

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 2148

INTRODUCER: Commerce Committee and Senators Deutch and Lynn

SUBJECT: Limited Liability Companies

DATE: April 20, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Earlywine/Hinely	Cooper	CM	Fav/CS
2.	Merlin	Maclure	JU	Pre-meeting
3.				
4.				
5.				
6.				

**I. Summary:**

This bill requires the names of limited liability companies (LLCs) registered with the Department of State to be distinguishable on the databases maintained by the Division of Corporations (DOC). In addition, this bill will no longer permit the Department of State to record duplicate names. Accordingly, an LLC may not register with the DOC under the registered name of another LLC.

This bill substantially amends sections 608.406 and 608.407, Florida Statutes.

**II. Present Situation:**

A limited liability company (LLC) is a type of business entity combining several features of corporations and partnership business structures. Owners are called members, as opposed to partners or shareholders, and members cannot be personally liable for the LLC's debts. An LLC's business structure does not require corporate meetings or resolutions, and unlike corporations, an LLC is dissolved when a member dies or is adjudicated bankrupt.

Chapter 608, F.S., is named the "Florida Limited Liability Company Act." Section 608.406, F.S., contains the requirements for the naming of an LLC and the requirements for filing the name with the Department of State (DOS or Department). Specifically, an LLC name must contain the words "limited liability company" or "limited company."<sup>1</sup> However, certain abbreviations are acceptable.<sup>2</sup> An LLC name may not contain language stating or implying that the LLC is

<sup>1</sup> Section 608.406(1)(a), F.S.

<sup>2</sup> *Id.*

organized for a purpose other than that permitted in ch. 608, F.S., and its articles of organization.<sup>3</sup> Further, an LLC name may not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States.<sup>4</sup>

The LLC name is required to be filed with the DOS for public notice, and the recording alone does not create any presumption of ownership in the LLC beyond that which is created under common law.<sup>5</sup> The Department is required to record the name without regard to any other name recorded.<sup>6</sup>

Over the past five years, the number of LLCs filed has steadily risen. In DOS's 2002 filings, 38,639 LLCs were listed; in 2004, the filings rose to 100,070; and in 2006, LLC filings amounted to 130,251. According to DOS, there are 16,433 active corporations, LLCs, and limited partnerships with duplicate names. Currently, DOS receives 30-35 complaints per day about duplicate names being issued.<sup>7</sup>

### III. Effect of Proposed Changes:

The bill amends s. 608.406, F.S., to eliminate "limited company," the designation "L.C.," or the abbreviation "LC" as an option for registration as part of the limited liability company name. The the Department of State (DOS or Department) reports that "limited company," "L.C.," and "LC" are archaic, that there only a few companies registered with such designations, and that these companies will be unaffected by this change.

The bill also requires an LLC registered with DOS to be distinguishable on the databases maintained by the Division of Corporations within the Department. There are three exceptions:

- Fictitious name registrations filed pursuant to s. 865.09, F.S., which provides for certain conditions when a person may register a fictitious name with DOS;
- General partnerships registered under s. 620.8105, F.S.; and
- Limited liability company names for which the owner entity has given written consent and the written consent is filed at the time of the registration of such name.

The bill renumbers and amends subsection (2) of 608.406, F.S., to delete the requirement that DOS must record the name of an LLC regardless of any other recorded LLC name.

The bill also provides that the distinguishable name requirements of the bill apply prospectively.

Finally, the bill amends s. 608.407, F.S., to require that the name of the limited liability company included in the articles of organization must satisfy the requirements of s. 608.406, F.S.

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<sup>3</sup> Section 608.406(1)(b), F.S.

<sup>4</sup> Section 608.406(1)(c), F.S.

<sup>5</sup> Section 608.406(2), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> JIM WYSS, WHAT'S IN A NAME, BILL MAY DECIDE, THE MIAMI HERALD, MARCH 30, 2007, at <http://www.miamiherald.com/458/story/57649.html>.

This bill provides an effective date of July 1, 2007.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of State, it will incur minimal cost due to only one database being affected.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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