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HOUSE BILL 105

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RICHARD T. KNOWLES

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO PARTNERSHIPS; ADDING PROVISIONS REGARDING LIMITED LIABILITY PARTNERSHIPS TO THE UNIFORM PARTNERSHIP ACT (1994); AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 54-1A-101 NMSA 1978 (being Laws 1996, Chapter 53, Section 101) is amended to read:

"54-1A-101. DEFINITIONS. -- As used in the Uniform Partnership Act (1994):

(1) "business" includes every trade, occupation and profession;

(2) "debtor in bankruptcy" means a person who is the subject of:

(i) an order for relief under Title 11 of the

1 United States Code or a comparable order under a successor
2 statute of general application; or

3 (ii) a comparable order under federal, state or
4 foreign law governing insolvency;

5 (3) "distribution" means a transfer of money or
6 other property from a partnership to a partner in the partner's
7 capacity as a partner or to the partner's transferee;

8 (4) "foreign [~~registered~~] limited liability
9 partnership" means a [~~registered limited liability partnership~~
10 ~~formed pursuant to an agreement governed by the laws of another~~
11 ~~jurisdiction and registered under the laws of that jurisdiction]~~
12 partnership that is formed under laws other than the laws of
13 this state and has the status of a limited liability partnership
14 under those laws;

15 (5) "limited liability partnership" means a
16 partnership that has filed a statement of qualification under
17 Section 54-1A-1001 NMSA 1978 and does not have a similar
18 statement in effect in any other jurisdiction;

19 [~~(5)~~] (6) "partnership" means an association of two
20 or more persons to carry on as co-owners a business for profit
21 formed under Section [~~202~~] 54-1A-202 NMSA 1978, predecessor law,
22 or comparable law of another jurisdiction, and includes a
23 registered limited liability partnership;

24 [~~(6)~~] (7) "partnership agreement" means the
25 agreement, whether written, oral or implied, among the partners

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1 concerning the partnership, including amendments to the
2 partnership agreement;

3 [(7)] (8) "partnership at will" means a partnership
4 in which the partners have not agreed to remain partners until
5 the expiration of a definite term or the completion of a
6 particular undertaking;

7 [(8)] (9) "partnership interest" or "partner's
8 interest in the partnership" means all of a partner's interests
9 in the partnership, including the partner's transferable
10 interest and all management and other rights;

11 [(9)] (10) "person" means an individual,
12 corporation, business trust, estate, trust, partnership, limited
13 liability company, association, joint venture, government,
14 governmental subdivision, agency or instrumentality or any other
15 legal or commercial entity;

16 [(10)] (11) "property" means all property, real,
17 personal or mixed, tangible or intangible, or any interest
18 therein;

19 [(11)] "~~registered limited liability partnership~~"
20 ~~includes a partnership formed pursuant to an agreement governed~~
21 ~~by the laws of this state, registered under Section 54-1-44 NMSA~~
22 ~~1978 and complying with Section 54-1-45 NMSA 1978;]~~

23 (12) "state" means a state of the United States, the
24 District of Columbia, the commonwealth of Puerto Rico or any
25 territory or insular possession subject to the jurisdiction of

1 the United States;

2 (13) "statement" means a statement of partnership
3 authority under Section ~~[303]~~ 54-1A-303 NMSA 1978, a statement
4 of denial under Section ~~[304]~~ 54-1A-304 NMSA 1978, a statement
5 of dissociation under Section ~~[704]~~ 54-1A-704 NMSA 1978, a
6 statement of dissolution under Section ~~[805]~~ 54-1A-805 NMSA
7 1978, a statement of merger under Section ~~[907]~~ 54-1A-907 NMSA
8 1978, a statement of qualification under Section 54-1A-1001 NMSA
9 1978, a statement of foreign qualification under Section
10 54-1A-1102 NMSA 1978 or an amendment or cancellation of any of
11 the foregoing; and

12 (14) "transfer" includes an assignment, conveyance,
13 lease, mortgage, deed and encumbrance. "

14 Section 2. Section 54-1A-103 NMSA 1978 (being Laws 1996,
15 Chapter 53, Section 103) is amended to read:

16 "54-1A-103. EFFECT OF PARTNERSHIP AGREEMENT--NONWAI VABLE
17 PROVISIONS. --

18 (a) Except as otherwise provided in Subsection (b)
19 of this section, relations among the partners and between the
20 partners and the partnership are governed by the partnership
21 agreement. To the extent the partnership agreement does not
22 otherwise provide, the Uniform Partnership Act (1994) governs
23 relations among the partners and between the partners and the
24 partnership.

