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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

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ENROLLED

HOUSE BILL No. 2226

(By Delegates Beach, Doyle + Farris)

— ● —

Passed March 10, 1995

In Effect 90 Days From Passage



ENROLLED

H. B. 2226

(BY DELEGATES BEACH, DOYLE AND FARRIS)

[Passed March 10, 1995; in effect ninety days from passage.]

AN ACT to repeal article eight-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter forty-seven-b, relating to adopting the Uniform Partnership Act (1994); general provisions; nature of partnership; relations of partners to persons dealing with partnership; relations of partners to each other and to partnership; transferees and creditors of partner; partner's dissociation; partner's dissociation when business not wound up; winding up partnership business; conversions and mergers; and miscellaneous provisions.

Be it enacted by the Legislature of West Virginia:

That article eight-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter forty-seven-b, to read as follows:

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

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) An order for relief under Title 11 of the United
7 States Code or a comparable order under a successor stat-
8 ute 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) "Partnership" means an association of two or more
15 persons to carry on as coowners a business for profit
16 formed under section two, article two of this chapter, pre-
17 decessor law, or comparable law of another jurisdiction.

18 (5) "Partnership agreement" means the agreement,
19 whether written, oral or implied, among the partners con-
20 cerning the partnership, including amendments to the
21 partnership agreement.

22 (6) "Partnership at will" means a partnership in which
23 the partners have not agreed to remain partners until the
24 expiration of a definite term or the completion of a partic-
25 ular undertaking.

26 (7) "Partnership interest" or "partner's interest in the
27 partnership" means all of a partner's interests in the part-
28 nership, including the partner's transferable interest and all
29 management and other rights.

30 (8) "Person" means an individual, corporation, busi-
31 ness trust, estate, trust, partnership, association, joint ven-
32 ture, government, governmental subdivision, agency or
33 instrumentality, or any other legal or commercial entity.

34 (9) "Property" means all property, real, personal or
35 mixed, tangible or intangible, or any interest therein.

36 (10) "State" means a state of the United States, the
37 District of Columbia, the Commonwealth of Puerto Rico,
38 or any territory or insular possession subject to the juris-
39 diction of the United States.

40 (11) "Statement" means a statement of partnership
41 authority under section three, article three of this chapter,
42 a statement of denial under section four, article three of
43 this chapter, a statement of dissociation under section four,
44 article seven of this chapter, a statement of dissolution
45 under section five, article eight of this chapter, a statement
46 of merger under section seven, article nine of this chapter,
47 or an amendment or cancellation of any of the foregoing.

48 (12) "Transfer" includes an assignment, conveyance,
49 lease, mortgage, deed and encumbrance.

§47B-1-2. Knowledge and notice.

1 (a) A person knows a fact if the person has actual
2 knowledge of it.

3 (b) A person has notice of a fact if the person:

4 (1) Knows of it;

5 (2) Has received a notification of it; or

6 (3) Has reason to know it exists from all of the facts
7 known to the person at the time in question.

8 (c) A person notifies or gives a notification to another
9 by taking steps reasonably required to inform the other
10 person in ordinary course, whether or not the other person
11 learns of it.

12 (d) A person receives a notification when the notifica-
13 tion:

14 (1) Comes to the person's attention; or

15 (2) Is duly delivered at the person's place of business
16 or at any other place held out by the person as a place for
17 receiving communications.

18 (e) Except as otherwise provided in subsection (f) of
19 this section, a person other than an individual knows, has
20 notice, or receives a notification of a fact for purposes of a
21 particular transaction when the individual conducting the
22 transaction knows, has notice, or receives a notification of
23 the fact, or in any event when the fact would have been
24 brought to the individual's attention if the person had
25 exercised reasonable diligence. The person exercises rea-
26 sonable diligence if it maintains reasonable routines for
27 communicating significant information to the individual
28 conducting the transaction and there is reasonable compli-
29 ance with the routines. Reasonable diligence does not
30 require an individual acting for the person to communi-
31 cate information unless the communication is part of the
32 individual's regular duties or the individual has reason to
33 know of the transaction and that the transaction would be
34 materially affected by the information.

35 (f) A partner's knowledge, notice or receipt of a notifi-
36 cation of a fact relating to the partnership is effective im-
37 mediately as knowledge by, notice to, or receipt of a noti-
38 fication by the partnership, except in the case of a fraud
39 on the partnership committed by or with the consent of
40 that partner.

**§47B-1-3. Effect of partnership agreement; nonwaivable pro-
visions.**

1 (a) Except as otherwise provided in subsection (b) of
2 this section, relations among the partners and between the
3 partners and the partnership are governed by the partner-
4 ship agreement. To the extent the partnership agreement
5 does not otherwise provide, this chapter governs relations
6 among the partners and between the partners and the part-
7 nership.

