

SB 325

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 325

(By Senator ROSS, ET AL)

PASSED MARCH 8, 1996
In Effect NINETY DAYS FROM Passage

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Senate Bill No. 325

(BY SENATORS ROSS, ANDERSON, BUCKALEW AND SHARPE)

[Passed March 8, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact sections one and six, article one, chapter forty-seven-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections six, seven and eight, article three of said chapter; to amend and reenact section one, article four of said chapter; to amend and reenact section three, article seven of said chapter; to amend and reenact sections six and seven, article eight of said chapter; to amend and reenact sections two and three, article nine of said chapter; to amend and reenact article ten of said chapter; and to further amend said chapter by adding thereto a new article, designated article eleven, all relating to registered limited liability partnerships; defining the terms "registered limited liability partnership" and "foreign registered limited liability partnership" and expanding the definitions of other terms; recognizing that a registered limited liability partnership is a general partnership; establishing governing law; providing for the liability of a partner in a registered limited liability partnership;

limiting the right to bring an action and to levy execution against only partners who are personally liable for obligations of the partnership; limiting the liability of a purported partner; setting forth the rights and duties of partners in limited liability partnerships; addressing rights and liabilities of partners upon dissociation or dissolution of a registered limited liability partnership; seeking accounts and contributions among partners; conversions and mergers of partnerships; requiring registered limited liability partnerships to register with the secretary of state; establishing registration and annual renewal fee; setting forth required content of such registration; requiring that the names of such partnerships contain the words "registered limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters in the partnership's name; requiring that a registered limited liability partnership carry a minimum of one million dollars in liability insurance or create, in lieu thereof, a segregated fund consisting of an insurance bond or other specified collateral, either of which shall be used to satisfy judgments against the partnership and its partners; requiring foreign registered limited liability partnerships to file notice together with fee with secretary of state; recognizing that foreign registered limited liability partnership shall be governed by the laws of the state of its formation; providing for miscellaneous provisions; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

That sections one and six, article one, chapter forty-seven-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections six, seven and eight, article three of said chapter be amended and reenacted; that section one, article four of said chapter be amended and reenacted; that section three, article seven of said chapter be amended and reenacted; that sections six and seven, article eight of said chapter be amended and reenacted; that sections two and three, article

nine of said chapter be amended and reenacted; that article ten of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article eleven, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§47B-1-1. Definitions.

1 In this chapter:

2 (1) "Business" includes every trade, occupation and
3 profession.

4 (2) "Debtor in bankruptcy" means a person who is the
5 subject of:

6 (i) In order for relief under Title 11 of the United
7 States Code or a comparable order under a successor
8 statute of general application; or

9 (ii) A comparable order under federal, state or foreign
10 law governing insolvency.

11 (3) "Distribution" means a transfer of money or other
12 property from a partnership to a partner in the partner's
13 capacity as a partner or to the partner's transferee.

14 (4) "Foreign limited liability partnership" means a
15 partnership or association formed under or pursuant to
16 an agreement governed by the laws of any state or
17 jurisdiction other than this state that is denominated as
18 a registered limited liability partnership or limited
19 liability partnership under the laws of such other
20 jurisdiction.

21 (5) "Partnership" means an association of two or more
22 persons to carry on as coowners a business for profit
23 formed under section two, article two of this chapter,
24 predecessor law, or comparable law of another jurisdic-
25 tion and includes, for all purposes of the laws of this
26 state, a registered limited liability partnership.

27 (6) "Partnership agreement" means the agreement,
28 whether written, oral or implied, among the partners
29 concerning the partnership, including amendments to

30 the partnership agreement.

31 (7) "Partnership at will" means a partnership in which
32 the partners have not agreed to remain partners until the
33 expiration of a definite term or the completion of a
34 particular undertaking.

35 (8) "Partnership interest" or "partner's interest in the
36 partnership" means all of a partner's interests in the
37 partnership, including the partner's transferable interest
38 and all management and other rights.

39 (9) "Person" means an individual, corporation, busi-
40 ness trust, estate, trust, partnership, association, joint
41 venture, government, governmental subdivision, agency
42 or instrumentality, or any other legal or commercial
43 entity.

44 (10) "Property" means all property, real, personal or
45 mixed, tangible or intangible, or any interest therein.