25 (b) The partnership agreement may not:

1 (1) vary the rights and duties under Section
2 [~~105~~] 54-1A-105 NMSA 1978, except to eliminate the duty to
3 provide copies of statements to all of the partners;

4 (2) unreasonably restrict the right of access
5 to books and records under Section [~~403(b)~~] 54-1A-403(b) NMSA
6 1978;

7 (3) eliminate the duty of loyalty under Section
8 [~~404(b)~~] 54-1A-404(b) or [~~603(b)-(3)~~] 54-1A-603(b)(3) NMSA 1978,
9 but:

10 (i) the partnership agreement may identify
11 specific types or categories of activities that do not violate
12 the duty of loyalty, if not manifestly unreasonable; or

13 (ii) all of the partners or a number or
14 percentage specified in the partnership agreement may authorize
15 or ratify, after full disclosure of all material facts, a
16 specific act or transaction that would violate the duty of
17 loyalty;

18 (4) unreasonably reduce the duty of care under
19 Section [~~404(e)~~] 54-1A-404(c) or [~~603(b)-(3)~~] 54-1A-603(b)(3)
20 NMSA 1978;

21 (5) eliminate the obligation of good faith and
22 fair dealing under Section [~~404(d)~~] 54-1A-404(d) NMSA 1978, but
23 the partnership agreement may prescribe the standards by which
24 the performance of the obligation is to be measured, if the
25 standards are not manifestly unreasonable;

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1 (6) vary the power to dissociate as a partner
2 under Section ~~[602(a)]~~ 54-1A-602(a) NMSA 1978, except to require
3 the notice under Section ~~[601(1)]~~ 54-1A-601(1) NMSA 1978 to be
4 in writing;

5 (7) vary the right of a court to expel a
6 partner in the events specified in Section ~~[601(5)]~~ 54-1A-601(5)
7 NMSA 1978;

8 (8) vary the requirement to wind up the
9 partnership business in cases specified in Section ~~[801(4), (5)~~
10 ~~or (6)]~~ 54-1A-801(4), (5) or (6) NMSA 1978 ~~[or]~~

11 (9) vary the law applicable to a limited
12 liability partnership under Section 54-1A-106 (b) NMSA 1978; or

13 ~~[(9)]~~ (10) restrict rights of third parties
14 under the Uniform Partnership Act (1994). "

15 Section 3. Section 54-1A-106 NMSA 1978 (being Laws 1996,
16 Chapter 53, Section 106) is amended to read:

17 "54-1A-106. ~~[LAW GOVERNING INTERNAL RELATIONS]~~ GOVERNING
18 LAW. --

19 (a) Except as otherwise provided in Subsection (b)
20 of this section, the law of the jurisdiction in which a
21 partnership has its chief executive office governs the relations
22 among the partners and the partnership.

23 (b) The law of this state governs relations among
24 the partners and between the partners and the partnership and
25 the liability of partners for an obligation of a limited

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1 liability partnership."

2 Section 4. Section 54-1A-201 NMSA 1978 (being Laws 1996,
3 Chapter 53, Section 201) is amended to read:

4 "54-1A-201. PARTNERSHIP AS ENTITY. --

5 (a) A partnership is an entity distinct from its
6 partners.

7 (b) A limited liability partnership continues to be
8 the same entity that existed before the filing of a statement of
9 qualification under Section 54-1A-1001 NMSA 1978."

10 Section 5. Section 54-1A-306 NMSA 1978 (being Laws 1996,
11 Chapter 53, Section 306) is amended to read:

12 "54-1A-306. PARTNER'S LIABILITY. --

13 (a) Except as otherwise provided in Subsections (b)
14 and (c) of this section, all partners are liable jointly and
15 severally for all obligations of the partnership unless
16 otherwise agreed by the claimant or provided by law.

17 (b) A person admitted as a partner into an existing
18 partnership is not personally liable for any partnership
19 obligation incurred before the person's admission as a partner.

20 ~~[(c) Subject to Subsection (b), a partner in a~~
21 ~~registered limited liability partnership is not liable directly~~
22 ~~or indirectly, by way of indemnification, contribution or~~
23 ~~otherwise, for debts, obligations and liabilities of or~~
24 ~~chargeable to the partnership or another partner or partners,~~
25 ~~whether in tort, contract or otherwise, arising from omissions,~~

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1 ~~negligence, wrongful acts, misconduct or malpractice committed~~
2 ~~while the partnership is a registered limited liability~~
3 ~~partnership and in the course of the partnership business by~~
4 ~~another partner or an employee, agent or representative of the~~
5 ~~partnership.]~~

6 (c) An obligation of a partnership incurred while the
7 partnership is a limited liability partnership, whether arising
8 in contract, tort or otherwise, is solely the obligation of the
9 partnership. A partner is not personally liable, directly or
10 indirectly, by way of contribution, indemnification or
11 otherwise, for such an obligation solely by reason of being or
12 so acting as a partner. This subsection applies notwithstanding
13 anything inconsistent in the partnership agreement that existed
14 immediately before the vote required to become a limited
15 liability partnership under Section 54-1A-1001(b) NMSA 1978.