8 (b) The partnership agreement may not:

9 (1) Vary the rights and duties under section five, arti-
10 cle one of this chapter except to eliminate the duty to
11 provide copies of statements to all of the partners;

12 (2) Unreasonably restrict the right of access to books
13 and records under subsection (b), section three, article
14 four of this chapter;

15 (3) Eliminate the duty of loyalty under subsection (b),
16 section four, article four, or subdivision (3) subsection (b),
17 section three, article six of this chapter, but:

18 (i) The partnership agreement may identify specific
19 types or categories of activities that do not violate the duty
20 of loyalty, if not manifestly unreasonable; or

21 (ii) All of the partners or a number or percentage
22 specified in the partnership agreement may authorize or
23 ratify, after full disclosure of all material facts, a specific
24 act or transaction that otherwise would violate the duty of
25 loyalty;

26 (4) Unreasonably reduce the duty of care under sub-
27 section (c), section four, article four or subdivision (3),
28 subsection (b), section three, article six of this chapter;

29 (5) Eliminate the obligation of good faith and fair
30 dealing under subsection (d), section four, article four of
31 this chapter, but the partnership agreement may prescribe
32 the standards by which the performance of the obligation
33 is to be measured, if the standards are not manifestly un-
34 reasonable;

35 (6) Vary the power to dissociate as a partner under
36 subsection (a), section two, article six of this chapter, ex-
37 cept to require the notice under subsection (1), section
38 one, article six of this chapter to be in writing;

39 (7) Vary the right of a court to expel a partner in the
40 events specified in subsection (5), section one, article six
41 of this chapter;

42 (8) Vary the requirement to wind up the partnership
43 business in cases specified in subsections (4), (5) or (6),
44 section one, article eight of this chapter; or

45 (9) Restrict rights of third parties under this chapter.

§47B-1-4. Supplemental principles of law.

1 (a) Unless displaced by particular provisions of this
2 chapter, the principles of law and equity supplement this
3 chapter.

4 (b) If an obligation to pay interest arises under this
5 chapter and the rate is not specified, the rate is that speci-
6 fied in section thirty-one, article six, chapter fifty-six of
7 this code.

§47B-1-5. Execution, filing and recording of statements.

1 (a) A statement may be filed in the office of the secre-
2 tary of state. A certified copy of a statement that is filed
3 in an office in another state may be filed in the office of
4 the secretary of state. Either filing has the effect provided
5 in this chapter with respect to partnership property located
6 in or transactions that occur in this state.

7 (b) A certified copy of a statement that has been filed
8 in the office of the secretary of state and recorded in the
9 office for recording transfers of real property has the
10 effect provided for recorded statements in this chapter. A
11 recorded statement that is not a certified copy of a state-
12 ment filed in the office of the secretary of state does not
13 have the effect provided for recorded statements in this
14 chapter.

15 (c) A statement filed by a partnership must be execut-
16 ed by at least two partners. Other statements must be exe-
17 cuted by a partner or other person authorized by this
18 chapter. An individual who executes a statement as, or on
19 behalf of, a partner or other person named as a partner in
20 a statement shall personally declare under penalty of per-
21 jury that the contents of the statement are accurate.

22 (d) A person authorized by this chapter to file a state-
23 ment may amend or cancel the statement by filing an
24 amendment or cancellation that names the partnership,
25 identifies the statement, and states the substance of the
26 amendment or cancellation.

27 (e) A person who files a statement pursuant to this
28 section shall promptly send a copy of the statement to
29 every nonfiling partner and to any other person named as
30 a partner in the statement. Failure to send a copy of a
31 statement to a partner or other person does not limit the
32 effectiveness of the statement as to a person not a partner.

33 (f) The secretary of state may collect a fee for filing or
34 providing a certified copy of a statement. The clerk of the
35 county commission of any county may collect a fee for
36 recording a statement.

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

1 The law of the jurisdiction in which a partnership has
2 its chief executive office governs relations among the
3 partners and between the partners and the partnership.

§47B-1-7. Partnership subject to amendment or repeal of chapter.

1 A partnership governed by this chapter is subject to
2 any amendment to or repeal of this chapter.

ARTICLE 2. NATURE OF PARTNERSHIP.

§47B-2-1. Partnership as entity.

1 A partnership is an entity distinct from its partners.

§47B-2-2. Formation of partnership.

1 (a) Except as otherwise provided in subsection (b) of
2 this section, the association of two or more persons to
3 carry on as coowners a business for profit forms a partner-
4 ship, whether or not the persons intend to form a partner-
5 ship.

6 (b) An association formed under a statute other than
7 this chapter, a predecessor statute, or a comparable statute
8 of another jurisdiction is not a partnership under this
9 chapter.

10 (c) In determining whether a partnership is formed,
11 the following rules apply:

12 (1) Joint tenancy, tenancy in common, tenancy by the
13 entireties, joint property, common property, or part owner-
14 ship does not by itself establish a partnership, even if the
15 coowners share profits made by the use of the property.

16 (2) The sharing of gross returns does not by itself
17 establish a partnership, even if the persons sharing them
18 have a joint or common right or interest in property from
19 which the returns are derived.

20 (3) A person who receives a share of the profits of a
21 business is presumed to be a partner in the business, unless
22 the profits were received in payment:

23 (i) Of a debt by installments or otherwise;

24 (ii) For services as an independent contractor or of
25 wages or other compensation to an employee;

26 (iii) Of rent;

27 (iv) Of an annuity or other retirement or health bene-
28 fit to a beneficiary, representative or designee of a de-
29 ceased or retired partner;

30 (v) Of interest or other charge on a loan, even if the
31 amount of payment varies with the profits of the business,
32 including a direct or indirect present or future ownership
33 of the collateral, or rights to income, proceeds or increase
34 in value derived from the collateral; or

35 (vi) For the sale of the goodwill of a business or other
36 property by installments or otherwise.

§47B-2-3. Partnership property.

1 Property acquired by a partnership is property of the
2 partnership and not of the partners individually.

§47B-2-4. When property is partnership property.

1 (a) Property is partnership property if acquired in the
2 name of:

3 (1) The partnership; or

4 (2) One or more partners with an indication in the
5 instrument transferring title to the property of the person's
6 capacity as a partner or of the existence of a partnership
7 but without an indication of the name of the partnership.