46 (11) "Registered limited liability partnership" means a
47 partnership formed pursuant to an agreement governed
48 by the laws of this state, registered under section one,
49 article ten of this chapter.

50 (12) "State" means a state of the United States, the
51 District of Columbia, the Commonwealth of Puerto Rico,
52 or any territory or insular possession subject to the
53 jurisdiction of the United States.

54 (13) "Statement" means a statement of partnership
55 authority under section three, article three of this
56 chapter, a statement of denial under section four of said
57 article, a statement of dissociation under section four,
58 article seven of this chapter, a statement of dissolution
59 under section five, article eight of this chapter, a state-
60 ment of merger under section seven, article nine of this
61 chapter, a statement of registration and a statement of
62 withdrawal under section one, article ten of this chapter,
63 or an amendment or cancellation of any of the foregoing.

64 (14) "Transfer" includes an assignment, conveyance,
65 lease, mortgage, deed and encumbrance.

§47B-1-6. Law governing internal relations.

1 Except as provided otherwise in section four, article
2 ten of this chapter, the law of the jurisdiction in which
3 a partnership has its chief executive office, governs the
4 relations among the partners and between the partners
5 and the partnership.

ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP.**§47B-3-6. Partner's liability.**

1 (a) Except as otherwise provided in subsections (b)
2 and (c) of this section, all partners are liable jointly and
3 severally for all obligations of the partnership unless
4 otherwise agreed by the claimant or provided by law.

5 (b) A person admitted as a partner into an existing
6 partnership, including a registered limited liability
7 partnership, is not personally liable for any partnership
8 obligation incurred before the person's admission as a
9 partner.

10 (c) Subject to the provisions of subsection (d) of this
11 section, a partner in a registered limited liability part-
12 nership is not personally liable directly or indirectly
13 (including by way of indemnification, contribution or
14 otherwise) for debts, obligations and liabilities of or
15 chargeable to the partnership, whether in tort, contract
16 or otherwise, arising from omissions, negligence, wrong-
17 ful acts, misconduct or malpractice committed while the
18 partnership is a registered limited liability partnership
19 and in the course of partnership business by another
20 partner or by an employee, agent or representative of the
21 partnership.

22 (d) Subsection (c) of this section does not affect the
23 liability of a partner in a registered limited liability
24 partnership for the partner's own omissions, negligence,
25 wrongful acts, misconduct or malpractice, or that of any
26 person under the partner's direct supervision and
27 control.

§47B-3-7. Actions by and against partnership and partners.

1 (a) A partnership may sue and be sued in the name of
2 the partnership.

3 (b) An action may be brought against the partnership
4 and any or all of the partners who are personally liable
5 for obligations of the partnership under section six of
6 this article in the same action or in separate actions.

7 (c) A judgment against a partnership is not by itself a
8 judgment against a partner. A judgment against a
9 partnership may not be satisfied from a partner's assets
10 unless there is also a judgment against the partner.

11 (d) A judgment creditor of a partner may not levy
12 execution against the assets of a partner who is person-
13 ally liable for obligations of the partnership under
14 section six of this article to satisfy a judgment based on
15 a claim against the partnership unless:

16 (1) A judgment based on the same claim has been
17 obtained against the partnership and a writ of execution
18 on the judgment has been returned unsatisfied, in whole
19 or in part;

20 (2) The partnership is a debtor in bankruptcy;

21 (3) The partner has agreed that the creditor need not
22 exhaust partnership assets;

23 (4) A court grants permission to the judgment creditor
24 to levy execution against the assets of a partner based on
25 a finding that partnership assets subject to execution are
26 clearly insufficient to satisfy the judgment, that exhaus-
27 tion of partnership assets is excessively burdensome, or
28 that the grant of permission is an appropriate exercise of
29 the court's equitable powers; or

30 (5) Liability is imposed on the partner by law or
31 contract independent on the existence of the partnership.

32 (e) This section applies to any partnership liability or
33 obligation resulting from a representation by a partner
34 or purported partner under section eight of this article.

§47B-3-8. Liability of purported partner.