16 (d) Subsection (c) of this section shall not affect
17 the liability of a partner in a registered limited liability
18 partnership for the partner's own tort, including any omission,
19 negligence, wrongful act, misconduct or malpractice, or that of
20 any person under the partner's direct supervision and control.

21 (e) A partner in a registered limited liability
22 partnership is not a proper party to a proceeding by or against
23 a registered limited liability partnership, the object of which
24 is to recover damages or enforce the obligations arising out of
25 [~~the~~] any tort, including omissions, negligence, wrongful acts,

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1 misconduct or malpractice, of the type described in Subsection
2 (c) of this section unless such partner is personally liable
3 under Subsection (d) of this section. "

4 Section 6. Section 54-1A-307 NMSA 1978 (being Laws 1996,
5 Chapter 53, Section 307) is amended to read:

6 "54-1A-307. ACTIONS BY AND AGAINST PARTNERSHIP AND
7 PARTNERS. --

8 (a) A partnership may sue and be sued in the name of
9 the partnership.

10 (b) An action may be brought against the partnership
11 and, to the extent not inconsistent with Section 54-1A-306 NMSA
12 1978, any or all of the partners in the same action or in
13 separate actions.

14 (c) A judgment against a partnership is not by
15 itself a judgment against a partner. A judgment against a
16 partnership may not be satisfied from a partner's assets unless
17 there is also a judgment against the partner.

18 (d) A judgment creditor of a partner may not levy
19 execution against the assets of the partner to satisfy a
20 judgment based on a claim against the partnership unless the
21 partner is personally liable for the claim under Section 54-1A-
22 306 NMSA 1978 and:

23 (1) a judgment based on the same claim has been
24 obtained against the partnership and a writ of execution on the
25 judgment has been returned unsatisfied in whole or in part;

1 (2) the partnership is a debtor in bankruptcy;

2 (3) the partner has agreed that the creditor
3 need not exhaust partnership assets;

4 (4) a court grants permission to the judgment
5 creditor to levy execution against the assets of a partner based
6 on a finding that partnership assets subject to execution are
7 clearly insufficient to satisfy the judgment, that exhaustion of
8 partnership assets is excessively burdensome, or that the grant
9 of permission is an appropriate exercise of the court's
10 equitable powers; or

11 (5) liability is imposed on the partner by law
12 or contract independent of the existence of the partnership.

13 (e) This section applies to any partnership
14 liability or obligation resulting from a representation by a
15 partner or purported partner under Section ~~[308]~~ 54-1A-308 NMSA
16 1978. "

17 Section 7. Section 54-1A-703 NMSA 1978 (being Laws 1996,
18 Chapter 53, Section 703) is amended to read:

19 "54-1A-703. DISSOCIATED PARTNER'S LIABILITY TO OTHER
20 PERSONS. --

21 (a) A partner's dissociation does not of itself
22 discharge the partner's liability for a partnership obligation
23 incurred before dissociation. A dissociated partner is not
24 liable for a partnership obligation incurred after dissociation,
25 except as otherwise provided in Subsection (b) of this section.

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1 (b) A partner who dissociates without resulting in a
2 dissolution and winding up of the partnership business is liable
3 as a partner to the other party in a transaction entered into by
4 the partnership, or a surviving partnership under Article 9 of
5 the Uniform Partnership Act (1994), within two years after the
6 partner's dissociation, only if ~~[the liability is owed for~~
7 ~~which]~~ the partner is liable for the obligation under Section
8 ~~[306 and Section 54-1-48 NMSA 1978]~~ 54-1A-306 NMSA 1978 and at
9 the time of entering into the transaction the other party:

10 (1) reasonably believed that the dissociated
11 partner was then a partner;

12 (2) did not have notice of the partner's
13 dissociation; and

14 (3) is not deemed to have had knowledge under
15 Section ~~[303(e)]~~ 54-1A-303(e) NMSA 1978 or notice under Section
16 ~~[704(e)]~~ 54-1A-704(c) NMSA 1978.

17 (c) By agreement with the partnership creditor and
18 the partners continuing the business, a dissociated partner may
19 be released from liability for a partnership obligation.