8 (b) Property is acquired in the name of the partnership
9 by a transfer to:

10 (1) The partnership in its name; or

11 (2) One or more partners in their capacity as partners
12 in the partnership, if the name of the partnership is indi-
13 cated in the instrument transferring title to the property.

14 (c) Property is presumed to be partnership property if
15 purchased with partnership assets, even if not acquired in
16 the name of the partnership or of one or more partners
17 with an indication in the instrument transferring title to the
18 property of the person's capacity as a partner or of the
19 existence of a partnership.

20 (d) Property acquired in the name of one or more of
21 the partners, without an indication in the instrument trans-
22 ferring title to the property of the person's capacity as a
23 partner or of the existence of a partnership and without
24 use of partnership assets, is presumed to be separate prop-
25 erty, even if used for partnership purposes.

ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEAL- ING WITH PARTNERSHIP.

§47B-3-1. Partner agent of partnership.

1 Subject to the effect of a statement of partnership
2 authority under section three, article three of this chapter:

3 (1) Each partner is an agent of the partnership for the
4 purpose of its business. An act of a partner, including the
5 execution of an instrument in the partnership name, for
6 apparently carrying on in the ordinary course the partner-
7 ship business or business of the kind carried on by the
8 partnership binds the partnership, unless the partner had
9 no authority to act for the partnership in the particular

10 matter and the person with whom the partner was dealing
11 knew or had received a notification that the partner lacked
12 authority.

13 (2) An act of a partner which is not apparently for
14 carrying on in the ordinary course the partnership busi-
15 ness or business of the kind carried on by the partnership
16 binds the partnership only if the act was authorized by the
17 other partners.

§47B-3-2. Transfer of partnership property.

1 (a) Partnership property may be transferred as follows:

2 (1) Subject to the effect of a statement of partnership
3 authority under section three, article three of this chapter,
4 partnership property held in the name of the partnership
5 may be transferred by an instrument of transfer executed
6 by a partner in the partnership name.

7 (2) Partnership property held in the name of one or
8 more partners with an indication in the instrument trans-
9 ferring the property to them of their capacity as partners
10 or of the existence of a partnership, but without an indica-
11 tion of the name of the partnership, may be transferred by
12 an instrument of transfer executed by the persons in
13 whose name the property is held.

14 (3) Partnership property held in the name of one or
15 more persons other than the partnership, without an indi-
16 cation in the instrument transferring the property to them
17 of their capacity as partners or of the existence of a part-
18 nership, may be transferred by an instrument of transfer
19 executed by the persons in whose name the property is
20 held.

21 (b) A partnership may recover partnership property
22 from a transferee only if it proves that execution of the
23 instrument of initial transfer did not bind the partnership
24 under section one, article three of this chapter, and:

25 (1) As to a subsequent transferee who gave value for
26 property transferred under subdivisions (1) and (2), sub-

27 section (a) of this section, proves that the subsequent trans-
28 feree knew or had received a notification that the person
29 who executed the instrument of initial transfer lacked
30 authority to bind the partnership; or

31 (2) As to a transferee who gave value for property
32 transferred under subdivision (3), subsection (a) of this
33 section, proves that the transferee knew or had received a
34 notification that the property was partnership property and
35 that the person who executed the instrument of initial
36 transfer lacked authority to bind the partnership.

37 (c) A partnership may not recover partnership proper-
38 ty from a subsequent transferee if the partnership would
39 not have been entitled to recover the property, under sub-
40 section (b) of this section, from any earlier transferee of
41 the property.

42 (d) If a person holds all of the partners' interests in the
43 partnership, all of the partnership property vests in that
44 person. The person may execute a document in the name
45 of the partnership to evidence vesting of the property in
46 that person and may file or record the document.

§47B-3-3. Statement of partnership authority.

1 (a) A partnership may file a statement of partnership
2 authority, which:

3 (1) Must include:

4 (i) The name of the partnership;

5 (ii) The street address of its chief executive office and
6 of one office in this state, if there is one;

7 (iii) The names and mailing addresses of all of the
8 partners or of an agent appointed and maintained by the
9 partnership for the purpose of subsection (b) of this sec-
10 tion; and

11 (iv) The names of the partners authorized to execute
12 an instrument transferring real property held in the name
13 of the partnership; and

14 (2) May state the authority, or limitations on the au-
15 thority, of some or all of the partners to enter into other
16 transactions on behalf of the partnership and any other
17 matter.

18 (b) If a statement of partnership authority names an
19 agent, the agent shall maintain a list of the names and
20 mailing addresses of all of the partners and make it avail-
21 able to any person on request for good cause shown.

22 (c) If a filed statement of partnership authority is exe-
23 cuted pursuant to subsection (c), section five, article one of
24 this chapter and states the name of the partnership but
25 does not contain all of the other information required by
26 subsection (a) of this section, the statement nevertheless
27 operates with respect to a person not a partner as provided
28 in subsections (d) and (e) of this section.

29 (d) Except as otherwise provided in subsection (g) of
30 this section, a filed statement of partnership authority
31 supplements the authority of a partner to enter into trans-
32 actions on behalf of the partnership as follows:

33 (1) Except for transfers of real property, a grant of
34 authority contained in a filed statement of partnership
35 authority is conclusive in favor of a person who gives
36 value without knowledge to the contrary, so long as and to
37 the extent that a limitation on that authority is not then
38 contained in another filed statement. A filed cancellation
39 of a limitation on authority revives the previous grant of
40 authority.

