

March 2012

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Georgia State University Law Review

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### Recommended Citation

Georgia State University Law Review, *CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS Partnerships: Provide for Limited Liability Limited Partnerships; Amend Certification, Merger, and Cancellation Requirements*, 13 GA. ST. U. L. REV. (2012).  
Available at: <https://readingroom.law.gsu.edu/gsulr/vol13/iss1/23>

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## CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

### *Partnerships: Provide for Limited Liability Limited Partnerships; Amend Certification, Merger, and Cancellation Requirements*

CODE SECTIONS: O.C.G.A. §§ 14-8-2, -48, -62 to -63, 14-9-201 to  
-204, -206, -206.1, -403, -604, -801, -1101  
(amended)

BILL NUMBER: HB 1627

ACT NUMBER: 852

GEORGIA LAWS: 1996 Ga. Laws 787

SUMMARY: The Act defines and specifies the naming  
requirements for limited liability limited  
partnerships. The Act sets out the procedural  
requirements for creating a limited liability  
partnership from a limited partnership.  
Additionally, the Act changes the process for the  
execution of certificates for the merger of  
limited partnerships, the amendment of  
certificates, and the fees charged for filing  
certificates.

EFFECTIVE DATE: July 1, 1996

### *History*

Texas created the first limited liability partnership (LLP) in 1992.<sup>1</sup> Shortly thereafter, Georgia had the choice to either turn away businesses wanting to register to do business in Georgia as LLPs or to recognize these business entities.<sup>2</sup> The Georgia General Assembly chose to recognize foreign limited liability companies.<sup>3</sup> Immediately thereafter, Georgia companies wanted to be able to limit their liability as well.<sup>4</sup> To keep Georgia businesses from organizing in states that already recognized limited liability companies and then returning to

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1. Larry E. Ribstein, *LLCs, LLPs and Other Unincorporated Businesses*, in 14TH ANN. CORP. & BANKING L. INST., 16-025 (1995).

2. Telephone Interview with Rep. Robert Reichert, House District No. 126 (June 6, 1996) [hereinafter Reichert Interview]. Georgia already gave full faith and credit to foreign corporations and general partnerships. *Id.*

3. See 1992 Ga. Laws 1865 (formerly found at O.C.G.A. §§ 14-11-1 to -19 (1992)), repealed by 1993 Ga. laws 123, § 1, at 126; Reichert Interview, *supra* note 2.

4. Reichert Interview, *supra* note 2.

Georgia to register to do business, Georgia allowed domestic companies to form as limited liability companies in 1993.<sup>5</sup>

In 1994, Georgia allowed foreign LLPs<sup>6</sup> and the next year allowed domestic LLPs.<sup>7</sup> In an effort to keep Georgia on the leading edge of business and to create a strong business climate, Representatives Baker, Chambless, Reichert and Bostick introduced HB 1627.<sup>8</sup> HB 1627 continues to advance Georgia business law by now allowing limited liability limited partnerships.<sup>9</sup>

### HB 1627

HB 1627 addresses the inconsistencies in the way limited liability corporation filings had been treated.<sup>10</sup> The bill's sponsors wanted to clarify and confirm that an LLP can become a limited liability limited partnership without dissolving and starting over.<sup>11</sup> The new language makes it easier for the Secretary of State's Office to administer the statute, while also making it easier for lawyers and pro se filers to follow the statute.<sup>12</sup>

Georgia created LLPs to protect the general partner.<sup>13</sup> However, the original LLP laws only protected the limited partners and left the

5. 1993 Ga. Laws 123, § 1, at 142 (codified at O.C.G.A. §§ 14-11-100 to -1109 (1994)); see also *Legislative Review*, 10 GA. ST. U. L. REV. 79 (1993) (discussing Georgia Limited Liability Company Act); Record of Proceedings in the Senate Special Judiciary Committee (Mar. 5, 1996) (remarks by Bob Ryan, State Bar of Georgia, Corporate Banking Section) [hereinafter Ryan Remarks II] (available in Georgia State University College of Law Library).