20 (d) A dissociated partner is released from liability
21 for a partnership obligation if a partnership creditor, with
22 notice of the partner's dissociation but without the partner's
23 consent, agrees to a material alteration in the nature or time
24 of payment of a partnership obligation. "

25 Section 8. Section 54-1A-806 NMSA 1978 (being Laws 1996,

1 Chapter 53, Section 806) is amended to read:

2 "54-1A-806. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER
3 DISSOLUTION. --

4 (a) Except as otherwise provided in Subsection (b)
5 of this section and Section 54-1A-306 NMSA 1978 after
6 dissolution a partner is liable to the other partners for the
7 partner's share of any partnership liability incurred under
8 Section [804] 54-1A-804 NMSA 1978 [~~unless the liability is not~~
9 ~~one for which the partner is liable under Section 306 and~~
10 ~~Section 54-1-48 NMSA 1978~~].

11 (b) A partner who, with knowledge of the
12 dissolution, incurs a partnership liability under Section
13 [~~804(2)~~] 54-1A-804(2) NMSA 1978 by an act that is not
14 appropriate for winding up the partnership business is liable to
15 the partnership for any damage caused to the partnership arising
16 from the liability. "

17 Section 9. Section 54-1A-807 NMSA 1978 (being Laws 1996,
18 Chapter 53, Section 807) is amended to read:

19 "54-1A-807. SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG
20 PARTNERS. --

21 (a) In winding up a partnership's business, the
22 assets of the partnership, including the contributions of the
23 partners required by this section, ~~must~~ be applied to discharge
24 its obligations to creditors, including, to the extent permitted
25 by law, partners who are creditors. Any surplus ~~must~~ be applied

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1 to pay in cash the net amount distributable to partners in
2 accordance with their right to distributions under Subsection
3 (b) of this section.

4 (b) Each partner is entitled to a settlement of all
5 partnership accounts upon winding up the partnership business.
6 In settling accounts among the partners, the profits and losses
7 that result from the liquidation of the partnership assets must
8 be credited and charged to the partner's accounts. The
9 partnership shall make a distribution to a partner in an amount
10 equal to any excess of the credits over the charges in the
11 partner's account. Except as otherwise provided in Section ~~§06~~
12 ~~and Section 51-1-48 NMSA 1978]~~ 54-1A-306 NMSA 1978, a partner
13 shall contribute to the partnership an amount equal to any
14 excess of the charges over the credits in the partner's account
15 but excluding from the calculation charges attributable to an
16 obligation for which the partner is not personally liable under
17 Section 54-1A-306 NMSA 1978.

18 (c) If a partner fails to contribute the full amount
19 required under Subsection (b) of this section all of the other
20 partners shall contribute, in the proportions in which those
21 partners share partnership losses, the additional amount
22 necessary to satisfy the partnership obligations for which they
23 are personally liable under Section 54-1A-306 NMSA 1978 A
24 partner or partner's legal representative may recover from the
25 other partners any contributions the partner makes to the extent

1 the amount contributed exceeds that partner's share of the
2 partnership obligations for which the partner is personally
3 liable under Section 54-1A-306 NMSA 1978

4 (d) [~~Except as otherwise provided in Section 306 and~~
5 ~~Section 54-1-48 NMSA 1978~~] After the settlement of accounts,
6 each partner shall contribute, in the proportion in which the
7 partner shares partnership losses, the amount necessary to
8 satisfy partnership obligations that were not known at the time
9 of the settlement and for which the partner is personally liable
10 under Section 54-1A-306 NMSA 1978

11 (e) The estate of a deceased partner is liable for
12 the partner's obligation to contribute to the partnership.

13 (f) An assignee for the benefit of creditors of a
14 partnership or a partner, or a person appointed by a court to
15 represent creditors of a partnership or a partner, may enforce a
16 partner's obligation to contribute to the partnership. "

17 Section 10. Section 54-1A-903 NMSA 1978 (being Laws 1996,
18 Chapter 53, Section 903) is amended to read:

19 "54-1A-903. CONVERSION OF LIMITED PARTNERSHIP TO
20 PARTNERSHIP. --

21 (a) A limited partnership may be converted to a
22 partnership pursuant to this section.

23 (b) Notwithstanding a provision to the contrary in a
24 limited partnership agreement, the terms and conditions of a
25 conversion of a limited partnership to a partnership must be

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1 approved by all of the partners.

2 (c) After the conversion is approved by the
3 partners, the limited partnership shall cancel its certificate
4 of limited partnership.