1 (a) If a person, by words or conduct, purports to be a
2 partner, or consents to being represented by another as
3 a partner, in a partnership or with one or more persons
4 not partners, the purported partner is liable to a person
5 to whom the representation is made:

6 (1) If that person, relying on the representation,
7 enters into a transaction with the actual or purported
8 partnership; and

9 (2) The purported partner would have been personally
10 liable for obligations of the partnership under section six
11 of this article if the purported partner had actually been
12 a partner.

13 (b) Subject to subsection (a) of this section, if the
14 representation, either by the purported partner or by a
15 person with the purported partner's consent, is made in
16 a public manner, the purported partner is liable to a
17 person who relies upon the purported partnership even
18 if the purported partner is not aware of being held out as
19 a partner to the claimant. If partnership liability results,
20 the purported partner is liable with respect to that
21 liability as if the purported partner were a partner. If no
22 partnership liability results, the purported partner is
23 liable with respect to that liability jointly and severally
24 with any other person consenting to the representation.

25 (c) If a person is thus represented to be a partner in an
26 existing partnership, or with one or more persons not
27 partners, the purported partner is an agent of persons
28 consenting to the representation to bind them to the
29 same extent and in the same manner as if the purported
30 partner were a partner, with respect to persons who
31 enter into transactions in reliance upon the representa-
32 tion. If all of the partners of the existing partnership
33 consent to the representation, a partnership act or
34 obligation results. If fewer than all of the partners of the
35 existing partnership consent to the representation, the
36 person acting and the partners consenting to the repre-

37 sentation are jointly and severally liable as if such
38 person had actually been a partner.

39 (d) A person is not liable as a partner merely because
40 the person is named by another in a statement of part-
41 nership authority.

42 (e) A person does not continue to be liable as a partner
43 merely because of a failure to file a statement of dissoci-
44 ation or to amend a statement of partnership authority
45 to indicate the partner's dissociation from the partner-
46 ship.

47 (f) Except as provided in subsections (a), (b) and (c) of
48 this section, persons who are not partners as to each
49 other are not liable as partners to other persons.

**ARTICLE 4. RELATIONS OF PARTNERS TO EACH OTHER AND TO PART-
NERSHIP.**

§47B-4-1. Partner's rights and duties.

1 (a) Each partner is deemed to have an account that is:

2 (1) Credited with an amount equal to the money plus
3 the value of any other property, net of the amount of any
4 liabilities as provided in section six, article three of this
5 chapter, the partner contributes to the partnership and
6 the partner's share of the partnership profits; and

7 (2) Charged with an amount equal to the money plus
8 the value of any other property, net of the amount of any
9 liabilities, distributed by the partnership to the partner
10 and the partner's share of the partnership losses:
11 *Provided*, That a partner shall be personally liable on
12 account of such charges only as provided in section six,
13 article three and section seven, article eight, both of this
14 chapter.

15 (b) Each partner: (i) Shall share equally in partnership
16 profits; and (ii) shall share in partnership losses as
17 provided in section seven, article eight of this chapter in
18 proportion to the partner's share of the profits.

19 (c) A partnership shall reimburse a partner for

20 payments made and indemnify a partner for liabilities
21 incurred by the partner in the ordinary course of the
22 business of the partnership or for the preservation of its
23 business or property: *Provided*, That no other partner
24 shall be required to make any payment, except as
25 provided in section seven, article eight of this chapter,
26 including any payments attributable all or in part to
27 partnership liabilities for reimbursement or indemnifica-
28 tion.

29 (d) A partnership shall reimburse a partner for an
30 advance to the partnership beyond the amount of capital
31 the partner agreed to contribute.

32 (e) A payment or advance made by a partner which
33 gives rise to a partnership obligation under subsection
34 (c) or (d) of this section constitutes a loan to the partner-
35 ship which accrues interest from the date of the payment
36 or advance.

37 (f) Each partner has equal rights in the management
38 and conduct of the partnership business.

39 (g) A partner may use or possess partnership property
40 only on behalf of the partnership.

41 (h) A partner is not entitled to remuneration for
42 services performed for the partnership, except for
43 reasonable compensation for services rendered in
44 winding up the business of the partnership.

45 (i) A person may become a partner only with the
46 consent of all of the partners.

47 (j) A difference arising as to a matter in the ordinary
48 course of business of a partnership may be decided by a
49 majority of the partners. An act outside the ordinary
50 course of business of a partnership and an amendment to
51 the partnership agreement may be undertaken only with
52 the consent of all of the partners.

