

1 SENATE BILL 197

2 **47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

3 INTRODUCED BY

4 Mary Kay Papen

5
6
7
8
9
10 AN ACT

11 RELATING TO BUSINESS; ENACTING THE GUARANTOR RIGHTS ACT.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 Section 1. SHORT TITLE.--This act may be cited as the
15 "Guarantor Rights Act".

16 Section 2. DEFINITIONS.--As used in the Guarantor Rights
17 Act:

18 A. "creditor" means a person that is entitled to
19 receive payment from a principal pursuant to a contract between
20 the creditor and the principal;

21 B. "guarantor" means a person that is or may become
22 obligated to a creditor on behalf of a principal under the
23 terms of a guaranty;

24 C. "guaranty" means a promise to answer for the
25 debt, default or miscarriage of another person; and

.158514.1

underscored material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 D. "principal" means a person that is obligated to
2 make payment to a creditor pursuant to a contract between the
3 principal and the creditor.

4 Section 3. NOTICE OF DEFAULT.--

5 A. A creditor shall, within thirty days of
6 obtaining knowledge of the default of a principal, give a
7 guarantor notice of the default of a principal unless the
8 guarantor has actual notice of the default of the principal.

9 B. A guarantor shall be exonerated from all
10 obligations to a creditor under a guaranty if the creditor
11 fails to give the guarantor notice as required pursuant to
12 Subsection A of this section.

13 Section 4. GUARANTOR'S RIGHT TO INFORMATION--PRINCIPAL'S
14 WAIVER OF RIGHT TO PRIVACY.--

15 A. A guarantor shall be entitled to obtain from a
16 creditor information regarding the status of the obligation of
17 the principal to the creditor, which obligation is the subject
18 of a guaranty with that guarantor.

19 B. Where a principal enters into, knows of or
20 consents to a guaranty, the principal shall be deemed to have
21 consented to the release of information by a creditor, to a
22 guarantor, regarding the status of the obligation that is the
23 subject of a guaranty agreement with that guarantor.

24 Section 5. SEVERABILITY.--If any part or application of
25 the Guarantor Rights Act is held invalid, the remainder or its

.158514.1

1 application to other situations or persons shall not be
2 affected.

3 Section 6. APPLICABILITY.--

4 A. Nothing in the Guarantor Rights Act shall affect
5 other rights or obligations of guarantors conferred or imposed
6 by law.

7 B. The Guarantor Rights Act shall not apply to
8 rights of guarantors pursuant to guaranties entered into prior
9 to July 1, 2006.

10 Section 7. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2006.