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

7 (e) A limited partner who becomes a general partner
8 as a result of the conversion remains liable only as a limited
9 partner for an obligation incurred by the limited partnership
10 before the conversion takes effect. Except as otherwise
11 provided in Section 54-1A-306 NMSA 1978 the partner is liable
12 as a general partner for an obligation of the partnership
13 incurred after the conversion takes effect. "

14 Section 11. Section 54-1A-906 NMSA 1978 (being Laws 1996,
15 Chapter 53, Section 906) is amended to read:

16 "54-1A-906. EFFECT OF MERGER. --

17 (a) When a merger takes effect:

18 (1) the separate existence of every partnership
19 or limited partnership that is a party to the merger, other than
20 the surviving entity, ceases;

21 (2) all property owned by each of the merged
22 partnerships or limited partnerships vests in the surviving
23 entity;

24 (3) all obligations of every partnership or
25 limited partnership that is a party to the merger become the

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1 obligations of the surviving entity; and

2 (4) an action or proceeding pending against a
3 partnership or limited partnership that is a party to the merger
4 may be continued as if the merger had not occurred or the
5 surviving entity may be substituted as a party to the action or
6 proceeding.

7 (b) The secretary of state of this state is the
8 agent for service of process in an action or proceeding against
9 a surviving foreign partnership or limited partnership to
10 enforce an obligation of a domestic partnership or limited
11 partnership that is a party to a merger. The surviving entity
12 shall promptly notify the secretary of state of the mailing
13 address of its chief executive office and of any change of
14 address. Upon receipt of process, the secretary of state shall
15 mail a copy of the process to the surviving foreign partnership
16 or limited partnership.

17 (c) A partner of the surviving partnership or
18 limited partnership is liable for:

19 (1) all obligations of a party to the merger
20 for which the partner was personally liable before the merger;

21 (2) all other obligations of the surviving
22 entity incurred before the merger by a party to the merger, but
23 those obligations may be satisfied only out of property of the
24 entity; and

25 (3) except as otherwise provided in Section

1 54-1A-306 NMSA 1978, all obligations of the surviving entity
2 incurred after the merger takes effect, but those obligations
3 may be satisfied only out of property of the entity if the
4 partner is a limited partner.

5 (d) If the obligations incurred before the merger by
6 a party to the merger are not satisfied out of the property of
7 the surviving partnership or limited partnership, the general
8 partners of that party immediately before the effective date of
9 the merger shall contribute the amount necessary to satisfy that
10 party's obligations to the surviving entity, in the manner
11 provided in Section ~~[807]~~ 54-1A-807 NMSA 1978 or in the limited
12 partnership act of the jurisdiction in which the party was
13 formed, as the case may be, as if the merged party were
14 dissolved.

15 (e) A partner of a party to a merger who does not
16 become a partner of the surviving partnership or limited
17 partnership is dissociated from the entity, of which that
18 partner was a partner, as of the date the merger takes effect.
19 The surviving entity shall cause the partner's interest in the
20 entity to be purchased under Section ~~[701]~~ 54-1A-701 NMSA 1978
21 or another statute specifically applicable to that party's
22 interest with respect to a merger. The surviving entity is
23 bound under Section ~~[702]~~ 54-1A-702 NMSA 1978 by an act of a
24 general partner dissociated under this subsection, and the
25 partner is liable under Section ~~[703]~~ 54-1A-703 NMSA 1978 for

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1 transactions entered into by the surviving entity after the
2 merger takes effect. "

3 Section 12. TEMPORARY PROVISION--RECOMPILATION.-- Sections
4 54-1A-1001 through 54-1A-1004 NMSA 1978 (being Laws 1996,
5 Chapter 53, Sections 1001 through 1003 and Section 1005) are
6 recompiled as Sections 54-1A-1201 through 54-1A-1204 NMSA 1978.

7 Section 13. Section 54-1A-1005 NMSA 1978 (being Laws 1996,
8 Chapter 53, Section 1006) is recompiled as Section 54-1A-1205
9 NMSA 1978 and is amended to read:

10 "54-1A-1205. APPLICABILITY.--

11 (a) [~~Before January 1, 2000~~] The Uniform Partnership
12 Act (1994) governs only a partnership formed under the laws of
13 this state:

14 (1) after the effective date of that act,
15 unless that partnership is continuing the business of a
16 dissolved partnership under Section 54-1-41 NMSA 1978, a part of
17 the prior Uniform Partnership Act; and

18 (2) before the effective date of that act, that
19 elects, as provided by Subsection [~~(e)~~] (b) of this section, to
20 be governed by that act.

21 [~~(b) After January 1, 2000, the Uniform Partnership~~
22 ~~Act (1994) governs all partnerships.~~

23 [~~(c) Before January 1, 2000, a partnership]~~

24 (b) A partnership formed under the laws of this
25 state before the effective date of the Uniform Partnership Act

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1 voluntarily may elect, in the manner provided in its partnership
2 agreement or by law for amending the partnership agreement, to
3 be governed by the Uniform Partnership Act (1994). Except as
4 otherwise provided in Section ~~[306]~~ 54-1A-306 NMSA 1978, the
5 provisions of that act relating to the liability of the
6 partnership's partners to third parties apply to limit those
7 partners' liability to a third party who had done business with
8 the partnership within one year preceding the partnership's
9 election to be governed by that act, only if the third party
10 knows or has received a notification of the partnership's
11 election to be governed by that act.