41 (2) A grant of authority to transfer real property held
42 in the name of the partnership contained in a certified
43 copy of a filed statement of partnership authority record-
44 ed in the office for recording transfers of that real proper-
45 ty is conclusive in favor of a person who gives value with-
46 out knowledge to the contrary, so long as and to the extent
47 that a certified copy of a filed statement containing a limi-
48 tation on that authority is not then of record in the office
49 for recording transfers of that real property. The record-
50 ing in the office for recording transfers of that real prop-

51 erty of a certified copy of a filed cancellation of a limita-
52 tion on authority revives the previous grant of authority.

53 (e) A person not a partner is deemed to know of a
54 limitation on the authority of a partner to transfer real
55 property held in the name of the partnership if a certified
56 copy of the filed statement containing the limitation on
57 authority is of record in the office for recording transfers
58 of that real property.

59 (f) Except as otherwise provided in subsections (d)
60 and (e) of this section and section four, article seven and
61 section five, article eight of this chapter, a person not a
62 partner is not deemed to know of a limitation on the au-
63 thority of a partner merely because the limitation is con-
64 tained in a filed statement.

65 (g) Unless earlier canceled, a filed statement of part-
66 nership authority is canceled by operation of law five
67 years after the date on which the statement, or the most
68 recent amendment, was filed with the secretary of state.

§47B-3-4. Statement of denial.

1 A partner or other person named as a partner in a filed
2 statement of partnership authority or in a list maintained
3 by an agent pursuant to subsection (b), section three, arti-
4 cle three of this chapter may file a statement of denial
5 stating the name of the partnership and the fact that is
6 being denied, which may include denial of a person's
7 authority or status as a partner. A statement of denial is a
8 limitation on authority as provided in subsections (d) and
9 (e), section three, article three of this chapter.

§47B-3-5. Partnership liable for partner's actionable conduct.

1 (a) A partnership is liable for loss or injury caused to
2 a person, or for a penalty incurred, as a result of a wrong-
3 ful act or omission, or other actionable conduct, of a part-
4 ner acting in the ordinary course of business of the part-
5 nership or with authority of the partnership.

6 (b) If, in the course of the partnership's business or

7 while acting with authority of the partnership, a partner
8 receives or causes the partnership to receive money or
9 property of a person not a partner, and the money or
10 property is misapplied by a partner, the partnership is
11 liable for the loss.

§47B-3-6. Partner's liability.

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

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

§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 in the same action or in
5 separate actions.

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

10 (d) A judgment creditor of a partner may not levy
11 execution against the assets of the partner to satisfy a
12 judgment based on a claim against the partnership unless:

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

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

18 (3) The partner has agreed that the creditor need not

19 exhaust partnership assets;

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

27 (5) Liability is imposed on the partner by law or con-
28 tract independent of the existence of the partnership.

29 (e) This section applies to any partnership liability or
30 obligation resulting from a representation by a partner or
31 purported partner under section eight, article three of this
32 chapter.

§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 a
3 partner, in a partnership or with one or more persons not
4 partners, the purported partner is liable to a person to
5 whom the representation is made, if that person, relying on
6 the representation, enters into a transaction with the actual
7 or purported partnership. If the representation, either by
8 the purported partner or by a person with the purported
9 partner's consent, is made in a public manner, the purport-
10 ed partner is liable to a person who relies upon the pur-
11 ported partnership even if the purported partner is not
12 aware of being held out as a partner to the claimant. If
13 partnership liability results, the purported partner is liable
14 with respect to that liability as if the purported partner
15 were a partner. If no partnership liability results, the pur-
16 ported partner is liable with respect to that liability jointly
17 and severally with any other person consenting to the
18 representation.

19 (b) If a person is thus represented to be a partner in an
20 existing partnership, or with one or more persons not
21 partners, the purported partner is an agent of persons

22 consenting to the representation to bind them to the same
23 extent and in the same manner as if the purported partner
24 were a partner, with respect to persons who enter into
25 transactions in reliance upon the representation. If all of
26 the partners of the existing partnership consent to the
27 representation, a partnership act or obligation results. If
28 fewer than all of the partners of the existing partnership
29 consent to the representation, the person acting and the
30 partners consenting to the representation are jointly and
31 severally liable.

32 (c) A person is not liable as a partner merely because
33 the person is named by another in a statement of partner-
34 ship authority.

35 (d) A person does not continue to be liable as a part-
36 ner merely because of a failure to file a statement of disso-
37 ciation or to amend a statement of partnership authority to
38 indicate the partner's dissociation from the partnership.

39 (e) Except as otherwise provided in subsections (a)
40 and (b) of this section, persons who are not partners as to
41 each other are not liable as partners to other persons.

ARTICLE 4. RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP.

§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, the partner contributes to the partnership and
5 the partner's share of the partnership profits; and

6 (2) Charged with an amount equal to the money plus
7 the value of any other property, net of the amount of any
8 liabilities, distributed by the partnership to the partner and
9 the partner's share of the partnership losses.

10 (b) Each partner is entitled to an equal share of the
11 partnership profits and is chargeable with a share of the

12 partnership losses in proportion to the partner's share of
13 the profits.

14 (c) A partnership shall reimburse a partner for pay-
15 ments made and indemnify a partner for liabilities in-
16 curred by the partner in the ordinary course of the busi-
17 ness of the partnership or for the preservation of its busi-
18 ness or property.

19 (d) A partnership shall reimburse a partner for an
20 advance to the partnership beyond the amount of capital
21 the partner agreed to contribute.

22 (e) A payment or advance made by a partner which
23 gives rise to a partnership obligation under subsection (c)
24 or (d) of this section constitutes a loan to the partnership
25 which accrues interest from the date of the payment or
26 advance.

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

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

31 (h) A partner is not entitled to remuneration for ser-
32 vices performed for the partnership, except for reasonable
33 compensation for services rendered in winding up the
34 business of the partnership.