6. 1994 Ga. Laws 1674 (formerly found at O.C.G.A. §§ 14-8-2, -48 (Supp. 1995) and codified at O.C.G.A. §§ 14-8-44 to -47, -49 to -61 (1994 & Supp. 1996)); Ryan Remarks II, *supra* note 5.

7. 1995 Ga. Laws 470 (formerly found at O.C.G.A. §§ 14-8-2, -48, -62 to -63 (Supp. 1995) and codified at O.C.G.A. §§ 14-8-15, -18, -34, -36, -40, -44 to -45, -64, 14-9-108, -902, 14-11-201, -212, -305, -405, -602, -702, -901, -903, -905 (Supp. 1996)). 1995 Ga. Laws 470 added a new paragraph (7.1) to O.C.G.A. § 14-8-2. 1995 Ga. Laws 470, § 1, at 471. However, pursuant to O.C.G.A. § 28-9-5 (which gives the Code Revision Commission authority to make editorial corrections), the paragraph was codified as (6.1). O.C.G.A. § 14-8-2 (Supp. 1996) (Code Commission notes).

8. Reichert Interview, *supra* note 2.

9. Ryan Remarks II, *supra* note 5.

10. Record of Proceedings in the House Judiciary Committee (Feb. 15, 1996) (remarks by Bob Ryan, State Bar of Georgia, Corporate Banking Section) [hereinafter Ryan Remarks I] (available in Georgia State University College of Law Library).

11. Reichert Interview, *supra* note 2.

12. Record of Proceedings in the Senate Special Judiciary Committee (Mar. 5, 1996) (remarks by Janet Jackson, Georgia Secretary of State Office) [hereinafter Jackson Remarks] (available in Georgia State University College of Law Library).

13. Ryan Remarks I, *supra* note 10. Mr. Ryan also expressed his opinion that allowing limited liability partnerships was not good for Georgia and was only done because other states allow them. *Id.*

general partner open to liability.<sup>14</sup> HB 1627 was passed to allow existing LLPs to reap the benefits provided under the bill's new limited liability limited partnership provision.<sup>15</sup>

The Act changes provisions in both the Partnership chapter<sup>16</sup> and the Revised Uniform Limited Partnership Act chapter of the Georgia Code.<sup>17</sup>

For clarity,<sup>18</sup> the Act specifically includes limited liability limited partnerships in the definition of "[f]oreign limited liability partnership[s]."<sup>19</sup> The Act also expands the definition of LLP from "a partnership formed pursuant to an agreement governed by the laws of this state"<sup>20</sup> to include any limited partnership organized under Georgia's Revised Uniform Limited Partnership Act, or subject to partnership Code sections 14-8-62 and -63.<sup>21</sup> This change merely creates uniformity in the way all LLPs are treated.<sup>22</sup>

The Act requires that the name of either a foreign or a Georgia limited liability limited partnership contain the words "limited liability limited partnership," or else the designation "L.L.L.P.," or "LLLP."<sup>23</sup> The required designation helps to inform the general public as to the limits on the business entity's liability.<sup>24</sup>

When an existing limited partnership elects to become an LLP,<sup>25</sup> a certificate must be filed with "the clerk of the superior court of any county in which the limited partnership has an office."<sup>26</sup> The Act

14. Reichert Interview, *supra* note 2; see 1995 Ga. Laws 470 (formerly found at O.C.G.A. §§ 14-8-2, -48, -62 to -63 (Supp. 1995) and codified at O.C.G.A. §§ 14-8-15, -18, -34, -36, -40, -44 to -45, -64, 14-9-108, -902, 14-11-201, -212, -305, -405, -602, -702, -901, -903, -905 (Supp. 1996)).