12 (c) Until a partnership formed under the laws of
13 this state before the effective date of the Uniform Partnership
14 Act (1994) elects voluntarily to be governed by that act, the
15 partnership shall continue to be governed by the provisions of
16 the prior Uniform Partnership Act.

17 (d) Subsections (a) and (b) of this section shall
18 not relieve a partnership formed under the laws of this state
19 that elects to be governed by the Uniform Partnership Act (1994)
20 from filing any statement of qualification required by Section
21 54-1A-1001 NMSA 1978.

22 (e) The Uniform Partnership Act (1994) governs any
23 partnership formed at any time under laws other than the laws of
24 this state which shall file any statement of foreign
25 qualification required by Section 54-1A-1102."

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1 Section 14. A new section of the Uniform Partnership Act
2 (1994), Section 54-1A-1001 NMSA 1978, is enacted to read:

3 "54-1A-1001. [NEW MATERIAL] STATEMENT OF QUALIFICATION. --

4 (a) A partnership may become a limited liability
5 partnership pursuant to this section.

6 (b) The terms and conditions on which a partnership
7 becomes a limited liability partnership shall be approved by the
8 vote necessary to amend the partnership agreement except, in the
9 case of a partnership agreement that expressly considers
10 obligations to contribute to the partnership, the vote necessary
11 to amend those provisions.

12 (c) After the approval required by Subsection (b) of
13 this section, a partnership may become a limited liability
14 partnership by filing a statement of qualification. The
15 statement shall contain:

16 (1) the name of the partnership;

17 (2) the street address of the partnership's
18 chief executive office and, if different, the street address of
19 an office in this state, if any;

20 (3) if the partnership does not have an office
21 in this state, the name and street address of the partnership's
22 agent for service of process;

23 (4) a statement that the partnership elects to
24 be a limited partnership; and

25 (5) a deferred effective date, if any.

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1 (d) The agent of a limited liability partnership for
2 service of process must be an individual who is a resident of
3 this state or other person authorized to do business in this
4 state.

5 (e) The status of a partnership as a limited
6 liability partnership is effective on the later of the filing of
7 the statement or a date specified in the statement. The status
8 remains effective, regardless of changes in the partnership,
9 until it is canceled pursuant to Section 54-1A-105(d) NMSA 1978
10 or revoked pursuant to Section 54-1A-1003 NMSA 1978.

11 (f) The status of a partnership as a limited
12 liability partnership and the liability of its partners is not
13 affected by errors or later changes in the information required
14 to be contained in the statement of qualification under
15 Subsection (c) of this section.

16 (g) The filing of a statement of qualification
17 establishes that a partnership has satisfied all conditions
18 precedent to the qualification of the partnership as a limited
19 liability partnership.

20 (h) An amendment or cancellation of a statement of
21 qualification is effective when it is filed or on a deferred
22 effective date specified in the amendment or cancellation."

23 Section 15. A new section of the Uniform Partnership Act
24 (1994), Section 54-1A-1002 NMSA 1978, is enacted to read:

25 "54-1A-1002. [NEW MATERIAL] STATEMENT OF QUALIFICATION--

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1 NAME. --The name of a limited liability partnership must end with
2 "Registered Limited Liability Partnership", "Limited Liability
3 Partnership", "R. L. L. P. ", "L. L. P. ", "RLLP" or "LLP". "

4 Section 16. A new section of the Uniform Partnership Act
5 (1994), Section 54-1A-1003 NMSA 1978, is enacted to read:

6 "54-1A-1003. [NEW MATERIAL] ANNUAL REPORT. --

7 (a) A limited liability partnership, and a foreign
8 limited liability partnership authorized to transact business in
9 this state, shall file an annual report in the office of the
10 secretary of state which contains:

11 (1) the name of the limited liability
12 partnership and the state or other jurisdiction under whose laws
13 the foreign limited liability partnership is formed;

14 (2) the street address of the partnership's
15 chief executive office and, if different, the street address of
16 an office of the partnership in this state, if any; and

17 (3) if the partnership does not have an office
18 in this state, the name and street address of the partnership's
19 current agent for service of process.

20 (b) An annual report must be filed between January 1
21 and April 1 of each year following the calendar year in which a
22 partnership files a statement of qualification or a foreign
23 partnership becomes authorized to transact business in this
24 state.