35 (i) A person may become a partner only with the con-
36 sent of all of the partners.

37 (j) A difference arising as to a matter in the ordinary
38 course of business of a partnership may be decided by a
39 majority of the partners. An act outside the ordinary
40 course of business of a partnership and an amendment to
41 the partnership agreement may be undertaken only with
42 the consent of all of the partners.

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

§47B-4-2. Distributions in kind.

1 A partner has no right to receive, and may not be
2 required to accept, a distribution in kind.

§47B-4-3. Partner's rights and duties with respect to information.

1 (a) A partnership shall keep its books and records, if
2 any, at its chief executive office.

3 (b) A partnership shall provide partners and their
4 agents and attorneys access to its books and records. It
5 shall provide former partners and their agents and attor-
6 neys access to books and records pertaining to the period
7 during which they were partners. The right of access
8 provides the opportunity to inspect and copy books and
9 records during ordinary business hours. A partnership
10 may impose a reasonable charge, covering the costs of
11 labor and material, for copies of documents furnished.

12 (c) Each partner and the partnership shall furnish to a
13 partner, and to the legal representative of a deceased part-
14 ner or partner under legal disability:

15 (1) Without demand, any information concerning the
16 partnership's business and affairs reasonably required for
17 the proper exercise of the partner's rights and duties under
18 the partnership agreement or this chapter; and

19 (2) On demand, any other information concerning the
20 partnership's business and affairs, except to the extent the
21 demand or the information demanded is unreasonable or
22 otherwise improper under the circumstances.

§47B-4-4. General standards of partner's conduct.

1 (a) The only fiduciary duties a partner owes to the
2 partnership and the other partners are the duty of loyalty
3 and the duty of care set forth in subsections (b) and (c) of
4 this section.

5 (b) A partner's duty of loyalty to the partnership and
6 the other partners is limited to the following:

7 (1) To account to the partnership and hold as trustee
8 for it any property, profit or benefit derived by the partner
9 in the conduct and winding up of the partnership business
10 or derived from a use by the partner of partnership prop-
11 erty, including the appropriation of a partnership opportu-
12 nity;

13 (2) To refrain from dealing with the partnership in the
14 conduct or winding up of the partnership business as or
15 on behalf of a party having an interest adverse to the part-
16 nership; and

17 (3) To refrain from competing with the partnership in
18 the conduct of the partnership business before the dissolu-
19 tion of the partnership.

20 (c) A partner's duty of care to the partnership and the
21 other partners in the conduct and winding up of the part-
22 nership business is limited to refraining from engaging in
23 grossly negligent or reckless conduct, intentional miscon-
24 duct, or a knowing violation of law.

25 (d) A partner shall discharge the duties to the partner-
26 ship and the other partners under this chapter or under the
27 partnership agreement and exercise any rights consistently
28 with the obligation of good faith and fair dealing.

29 (e) A partner does not violate a duty or obligation
30 under this chapter or under the partnership agreement
31 merely because the partner's conduct furthers the partner's
32 own interest.

33 (f) A partner may lend money to and transact other
34 business with the partnership, and as to each loan or trans-
35 action the rights and obligations of the partner are the
36 same as those of a person who is not a partner, subject to
37 other applicable law.

38 (g) This section applies to a person winding up the
39 partnership business as the personal or legal representative
40 of the last surviving partner as if the person were a partner.

§47B-4-5. Actions by partnership and partners.

1 (a) A partnership may maintain an action against a
2 partner for a breach of the partnership agreement, or for
3 the violation of a duty to the partnership, causing harm to
4 the partnership.

5 (b) A partner may maintain an action against the part-
6 nership or another partner for legal or equitable relief,
7 with or without an accounting as to partnership business,
8 to:

9 (1) Enforce the partner's rights under the partnership
10 agreement;

11 (2) Enforce the partner's rights under this chapter,
12 including:

13 (i) The partner's rights under sections one, three or
14 four, article four of this chapter;

15 (ii) The partner's right on dissociation to have the
16 partner's interest in the partnership purchased pursuant to
17 section one, article seven of this chapter or enforce any
18 other right under article six or seven;

19 (iii) The partner's right to compel a dissolution and
20 winding up of the partnership business under section one,
21 article eight of this chapter or enforce any other right
22 under article eight; or

23 (3) Enforce the rights and otherwise protect the inter-
24 ests of the partner, including rights and interests arising
25 independently of the partnership relationship.

26 (c) The accrual of, and any time limitation on, a right
27 of action for a remedy under this section is governed by
28 other law. A right to an accounting upon a dissolution and
29 winding up does not revive a claim barred by law.

§47B-4-6. Continuation of partnership beyond definite term or particular undertaking.

1 (a) If a partnership for a definite term or particular
2 undertaking is continued, without an express agreement,
3 after the expiration of the term or completion of the un-

4 dertaking, the rights and duties of the partners remain the
5 same as they were at the expiration or completion, so far
6 as is consistent with a partnership at will.

7 (b) If the partners, or those of them who habitually
8 acted in the business during the term or undertaking, con-
9 tinue the business without any settlement or liquidation of
10 the partnership, they are presumed to have agreed that the
11 partnership will continue.

ARTICLE 5. TRANSFEREES AND CREDITORS OF PARTNER.

§47B-5-1. Partner not coowner of partnership property.

1 A partner is not a coowner of partnership property
2 and has no interest in partnership property which can be
3 transferred, either voluntarily or involuntarily.

§47B-5-2. Partner's transferable interest in partnership.

1 The only transferable interest of a partner in the part-
2 nership is the partner's share of the profits and losses of
3 the partnership and the partner's right to receive distribu-
4 tions. The interest is personal property.

