.* 1993 bar committee's cmt. (noting that "[s]ubsection (a)(1) follows TUPA § 15(2) in providing that a partner in a [RLLP] is not individually liable for the errors or omissions of another partner").

106. *See* discussion of vertical liability *supra* part II.B.2; *see also* LA. REV. STAT. ANN. § 9:3431 (West Supp. 1995) (omitting provisions for vertical liability).

107. TEX. REV. CIV. STAT. ANN. art. 6132b-3.08(a)(1). The 1991 statute did not qualify the notice requirement with a "reasonable steps" provision. *See id.* 1993 bar committee's cmt. (saying that the amendment merely "clarifies" the former version).

108. N.C. GEN. STAT. § 59-45(b).

Delaware's 1993 LLP legislation spawned numerous progeny that are very similar and sometimes identical. The statutes of Illinois, Iowa, Kansas, Michigan, Mississippi, Nevada, New Jersey, New Mexico, Pennsylvania, South Carolina, Tennessee, and Washington all include negligence, wrongful acts, or misconduct in their lists of excused conduct, mirroring Delaware's provision;¹⁰⁹ eight of them add "omissions" and "malpractice" to the list.¹¹⁰ These two additions make the LLP structure more attractive to professionals, such as lawyers and accountants, by limiting a partner's malpractice exposure to his own wrongdoing, and not that of fellow practitioners.¹¹¹

The LLP statutes in Arizona, Connecticut, Florida, and Virginia loosely resemble that of Delaware. Arizona's and Connecticut's statutes, for example, omit the phrase "whether in tort, contract, or otherwise," although both use the identical list of excused conduct as Delaware, namely "negligence, wrongful acts, or misconduct."¹¹² The omission may result in an innocent partner being liable for a contractual breach of another partner, even if the breach can be interpreted broadly as negligent behavior.

Finally, the LLP statutes in Kentucky and Utah, similar to those of Texas and Louisiana,¹¹³ contain lists of excused conduct but no provision for vertical liability, although both states expressly provide that the partner is liable for his own negligence, wrongful acts, or misconduct.¹¹⁴ These provisions further limit the type of conduct for which an innocent partner can be held liable.

B. *The "No List" Jurisdictions*

The "no list" states, those which contain no particularized list of excused conduct, can be further subdivided by the differences in the

109. See, e.g., IOWA CODE § 486.15(2); see also *supra* part II.B.1.

110. See, e.g., ILL. ANN. STAT. ch. 805, para. 205/15.

111. But see 15 PA. CONS. STAT. ANN. § 8204 committee cmt.

Although the Committee chose to use the phrase "negligent or wrongful acts or misconduct" because of its use in other contexts in Pennsylvania law, the Committee believes that it should include the actions covered by the Texas provision cited in the Official Source Note, which refers to "errors, omission, negligence, incompetence, or malfeasance."

Id.

112. ARIZ. REV. STAT. ANN. § 29-215(B); Uniform Partnership Act (1994), P.A. 95-341, § 18, 1995 Conn. Legis. Serv. 1257 (West).

113. See *supra* note 102 and accompanying text.

114. KY. REV. STAT. ANN. § 362.220(2); UTAH CODE ANN. § 48-1-12(2)(a).

operative language of their legislation. They fall into two categories. In early 1994 the Minnesota Legislature created a limited liability entity which provides the most comprehensive protection to partners in a registered firm of any state.¹¹⁵ By the end of 1995, fifteen additional states had chosen this broadly exculpatory approach to the limitation of a partner's liability in an LLP. California, Georgia, Indiana, Maryland, New York, Oregon, South Dakota, and Wisconsin passed legislation that provides that a partner is "not liable . . . for any debts, obligations, or liabilities of . . . the partnership or any other partner . . . solely by reason of being a partner."¹¹⁶ Colorado, Idaho, Massachusetts, Missouri, Montana, North Dakota, and Ohio have statutes that resemble Minnesota's version: "A partner of a limited liability partnership is not, merely on account of this status, personally liable for anything chargeable to the partnership . . ."¹¹⁷