25 (c) The secretary of state may revoke the statement

1 of qualification of a partnership that fails to file an annual
2 report when due or pay the required filing fee. To do so, the
3 secretary of state shall provide the partnership at least 60
4 days' written notice of intent to revoke the statement. The
5 notice must be mailed to the partnership at its chief executive
6 office set forth in the last statement of qualification or
7 annual report. The notice must specify the annual report that
8 has not been filed, the fee that has not been paid and the
9 effective date of the revocation. The revocation is not
10 effective if the annual report is filed and the fee is paid
11 before the effective date of the revocation.

12 (d) A revocation under Subsection (c) of this
13 section only affects a partnership's status as a limited
14 liability partnership and is not an event of dissolution of the
15 partnership.

16 (e) A partnership whose statement of qualification
17 has been revoked may apply to the secretary of state for
18 reinstatement within two years after the effective date of the
19 revocation. The application must state:

20 (1) the name of the partnership and the
21 effective date of the revocation; and

22 (2) that the ground for revocation either did
23 not exist or has been corrected.

24 (f) A reinstatement under Subsection (e) of this
25 section relates back to and takes effect as of the effective

1 date of the revocation, and the partnership's status as a
2 limited liability partnership continues as if the revocation had
3 never occurred. "

4 Section 17. A new section of the Uniform Partnership Act
5 (1994), Section 54-1A-1101 NMSA 1978, is enacted to read:

6 "54-1A-1101. [NEW MATERIAL] LAW GOVERNING FOREIGN LIMITED
7 LIABILITY PARTNERSHIP. --

8 (a) The law under which a foreign limited liability
9 partnership is formed governs relations among the partners and
10 between the partners and the partnership and the liability of
11 partners for obligations of the partnership.

12 (b) A foreign limited liability partnership may not
13 be denied a statement of foreign qualification by reason of any
14 difference between the law under which the partnership was
15 formed and the law of this state.

16 (c) A statement of foreign qualification does not
17 authorize a foreign limited liability partnership to engage in
18 any business or exercise any power that a partnership may not
19 engage in or exercise in this state as a limited liability
20 partnership. "

21 Section 18. A new section of the Uniform Partnership Act
22 (1994), Section 54-1A-1102 NMSA 1978, is enacted to read:

23 "54-1A-1102. [NEW MATERIAL] STATEMENT OF FOREIGN
24 QUALIFICATION. --

25 (a) Before transacting business in this state, a

1 foreign limited liability partnership must file a statement of
2 foreign qualification. The statement must contain:

3 (1) the name of the foreign limited liability
4 partnership which satisfies the requirements of the state or
5 other jurisdiction under whose law it is formed and ends with
6 "Registered Limited Liability Partnership", "Limited Liability
7 Partnership", "R. L. L. P. ", "L. L. P. ", "RLLP" or "LLP";

8 (2) the street address of the partnership's
9 chief executive office and, if different, the street address of
10 an office of the partnership in this state, if any;

11 (3) if there is no office of the partnership in
12 this state, the name and street address of the partnership's
13 agent for service of process; and

14 (4) a deferred effective date, if any.

15 (b) The agent of a foreign limited liability company
16 for service of process must be an individual who is a resident
17 of this state or other person authorized to do business in this
18 state.

19 (c) The status of a partnership as a foreign limited
20 liability partnership is effective on the later of the filing of
21 the statement of foreign qualification or a date specified in
22 the statement. The status remains effective, regardless of
23 changes in the partnership, until it is canceled pursuant to
24 Section 54-1A 105(d) NMSA 1978 or revoked pursuant to Section
25 54-1A 1003 NMSA 1978.

Underscored material = new
[bracketed material] = delete

1 (d) An amendment or cancellation of a statement of
2 foreign qualification is effective when it is filed or on a
3 deferred effective date specified in the amendment or
4 cancellation. "

5 Section 19. A new section of the Uniform Partnership Act
6 (1994), Section 54-1A-1103 NMSA 1978, is enacted to read:

7 "54-1A-1103. [NEW MATERIAL] EFFECT OF FAILURE TO
8 QUALIFY. --

9 (a) A foreign limited liability partnership
10 transacting business in this state may not maintain an action or
11 proceeding in this state unless it has in effect a statement of
12 foreign qualification.

13 (b) The failure of a foreign limited liability
14 partnership to have in effect a statement of foreign
15 qualification does not impair the validity of a contract or act
16 of the foreign limited liability partnership or preclude it from
17 defending an action or proceeding in this state.

18 (c) A limitation on personal liability of a partner
19 is not waived solely by transacting business in this state
20 without a statement of foreign qualification.