§47B-5-3. Transfer of partner's transferable interest.

1 (a) A transfer, in whole or in part, of a partner's trans-
2 ferable interest in the partnership:

3 (1) Is permissible;

4 (2) Does not by itself cause the partner's dissociation
5 or a dissolution and winding up of the partnership busi-
6 ness; and

7 (3) Does not, as against the other partners or the part-
8 nership, entitle the transferee, during the continuance of
9 the partnership, to participate in the management or con-
10 duct of the partnership business, to require access to infor-
11 mation concerning partnership transactions, or to inspect
12 or copy the partnership books or records.

13 (b) A transferee of a partner's transferable interest in
14 the partnership has a right:

15 (1) To receive, in accordance with the transfer, distri-
16 butions to which the transferor would otherwise be enti-
17 tled;

18 (2) To receive upon the dissolution and winding up of
19 the partnership business, in accordance with the transfer,
20 the net amount otherwise distributable to the transferor;
21 and

22 (3) To seek under subsection (6), section one, article
23 eight of this chapter a judicial determination that it is equi-
24 table to wind up the partnership business.

25 (c) In a dissolution and winding up, a transferee is
26 entitled to an account of partnership transactions only
27 from the date of the latest account agreed to by all of the
28 partners.

29 (d) Upon transfer, the transferor retains the rights and
30 duties of a partner other than the interest in distributions
31 transferred.

32 (e) A partnership need not give effect to a transferee's
33 rights under this section until it has notice of the transfer.

34 (f) A transfer of a partner's transferable interest in the
35 partnership in violation of a restriction on transfer con-
36 tained in the partnership agreement is ineffective as to a
37 person having notice of the restriction at the time of trans-
38 fer.

§47B-5-4. Partner's transferable interest subject to charging order.

1 (a) On application by a judgment creditor of a part-
2 ner or of a partner's transferee, a court having jurisdiction
3 may charge the transferable interest of the judgment debt-
4 or to satisfy the judgment. The court may appoint a re-
5 ceiver of the share of the distributions due or to become
6 due to the judgment debtor in respect of the partnership
7 and make all other orders, directions, accounts, and inqui-
8 ries the judgment debtor might have made or which the
9 circumstances of the case may require.

10 (b) A charging order constitutes a lien on the judg-
11 ment debtor's transferable interest in the partnership. The
12 court may order a foreclosure of the interest subject to the
13 charging order at any time. The purchaser at the foreclo-
14 sure sale has the rights of a transferee.

15 (c) At any time before foreclosure, an interest
16 charged may be redeemed:

17 (1) By the judgment debtor;

18 (2) With property other than partnership property, by
19 one or more of the other partners; or

20 (3) With partnership property, by one or more of the
21 other partners with the consent of all of the partners whose
22 interests are not so charged.

23 (d) This chapter does not deprive a partner of a right
24 under exemption laws with respect to the partner's interest
25 in the partnership.

26 (e) This section provides the exclusive remedy by
27 which a judgment creditor of a partner or partner's trans-
28 feree may satisfy a judgment out of the judgment debtor's
29 transferable interest in the partnership.

ARTICLE 6. PARTNER'S DISSOCIATION.

§47B-6-1. Events causing partner's dissociation.

1 A partner is dissociated from a partnership upon the
2 occurrence of any of the following events:

3 (1) The partnership's having notice of the partner's
4 express will to withdraw as a partner or on a later date
5 specified by the partner;

6 (2) An event agreed to in the partnership agreement as
7 causing the partner's dissociation;

8 (3) The partner's expulsion pursuant to the partnership
9 agreement;

10 (4) The partner's expulsion by the unanimous vote of

11 the other partners if:

12 (i) It is unlawful to carry on the partnership business
13 with that partner;

14 (ii) There has been a transfer of all or substantially all
15 of that partner's transferable interest in the partnership,
16 other than a transfer for security purposes, or a court or-
17 der charging the partner's interest, which has not been
18 foreclosed;

19 (iii) Within ninety days after the partnership notifies a
20 corporate partner that it will be expelled because it has
21 filed a certificate of dissolution or the equivalent, its char-
22 ter has been revoked, or its right to conduct business has
23 been suspended by the jurisdiction of its incorporation,
24 there is no revocation of the certificate of dissolution or
25 no reinstatement of its charter or its right to conduct busi-
26 ness; or

27 (iv) A partnership that is a partner has been dissolved
28 and its business is being wound up;

29 (5) On application by the partnership or another part-
30 ner, the partner's expulsion by judicial determination be-
31 cause:

32 (i) The partner engaged in wrongful conduct that
33 adversely and materially affected the partnership business;

34 (ii) The partner willfully or persistently committed a
35 material breach of the partnership agreement or of a duty
36 owed to the partnership or the other partners under section
37 four, article four of this chapter; or

38 (iii) The partner engaged in conduct relating to the
39 partnership business which makes it not reasonably practi-
40 cable to carry on the business in partnership with the part-
41 ner;

42 (6) The partner's:

43 (i) Becoming a debtor in bankruptcy;

44 (ii) Executing an assignment for the benefit of credi-
45 tors;

46 (iii) Seeking, consenting to, or acquiescing in the ap-
47 pointment of a trustee, receiver, or liquidator of that part-
48 ner or of all or substantially all of that partner's property;
49 or

50 (iv) Failing, within ninety days after the appointment,
51 to have vacated or stayed the appointment of a trustee,
52 receiver, or liquidator of the partner or of all or substan-
53 tially all of the partner's property obtained without the
54 partner's consent or acquiescence, or failing within ninety
55 days after the expiration of a stay to have the appointment
56 vacated;