53 (k) This section does not affect the obligations of a
54 partnership to other persons under section one, article
55 three of this chapter.

ARTICLE 7. PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP.**§47B-7-3. Dissociated partner's liability to other persons.**

1 (a) A partner's dissociation does not of itself discharge
2 the partner's liability for a partnership obligation
3 incurred before dissociation. A dissociated partner is
4 not liable for a partnership obligation incurred after
5 dissociation, except as otherwise provided in subsection
6 (b) of this section.

7 (b) A partner who dissociates without resulting in a
8 dissolution and winding up of the partnership business
9 is personally liable as a partner to the other party on
10 account of a partnership obligation incurred in connec-
11 tion with a transaction entered into by the partnership,
12 or a surviving partnership under article nine of this
13 chapter, within two years after the partner's dissocia-
14 tion, only if at the time of entering into the transaction
15 the other party:

16 (1) Reasonably believed that the dissociated partner
17 was then a partner; \

18 (2) Did not have notice of the partner's dissociation;

19 (3) Is not deemed to have had knowledge under subsec-
20 tion (e), section three, article three of this chapter or
21 notice under subsection (c), section four of this article;
22 and

23 (4) The obligation is one on account of which the
24 partner would be personally liable under section six,
25 article three of this chapter if the partner had not
26 dissociated from the partnership.

27 (c) By agreement with the partnership creditor and the
28 partners continuing the business, a dissociated partner
29 may be released from liability for a partnership obliga-
30 tion.

31 (d) A dissociated partner is released from liability for
32 a partnership obligation if a partnership creditor, with
33 notice of the partner's dissociation but without the

34 partner's consent, agrees to a material alteration in the
35 nature or time of payment of a partnership obligation.

ARTICLE 8. WINDING UP PARTNERSHIP BUSINESS.

§47B-8-6. Partner's liability to other partners after dissolution.

1 (a) Except as otherwise provided in subsection (b) of
2 this section, after dissolution a partner is liable to the
3 other partners for the partner's share of any partnership
4 liability incurred under section four of this article for
5 which such partner is personally liable under section six,
6 article three of this chapter.

7 (b) A partner who, with knowledge of the dissolution,
8 incurs a partnership liability under subsection (2),
9 section four of this article by an act that is not appropri-
10 ate for winding up the partnership business is liable to
11 the partnership for any damage caused to the partner-
12 ship arising from the liability.

§47B-8-7. Settlement of accounts and contributions among partners.

1 (a) In winding up a partnership's business, the assets
2 of the partnership, including the contributions of the
3 partners required by this section, must be applied to
4 discharge its obligations to creditors, including, to the
5 extent permitted by law, partners who are creditors.
6 Any surplus must be applied to pay in cash the net
7 amount distributable to partners in accordance with
8 their right to distributions under subsection (b) of this
9 section.

10 (b) Each partner is entitled to a settlement of all
11 partnership accounts upon winding up the partnership
12 business. In settling accounts among the partners, the
13 profits and losses that result from the liquidation of the
14 partnership assets must be credited and charged to the
15 partners' accounts. The partnership shall make a
16 distribution to a partner in an amount equal to any
17 excess of the credits over the charges in the partner's
18 account. A partner shall contribute to the partnership

19 an amount equal to any excess of the charges over the
20 credits in the partner's account that is attributable to an
21 obligation for which such partner is personally liable
22 under section six, article three of this chapter.

23 (c) If a partner fails or is not obligated to contribute,
24 all of the other partners shall contribute, in the propor-
25 tions in which those partners share partnership losses,
26 the additional amount necessary to satisfy any partner-
27 ship obligations for which such partner is personally
28 liable under section six, article three of this chapter. A
29 partner or partner's legal representative may recover
30 from the other partners any contributions the partner
31 makes to the extent the amount contributed exceeds that
32 partner's share of the partnership obligations, to the
33 extent such contributions are made on account of
34 obligations for which the other partners are liable under
35 said section.

36 (d) After the settlement of accounts, each partner shall
37 contribute, in the proportion in which the partner shares
38 partnership losses, the amount necessary to satisfy
39 partnership obligations for which such partner is per-
40 sonally liable under section six, article three of this
41 chapter and that were not known at the time of settle-
42 ment.