21 (d) If a foreign limited liability partnership
22 transacts business in this state without a statement of foreign
23 qualification, the secretary of state is its agent for service
24 of process with respect to a right of action arising out of the
25 transaction of business in this state. "

Underscored material = new
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1 Section 20. A new section of the Uniform Partnership Act
2 (1994), Section 54-1A-1104 NMSA 1978, is enacted to read:

3 "54-1A-1104. [NEW MATERIAL] ACTIVITIES NOT CONSTITUTING
4 TRANACTING BUSINESS. --

5 (a) Activities of a foreign limited liability
6 partnership, which do not constitute transacting business for
7 the purpose of the Uniform Partnership Act (1994), include:

8 (1) maintaining, defending or settling an
9 action or proceeding whether judicial, administrative,
10 arbitration or mediation;

11 (2) holding meetings of its partners or
12 carrying on any other activity concerning its internal affairs;

13 (3) maintaining bank accounts;

14 (4) maintaining offices or agencies for the
15 transfer, exchange and registration of the partnership's own
16 securities or appointing and maintaining trustees or
17 depositories with respect to those securities;

18 (5) selling through independent contractors;

19 (6) soliciting or obtaining orders, whether by
20 mail or through employees or agents or otherwise, if the orders
21 require acceptance outside this state before they become
22 contracts;

23 (7) creating as borrower or lender or acquiring
24 indebtedness, with or without a mortgage or other security
25 interest in real or personal property;

1 (8) securing or collecting debts or foreclosure
2 mortgages or other security interests in property securing the
3 debts, and holding, protecting and maintaining property so
4 acquired;

5 (9) investing in or acquiring, in transactions
6 outside New Mexico, royalties and other non-operating mineral
7 interests; executing division orders, contracts of sale and
8 other instruments incidental to the ownership of such non-
9 operating mineral interests;

10 (10) owning or controlling an interest in a
11 corporation that transacts business in this state or is
12 organized under the laws of this state;

13 (11) being a partner in a partnership,
14 including a limited liability partnership, that transacts
15 business in this state or is organized under the laws of this
16 state;

17 (12) being a member or manager of a limited
18 liability company that transacts business in this state or is
19 organized under the laws of this state;

20 (13) conducting an isolated transaction that is
21 completed within thirty days and is not one in the course of
22 similar transactions; and

23 (14) transacting business in interstate
24 commerce.

25 (b) For purposes of the Uniform Partnership Act

Underscored material = new
[bracketed material] = delete

1 (1994), the ownership in this state of income-producing real
2 property or tangible personal property, other than property
3 excluded under Subsection (a) of this section constitutes
4 transacting business in this state.

5 (c) This section does not apply in determining the
6 contracts or activities that may subject a foreign limited
7 liability partnership to service of process, taxation or
8 regulation under any other law of this state."

9 Section 21. A new section of the Uniform Partnership Act
10 (1994), Section 54-1A-1105 NMSA 1978, is enacted to read:

11 "54-1A-1105. [NEW MATERIAL] ACTION BY ATTORNEY GENERAL. --
12 The attorney general may maintain an action to restrain a
13 foreign limited partnership from transacting business in this
14 state in violation of the Uniform Limited Partnership Act."

15 Section 22. A new section of the Uniform Partnership Act
16 (1994), Section 54-1A-1206 NMSA 1978, is enacted to read:

17 "54-1A-1206. [NEW MATERIAL] FILING FEES. --The filing fee
18 for any statement, annual report or other document filed with
19 the secretary of state under the Uniform Partnership Act (1994)
20 is fifty dollars (\$50.00)."

21 Section 23. REPEAL. --Sections 54-1-44 through 54-1-48 NMSA
22 1978 (being Laws 1995, Chapter 185, Sections 9 through 13) are
23 repealed.

24 Section 24. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is July 1, 1997.

State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 6, 1997

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred

HOUSE BILL 105

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HB C/HB 105

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Respectfully submitted,

Fred Luna, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Luna, Varela

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 17, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 105

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 20, line 24, after the word "limited" insert
the word "liability".

2. On page 29, strike lines 21 through 23 in their entirety
and insert in lieu thereof the following new section:

"Section 23. REPEAL. -- Sections 54-1-44 through 54-1-46 and
54-1-48 NMSA 1978 (being Laws 1995, Chapter 185, Sections 9
through 11 and 13) are repealed."

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Luna, Mallory, Rios, Sanchez, Stewart

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 8, 1997

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
whom has been referred

HOUSE BILL 105, as amended

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

Respectfully submitted,

Roman M. Maes, III, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Fidel, Kidd, McKibben

Absent: None

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FIRST SESSION, 1997

HJC/HB 105

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 17, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 105, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____

FORTY-THIRD LEGISLATURE
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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Lopez, Vernon

Absent: None

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~~[bracketed material] = delete~~