57 (7) In the case of a partner who is an individual:

58 (i) The partner's death;

59 (ii) The appointment of a guardian or general conser-
60 vator for the partner; or

61 (iii) A judicial determination that the partner has oth-
62 erwise become incapable of performing the partner's du-
63 ties under the partnership agreement;

64 (8) In the case of a partner that is a trust or is acting as
65 a partner by virtue of being a trustee of a trust, distribution
66 of the trust's entire transferable interest in the partnership,
67 but not merely by reason of the substitution of a successor
68 trustee;

69 (9) In the case of a partner that is an estate or is acting
70 as a partner by virtue of being a personal representative of
71 an estate, distribution of the estate's entire transferable
72 interest in the partnership, but not merely by reason of the
73 substitution of a successor personal representative; or

74 (10) Termination of a partner who is not an individual,
75 partnership, corporation, trust or estate.

§47B-6-2. Partner's power to dissociate; wrongful dissociation.

1 (a) A partner has the power to dissociate at any time,
2 rightfully or wrongfully, by express will pursuant to sub-
3 section (1), section one, article six of this chapter.

4 (b) A partner's dissociation is wrongful only if:

5 (1) It is in breach of an express provision of the part-
6 nership agreement; or

7 (2) In the case of a partnership for a definite term or
8 particular undertaking, before the expiration of the term
9 or the completion of the undertaking:

10 (i) The partner withdraws by express will, unless the
11 withdrawal follows within ninety days after another
12 partner's dissociation by death or otherwise under subsec-
13 tions (6) through (10), section one, article six of this chap-
14 ter or wrongful dissociation under this subsection;

15 (ii) The partner is expelled by judicial determination
16 under subsection (5), section one, article six of this chap-
17 ter;

18 (iii) The partner is dissociated by becoming a debtor
19 in bankruptcy; or

20 (iv) In the case of a partner who is not an individual,
21 trust other than a business trust, or estate, the partner is
22 expelled or otherwise dissociated because it willfully dis-
23 solved or terminated.

24 (c) A partner who wrongfully dissociates is liable to
25 the partnership and to the other partners for damages
26 caused by the dissociation. The liability is in addition to
27 any other obligation of the partner to the partnership or to
28 the other partners.

§47B-6-3. Effect of partner's dissociation.

1 (a) If a partner's dissociation results in a dissolution
2 and winding up of the partnership business, article eight of
3 this chapter applies; otherwise, article seven of this chapter
4 applies.

5 (b) Upon a partner's dissociation:

6 (1) The partner's right to participate in the manage-
7 ment and conduct of the partnership business terminates,
8 except as otherwise provided in section three, article eight
9 of this chapter;

10 (2) The partner's duty of loyalty under subsection (3),
11 section four, article four of this chapter terminates; and

12 (3) The partner's duty of loyalty under subsections (1)
13 and (2), section four (b), article four of this chapter, and
14 duty of care under subsection (c), section four, article four
15 of this chapter continue only with regard to matters arising
16 and events occurring before the partner's dissociation,
17 unless the partner participates in winding up the
18 partnership's business pursuant to section three, article
19 eight of this chapter.

**ARTICLE 7. PARTNER'S DISSOCIATION WHEN BUSINESS NOT
WOUND UP.**

§47B-7-1. Purchase of dissociated partner's interest.

1 (a) If a partner is dissociated from a partnership with-
2 out resulting in a dissolution and winding up of the part-
3 nership business under section one, article eight of this
4 chapter, the partnership shall cause the dissociated
5 partner's interest in the partnership to be purchased for a
6 buyout price determined pursuant to subsection (b) of this
7 section.

8 (b) The buyout price of a dissociated partner's interest
9 is the amount that would have been distributable to the
10 dissociating partner under subsection (b), section seven,
11 article eight of this chapter if, on the date of dissociation,
12 the assets of the partnership were sold at a price equal to
13 the greater of the liquidation value or the value based on a
14 sale of the entire business as a going concern without the
15 dissociated partner and the partnership being wound up as
16 of that date. Interest must be paid from the date of disso-
17 ciation to the date of payment.

18 (c) Damages for wrongful dissociation under subsec-
19 tion (b), section two, article six of this chapter, and all
20 other amounts owing, whether or not presently due, from
21 the dissociated partner to the partnership, must be offset
22 against the buyout price. Interest must be paid from the
23 date the amount owed becomes due to the date of pay-
24 ment.

25 (d) A partnership shall indemnify a dissociated partner
26 whose interest is being purchased against all partnership
27 liabilities, whether incurred before or after the dissociation,
28 except liabilities incurred by an act of the dissociated
29 partner under section two, article seven of this chapter.

30 (e) If no agreement for the purchase of a dissociated
31 partner's interest is reached within one hundred twenty
32 days after a written demand for payment, the partnership
33 shall pay, or cause to be paid, in cash to the dissociated
34 partner the amount the partnership estimates to be the
35 buyout price and accrued interest, reduced by any offsets
36 and accrued interest under subsection (c) of this section.

37 (f) If a deferred payment is authorized under subsec-
38 tion (h) of this section, the partnership may tender a writ-
39 ten offer to pay the amount it estimates to be the buyout
40 price and accrued interest, reduced by any offsets under
41 subsection (c) of this section, stating the time of payment,
42 the amount and type of security for payment, and the
43 other terms and conditions of the obligation.