43 (e) The estate of a deceased partner is liable for the
44 partner's obligation to contribute to the partnership
45 under subsection (b) of this section.

46 (f) An assignee for the benefit of creditors of a part-
47 nership or a partner, or a person appointed by a court to
48 represent creditors of a partnership or a partner, may
49 enforce a partner's obligation to contribute to the
50 partnership under subsection (b) of this section.

ARTICLE 9. CONVERSIONS AND MERGERS.

§47B-9-2. Conversion of partnership to limited partnership.

1 (a) A partnership may be converted to a limited
2 partnership pursuant to this section.

3 (b) The terms and conditions of a conversion of a
4 partnership to a limited partnership must be approved
5 by all of the partners or by a number or percentage
6 specified for conversion in the partnership agreement.

7 (c) After the conversion is approved by the partners,
8 the partnership shall file a certificate of limited partner-
9 ship in the jurisdiction in which the limited partnership
10 is to be formed. The certificate must include:

11 (1) A statement that the partnership was converted to
12 a limited partnership from a partnership;

13 (2) Its former name; and

14 (3) A statement of the number of votes cast by the
15 partners for and against the conversion and, if the vote
16 is less than unanimous, the number or percentage
17 required to approve the conversion under the partner-
18 ship agreement.

19 (d) The conversion takes effect when the certificate of
20 limited partnership is filed or at any later date specified
21 in the certificate.

22 (e) A general partner who becomes a limited partner
23 as a result of the conversion remains liable as a general
24 partner for an obligation incurred by the partnership
25 before the conversion takes effect for which the partner
26 is personally liable under section six, article three of this
27 chapter. If the other party to a transaction with the
28 limited partnership reasonably believes when entering
29 the transaction that the limited partner is a general
30 partner, the limited partner is liable for an obligation
31 incurred by the limited partnership within ninety days
32 after the conversion takes effect for which a general
33 partner would be personally liable under said section.
34 The limited partner's liability for all other obligations of
35 the limited partnership incurred after the conversion
36 takes effect is that of a limited partner as provided in
37 sections one et seq., article nine, chapter forty-seven of
38 this code.

§47B-9-3. Conversion of limited partnership to partnership.

1 (a) A limited partnership may be converted to a
2 partnership pursuant to this section.

3 (b) Notwithstanding a provision to the contrary in a
4 limited partnership agreement, the terms and conditions
5 of a conversion of a limited partnership to a partnership
6 must be approved by all of the partners.

7 (c) After the conversion is approved by the partners,
8 the limited partnership shall cancel its certificate of
9 limited partnership.

10 (d) The conversion takes effect when the certificate of
11 limited partnership is canceled.

12 (e) A limited partner who becomes a general partner
13 as a result of the conversion remains liable only as a
14 limited partner for an obligation incurred by the limited
15 partnership before the conversion takes effect. The
16 partner is liable as a general partner for an obligation of
17 the partnership for which the partner is personally liable
18 under section six, article three of this chapter incurred
19 after the conversion takes effect.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIPS.**§47B-10-1. Registered limited liability partnerships.**

1 (a) To become a registered limited liability partner-
2 ship, a partnership shall file with the secretary of state
3 a statement of registration stating the name of the
4 partnership; the address of its principal office; if the
5 partnership's principal office is not located in this state,
6 the address of a registered office and the name and
7 address of a registered agent for service of process in this
8 state, which the partnership will be required to main-
9 tain; a brief statement of the business in which the
10 partnership engages; any other matters that the partner-
11 ship determines to include; and that the partnership
12 thereby registers as a registered limited liability partner-
13 ship.

14 (b) The registration shall be executed by one or more

15 partners authorized to execute a registration.

16 (c) The registration shall be accompanied by a fee of
17 two hundred fifty dollars.

18 (d) The secretary of state shall register as a registered
19 limited liability partnership any partnership that
20 submits a completed registration with the required fee.

21 (e) A partnership registered under this section shall
22 pay, in each year following the year in which its registra-
23 tion is filed, on a date specified by the secretary of state,
24 an annual fee of five hundred dollars. The fee must be
25 accompanied by a notice, on a form provided by the
26 secretary of state, of any material changes in the infor-
27 mation contained in the partnership's registration.