In minimizing a partner's liability in an LLP, the Minnesota Legislature created a "corporate-like liability shield that severs the connection between partner status and personal liability for partnership debts."¹¹⁸ A partner in an LLP is protected exactly as are shareholders in a Minnesota corporation and members in a Minnesota LLC, although partners in an LLP, do not enjoy perpetual protection.¹¹⁹ Limitation on liability lasts for one year only while the current registration is in effect. If the registration is not renewed, the liability buffer expires. The statute also expressly provides that the corporate doctrine of piercing the corporate veil applies to LLPs.¹²⁰

115. See Keatinge et al., *supra* note 7, at 120-21 (discussing the liability of partners in an LLP in the state of organization).

116. OR. REV. STAT. § 68.270 (1995). The liability provision in California's LLP Act resembles this group of statutes, but it omits the word "solely," and like Maryland, New York, Oregon, and South Dakota, does not qualify the liability with either "individually," as Georgia does, or "personally," as in the LLP laws of Indiana and Wisconsin. CAL. CORP. CODE § 15015; GA. CODE ANN. § 14-8-15; IND. CODE § 23-4-1-15. The omissions in California's statute leave more room for manipulation when applying the statute to specific instances of partner liability. California, Massachusetts, and Wisconsin were the most recent states to jump on the LLP bandwagon and chose to join the no-list jurisdictions. In contrast, the first states to enact LLP legislation took the more conservative approach by including lists of excused conduct in their bills.

117. MINN. STAT. ANN. § 323.14(2) (West 1995).

118. *Id.* § 323.14 reporters' notes (naming Professors Daniel S. Kleinberger & Carter G. Bishop as co-reporters); see also *id.* § 323.14(2) (entitled "Limited Liability Partnership Shield").

119. *Id.* § 323.14 reporters' notes (indicating that "the LLP shield is more ephemeral" than the shield for corporate shareholders).

120. *Id.* § 323.14(3) (providing that "the case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under

It does not, however, absolve a partner from personal liability for his own misconduct.¹²¹ The Minnesota LLP was created in the corporate image.

In Colorado, a partner also enjoys blanket protection. The LLP shield shelters partners from liability "directly or indirectly . . . for a debt, obligation, or liability of . . . the partnership while it is a registered limited liability partnership, except that . . . the liability of a partner . . . for such partner's own negligence, wrongful acts, or misconduct" is not affected by the section.¹²² Under the Colorado LLP Act, LLPs duplicate the liability protection of LLCs, which shield members from liability to the same degree as corporate shareholders are protected.¹²³ In passing an LLP statute that departs from the tradition begun by Texas in 1991, the Colorado Legislature sought to reduce conflicts in two areas. First, it sought to avoid questions and potential litigation regarding claim exclusion. Second, it hoped to minimize conflicts arising from payment priority for personal negligence claims as opposed to partnership contractual claims.¹²⁴

The "no list" states have enacted statutes that apparently shield partners in an LLP from all liability that does not arise from personal negligence. These limited liability entities may thus protect partners from contractual claims as well as negligence and malpractice claims whether based on common law or statute, whether the statute is state or federal.¹²⁵

VII. CONCLUSION

LLP legislation is varied and becoming more so each day, as states continue to embrace the innovative concept of limited liability within a partnership framework. While legislatures are picking and choosing among various possibilities for limited liability entities, the final format of the LLP is still undecided. Questions remain regarding the extent of limitation on a partner's liability and other issues such as taxation of foreign LLPs. Ideally, once all the states have enacted their own legislation, a movement toward uniformity will arise that will solve the problems attributable to the lack of uniformity among state LLP statutes.

Minnesota law also applies to [LLPs]).

121. MINN. STAT. ANN. § 323.14 reporters' notes.

122. COLO. REV. STAT. ANN. § 7-60-115(2)(a).

123. Keatinge et al., *supra* note 8, at 1525 & n.7.

124. *Id.* at 1525 & n.10.

125. See Lubaroff, *supra* note 1, at 26 (noting as example that under the LLP statutes enacted from 1991 to 1993 it was uncertain whether liability limitations would extend to statutory liability of a partner for employment discrimination).