15. Reichert Interview, *supra* note 2.

16. 1984 Ga. Laws 1439 (codified at O.C.G.A. § 14-8-1 (1994)).

17. 1988 Ga. Laws 1016, § 1, at 1019 (codified at O.C.G.A. § 14-9-100 (1994)).

18. Reichert Interview, *supra* note 2.

19. O.C.G.A. § 14-8-2(5) (Supp. 1996).

20. 1995 Ga. Laws 470, § 1, at 471 (formerly found at O.C.G.A. § 14-8-2(6.1) (Supp. 1995)).

21. O.C.G.A. § 14-8-2(6.1) (Supp. 1996). As originally introduced in the House, HB 1627 did not include limited liability partnerships that elected to be subject to the Revised Uniform Limited Partnership Act in the definition. HB 1627, as introduced, 1996 Ga. Gen. Assem. This language was added by the House Judiciary Committee. HB 1627 (HCS), 1996 Ga. Gen. Assem.

22. Telephone Interview with Rep. Tommy Chambliss, House District No. 163 (June 21, 1996) [hereinafter Chambliss Interview].

23. O.C.G.A. § 14-8-48(a)(1) (Supp. 1996) (foreign); *id.* § 14-8-63(b) (Georgia).

24. Reichert Interview, *supra* note 2. The creation of limited liability business entities required the Georgia General Assembly to balance the needs of the general public against the needs of the business community. *Id.* The General Assembly subordinated concerns that the general public might be unable to recover contract or tort damages from a limited liability entity to concerns for the stimulation and growth of businesses. *Id.*

25. O.C.G.A. § 14-8-62(g) (Supp. 1996).

26. 1995 Ga. Laws 470, § 11, at 474 (codified at O.C.G.A. § 14-8-62(a) (Supp.

requires an existing limited partnership to file an amended certificate with the Secretary of State to become a limited liability limited partnership.<sup>27</sup> The amended certificate must include the name of the partnership, including the required designation of L.L.L.P., or LLLP; have been approved by all the partners, unless they agreed otherwise; and, the new status as a limited liability limited partnership remains in effect until the certificate is again amended to reflect a return to limited partnership status.<sup>28</sup> When a limited partnership elects to become a limited liability limited partnership, it remains subject to the regulations of the Revised Uniform Limited Partnership Act.<sup>29</sup>

While the Code once allowed a limited partnership to come into existence when a certificate of limited partnership was filed with the Secretary of State, or at any later time specified on the certificate,<sup>30</sup> the Act now requires that the creation of the limited partnership occur no more than ninety days after the certificate is filed.<sup>31</sup> This ninety day limit also applies to amended certificates of limited partnership, as well as certificates canceling limited partnerships.<sup>32</sup> The ninety day limit ensures uniformity.<sup>33</sup>

When a merger of limited partnerships occurs, the Act requires that "at least one general partner" of the surviving limited partnership execute the merger certificate.<sup>34</sup> This change prevents an exiting partner from being the partner that executes the document.<sup>35</sup> Preventing the exiting partner from executing the merger certificate was a logical "housekeeping" change to the Code.<sup>36</sup>

An amendment to a certificate of limited partnership is now effective either when the certificate is filed or at the time stated in the certificate, so long as that time is not longer than ninety days after the

1995)).

27. O.C.G.A. § 14-9-202 (Supp. 1996).

28. *Id.* § 14-8-62(g).

29. *Id.* HB 1627, as introduced, did not provide that a limited liability limited partnership would remain subject to the Revised Uniform Limited Partnership Act. HB 1627, as introduced, 1996 Ga. Gen. Assem. This omission was an oversight and the inclusion of this provision was requested by the Georgia Bar. Chambless Interview, *supra* note 22.

30. 1988 Ga. Laws 1016, § 1, at 1027-28 (formerly found at O.C.G.A. § 14-9-201(a), (b) (1994)).