28 (f) Registration is effective:

29 (1) Immediately after the date a registration is filed; or

30 (2) On a date specified in the statement of registration,
31 which date shall not be more than sixty days after the
32 date of filing.

33 (g) Registration remains effective until:

34 (1) It is voluntarily withdrawn by filing with the
35 secretary of state a statement of withdrawal; or

36 (2) Thirty days after receipt by the partnership of a
37 notice from the secretary of state, which notice shall be
38 sent by certified mail, return receipt requested, that the
39 partnership has failed to make timely payment of the
40 annual fee specified in subsection (e) of this section,
41 unless the fee is paid within such a thirty-day period.

42 (h) The status of a partnership as a registered limited
43 liability partnership and the liability of the partners
44 thereof shall not be affected by:

45 (1) Errors in the information contained in a statement
46 of registration under subsection (a) of this section or
47 notice under subsection (e) of this section; or

48 (2) Changes after the filing of such statement of

49 registration or notice in the information stated in the
50 registration or notice.

51 (i) The secretary of state shall provide forms for the
52 statement of registration under subsection (a) of this
53 section or a notice under subsection (e) of this section.

§47B-10-2. Effect of registration; entity unchanged.

1 (a) A partnership that has registered pursuant to this
2 article is for all purposes the same partnership that
3 existed before the registration.

4 (b) When registration takes effect:

5 (1) All property owned by the registering partnership
6 remains vested in the registered partnership;

7 (2) All obligations of the registering partnership
8 continue as obligations of the registered partnership; and

9 (3) An action or proceeding pending against the
10 registering partnership may be continued as if the
11 registration had not occurred.

§47B-10-3. Name of registered limited liability partnership.

1 The name of a registered limited liability partnership
2 shall contain the words "Registered Limited Liability
3 Partnership" or the abbreviation "L.L.P." or "LLP" as
4 the last words or letters of its name.

§47B-10-4. Applicability of article to foreign and interstate commerce.

1 (a) A registered limited liability partnership formed
2 under this article may conduct its business, carry on its
3 operations, and have and exercise the powers granted by
4 this chapter in any state, territory, district or possession
5 of the United States or in any foreign country.

6 (b) It is the intent of the Legislature that the legal
7 existence of registered limited liability partnerships
8 formed under this article be recognized outside the
9 boundaries of this state and that the laws of this state
10 governing such registered limited liability partnerships

11 doing business outside this state be granted the protec-
12 tion of full faith and credit under the Constitution of the
13 United States.

14 (c) Notwithstanding section six, article one of this
15 chapter, the internal affairs of registered limited liability
16 partnerships formed under this article, including the
17 liability of partners for debts, obligations and liabilities
18 of or chargeable to the partnership, shall be subject to
19 and governed by the laws of this state.

20 (d) Before transacting business in this state, a foreign
21 registered limited liability partnership shall:

22 (i) Comply with any statutory or administrative
23 registration or filing requirements governing the specific
24 type of business in which the partnership is engaged; and

25 (ii) File a notice with the secretary of state, on such
26 forms as the secretary of state shall provide, stating the
27 name of the partnership; the address of its principal
28 office; if the partnership's principal office is not located
29 in this state, the address of a registered office and the
30 name and address of a registered agent for service of
31 process in this state, which the partnership will be
32 required to maintain; any other matters that the partner-
33 ship determines to include; and a brief statement of the
34 business in which the partnership engages. Such notice
35 shall be effective for two years from the date of filing,
36 after which time the partnership shall file a new notice.

37 (e) The name of a foreign registered limited liability
38 partnership doing business in this state shall contain the
39 words "Registered Limited Liability Partnership" or the
40 abbreviation "L.L.P." or "LLP" as the last words or
41 letters of its name.

42 (f) Notwithstanding section six, article one of this
43 chapter, the internal affairs of foreign registered limited
44 liability partnerships, including the liability of partners
45 for debts, obligations and liabilities of or chargeable to
46 the partnership, shall be subject to and governed by the
47 laws of the jurisdiction in which the foreign registered

48 limited liability partnership is registered.

§47B-10-5. Insurance or financial responsibility of registered limited liability partnerships.

1 (a) A registered limited liability partnership, and any
2 foreign limited liability partnership transacting business
3 in this state, shall carry at all times at least one million
4 dollars of liability insurance of a kind that is designed to
5 cover the kinds of omissions, negligence, wrongful acts,
6 misconduct and malpractice for which liability is limited
7 by subsection (c), section six, article three of this chapter
8 and which insures the partnership and its partners.

9 (b) If, in any proceeding, compliance by a partnership
10 with the requirements of subsection (a) of this section is
11 disputed, that issue shall be determined by the court,
12 and the burden of proof of compliance shall be on the
13 person who claims the limitation of liability in subsec-
14 tion (c), section six, article three of this chapter.

15 (c) If a registered limited liability partnership is in
16 compliance with the requirements of subsection (a) of
17 this section, the requirements of this section shall not be
18 admissible or in any way be made known to a jury in
19 determining an issue of liability for or extent of the
20 obligation or damages in question.

21 (d) A registered limited liability partnership is consid-
22 ered to be in compliance with subsection (a) of this
23 section if the partnership provides one million dollars of
24 funds specifically designated and segregated for the
25 satisfaction of judgments against the partnership or its
26 partners based on the kinds of omissions, negligence,
27 wrongful acts, misconduct and malpractice for which
28 liability is limited by subsection (c), section six, article
29 three of this chapter, by:

30 (1) Deposit in trust or in bank escrow of cash, bank
31 certificates of deposit or United States Treasury obliga-
32 tions; or

33 (2) A bank letter of credit or insurance company bond.

34 (e) Any policy or contract of liability insurance provid-
 35 ing coverage for liability as described in this section
 36 shall be read so as to contain a provision or endorsement
 37 whereby the company issuing such policy waives or
 38 agrees not to assert as a defense on behalf of the policy-
 39 holder or any beneficiary thereof, to any claim covered
 40 by the terms of such policy within the policy limits, the
 41 immunity from liability of the insured granted by the
 42 provisions of this chapter.

ARTICLE 11. MISCELLANEOUS PROVISIONS.

§47B-11-1. Uniformity of application and construction.

1 This chapter shall be applied and construed to effectu-
 2 ate its general purpose to make uniform the law with
 3 respect to the subject of this chapter among states
 4 enacting it.

§47B-11-2. Short title.

1 This chapter may be cited as the Uniform Partnership
 2 Act.

§47B-11-3. Severability clause.

1 If any provision of this chapter or its application to any
 2 person or circumstance is held invalid, the invalidity
 3 does not affect other provisions or applications of this
 4 chapter which can be given effect without the invalid
 5 provision or application, and to this end the provisions
 6 of this chapter are severable.

§47B-11-4. Applicability.

1 (a) Before the first day of July, one thousand nine
 2 hundred ninety-five, this chapter governs only a partner-
 3 ship formed:

4 (1) After the effective date of this chapter, unless that
 5 partnership is continuing the business of a dissolved
 6 partnership under section forty-one, article eight-a,
 7 chapter forty-seven of this code; and

8 (2) Before the effective date of this chapter, that
 9 elects, as provided by subsection (c) of this section, to be

10 governed by this chapter.

11 (b) After the first day of July, one thousand nine
12 hundred ninety-five, this chapter governs all partner-
13 ships.

14 (c) Before the first day of July, one thousand nine
15 hundred ninety-five, a partnership voluntarily may elect,
16 in the manner provided in its partnership agreement or
17 by law for amending the partnership agreement, to be
18 governed by this chapter. The provisions of this chapter
19 relating to the liability of the partnership's partners to
20 third parties apply to limit those partners' liability to a
21 third party who had done business with the partnership
22 within one year preceding the partnership's election to
23 be governed by this chapter, only if the third party
24 knows or has received a notification of the partnership's
25 election to be governed by this chapter.

§47B-11-5. Savings clause.

1 This chapter does not affect an action or proceeding
2 commenced or right accrued before this chapter takes
3 effect.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rudy Schenker
.....
Chairman Senate Committee

Rudy Seavast
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell R. Adams
.....
Clerk of the Senate

Gregory M. Ham
.....
Clerk of the House of Delegates

Carl Ray Tomblini
.....
President of the Senate

Carl L. Lauer
.....
Speaker House of Delegates

The within *is approved* this the *15th*
day of *April*, 1996.

Gaston Caputo
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/20/96

Time 4:00 pm