31. O.C.G.A. § 14-9-201(b) (Supp. 1996).

32. *Id.* §§ 14-9-202, -203.

33. Chambless Interview, *supra* note 22.

34. O.C.G.A. § 14-9-204(a)(4) (Supp. 1996). Previously, at least one general partner of *each* of the merging limited partnerships had to execute the merger certificate. 1988 Ga. Laws 1016, § 1, at 1028-29 (formerly found at O.C.G.A. § 14-9-204(a)(4) (1994)).

35. Ryan Remarks I, *supra* note 10.

36. Chambless Interview, *supra* note 22.

filing, whichever is later.<sup>37</sup> The same effective date rules apply to mergers and cancellations of limited partnerships.<sup>38</sup> Identical effective date rules ensure uniformity.<sup>39</sup>

HB 1627 clarified Code section 14-9-206.1 by explicitly making it applicable to mergers between a limited partnership and any domestic or foreign limited partnership, limited liability company, or domestic or foreign corporation.<sup>40</sup> This Code section was changed to model the Georgia Business Corporation Code.<sup>41</sup> More importantly, the Act does away with the requirement that the surviving entity of a merger must be a corporation where a corporation was one of the entities in the merger.<sup>42</sup> Now Georgia treats mergers like other states.<sup>43</sup>

The Act also adds a new provision that specifies that in a LLP, "the liabilities of each general partner" will be determined according to the provisions of the partnership chapter of the Code.<sup>44</sup> Once again, this change ensures uniformity.<sup>45</sup>

A withdrawing partner is specifically limited by the Act to receiving only the fair value of the partnership interest "with respect to which the withdrawal has occurred."<sup>46</sup> This change clarifies the value owed to the withdrawing partner by stating that a withdrawing partner only gets the fair value for the capacity or capacities from which the partner is withdrawing, not the entire partnership.<sup>47</sup>

An amendment to Code section 14-9-801 relates to the withdrawal of general partners.<sup>48</sup> Now, the statute clearly requires all partners, excluding the withdrawing general partner, to vote on the continuance of the business entity.<sup>49</sup> Logically, the withdrawing partner should have a vote on the continuance of the business entity.<sup>50</sup>

Finally, the Act institutes a fee of one hundred dollars for converting a limited partnership to an LLP.<sup>51</sup> The fee goes to the state general

37. O.C.G.A. § 14-9-206(b) (Supp. 1996).

38. *Id.* § 14-9-206(c), (d).

39. Chambless Interview, *supra* note 22.

40. O.C.G.A. § 14-9-206.1 (Supp. 1996).

41. *See* 1988 Ga. Laws 1070, § 1, at 1072 (codified at O.C.G.A. § 14-2-101 (1994)); Ryan Remarks I, *supra* note 10.

42. *Compare* 1993 Ga. Laws 123, § 3, at 229 (formerly found at O.C.G.A. § 14-9-206.1(a) (Supp. 1995)) *with* O.C.G.A. § 14-9-206.1(a) (Supp. 1996).

43. Chambless Interview, *supra* note 22.

44. O.C.G.A. § 14-9-403(c) (Supp. 1996); *see* 1984 Ga. Laws 1439 (codified at O.C.G.A. § 14-8-1 (1994)).

45. Chambless Interview, *supra* note 22.

46. O.C.G.A. § 14-9-604 (Supp. 1996).

47. Ryan Remarks I, *supra* note 10.

48. O.C.G.A. § 14-9-801 (Supp. 1996).

49. *Id.*; Ryan Remarks I, *supra* note 10.

50. Chambless Interview, *supra* note 22.

51. O.C.G.A. § 14-9-1101(6) (Supp. 1996). HB 1627, as introduced, 1996 Ga. Gen.

fund and is intended to discourage partnerships from making changes.<sup>52</sup>

*Jennifer B. Sandberg*

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Assem., did not include this fee.

52. Jackson Remarks, *supra* note 12.