44 (g) The payment or tender required by subsection (e)
45 or (f) of this section must be accompanied by the follow-
46 ing:

47 (1) A statement of partnership assets and liabilities as
48 of the date of dissociation;

49 (2) The latest available partnership balance sheet and
50 income statement, if any;

51 (3) An explanation of how the estimated amount of
52 the payment was calculated; and

53 (4) Written notice that the payment is in full satisfac-
54 tion of the obligation to purchase unless, within one hun-
55 dred twenty days after the written notice, the dissociated
56 partner commences an action to determine the buyout
57 price, any offsets under subsection (c) of this section, or
58 other terms of the obligation to purchase.

59 (h) A partner who wrongfully dissociates before the
60 expiration of a definite term or the completion of a partic-
61 ular undertaking is not entitled to payment of any portion
62 of the buyout price until the expiration of the term or
63 completion of the undertaking, unless the partner estab-
64 lishes to the satisfaction of the court that earlier payment
65 will not cause undue hardship to the business of the part-
66 nership. A deferred payment must be adequately secured
67 and bear interest.

68 (i) A dissociated partner may maintain an action
69 against the partnership, pursuant to paragraph (ii), subdivi-
70 sion (2), subsection (b), section five, article four of this
71 chapter, to determine the buyout price of that partner's
72 interest, any offsets under subsection (c) of this section, or
73 other terms of the obligation to purchase. The action
74 must be commenced within one hundred twenty days after
75 the partnership has tendered payment or an offer to pay
76 or within one year after written demand for payment if no
77 payment or offer to pay is tendered. The court shall de-
78 termine the buyout price of the dissociated partner's inter-
79 est, any offset due under subsection (c) of this section, and
80 accrued interest, and enter judgment for any additional
81 payment or refund. If deferred payment is authorized
82 under subsection (h) of this section, the court shall also
83 determine the security for payment and other terms of the
84 obligation to purchase. The court may assess reasonable
85 attorney's fees and the fees and expenses of appraisers or
86 other experts for a party to the action, in amounts the
87 court finds equitable, against a party that the court finds
88 acted arbitrarily, vexatiously, or not in good faith. The
89 finding may be based on the partnership's failure to tender
90 payment or an offer to pay or to comply with subsection

91 (g) of this section.

§47B-7-2. Dissociated partner's power to bind and liability to partnership.

1 (a) For two years after a partner dissociates without
2 resulting in a dissolution and winding up of the partner-
3 ship business, the partnership, including a surviving part-
4 nership under article nine of this chapter, is bound by an
5 act of the dissociated partner which would have bound the
6 partnership under section one, article three of this chapter
7 before dissociation only if at the time of entering into the
8 transaction the other party:

9 (1) Reasonably believed that the dissociated partner
10 was then a partner;

11 (2) Did not have notice of the partner's dissociation;
12 and

13 (3) Is not deemed to have had knowledge under sub-
14 section (e), section three, article three or notice under
15 subsection (c), section four, article seven of this chapter.

16 (b) A dissociated partner is liable to the partnership
17 for any damage caused to the partnership arising from an
18 obligation incurred by the dissociated partner after disso-
19 ciation for which the partnership is liable under subsection
20 (a) of this section.

§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 incurred
3 before dissociation. A dissociated partner is not liable for
4 a partnership obligation incurred after dissociation, except
5 as otherwise provided in subsection (b) of this section.

6 (b) A partner who dissociates without resulting in a
7 dissolution and winding up of the partnership business is
8 liable as a partner to the other party in a transaction en-
9 tered into by the partnership, or a surviving partnership
10 under article nine of this chapter, within two years after the

11 partner's dissociation, only if at the time of entering into
12 the transaction the other party:

13 (1) Reasonably believed that the dissociated partner
14 was then a partner;

15 (2) Did not have notice of the partner's dissociation;
16 and

17 (3) Is not deemed to have had knowledge under sub-
18 section (e), section three, article three or notice under
19 subsection (c), section four, article seven, both of this
20 chapter.

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

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

§47B-7-4. Statement of dissociation.

1 (a) A dissociated partner or the partnership may file a
2 statement of dissociation stating the name of the partner-
3 ship and that the partner is dissociated from the partner-
4 ship.

5 (b) A statement of dissociation is a limitation on the
6 authority of a dissociated partner for the purposes of sub-
7 sections (d) and (e), section three, article three of this
8 chapter.

9 (c) For the purposes of subdivision (3), subsection (a),
10 section two, and subdivision (3), subsection (b) of section
11 three, article seven of this chapter, a person not a partner is
12 deemed to have notice of the dissociation ninety days after
13 the statement of dissociation is filed.

§47B-7-5. Continued use of partnership name.

1 Continued use of a partnership name, or a dissociated
2 partner's name as part thereof, by partners continuing the
3 business does not of itself make the dissociated partner
4 liable for an obligation of the partners or the partnership
5 continuing the business.

ARTICLE 8. WINDING UP PARTNERSHIP BUSINESS.

§47B-8-1. Events causing dissolution and winding up of partnership business.

1 A partnership is dissolved, and its business must be
2 wound up, only upon the occurrence of any of the follow-
3 ing events:

4 (1) In a partnership at will, the partnership's having
5 notice from a partner, other than a partner who is dissoci-
6 ated under subsections (2) through (10), section one, arti-
7 cle six of this chapter, of that partner's express will to with-
8 draw as a partner, or on a later date specified by the part-
9 ner;

10 (2) In a partnership for a definite term or particular
11 undertaking:

12 (i) The expiration of ninety days after a partner's dis-
13 sociation by death or otherwise under subsections (6)
14 through (10), section one, article six, or wrongful dissocia-
15 tion under subsection (b), section two, article six, both of
16 this chapter, unless before that time a majority in interest
17 of the remaining partners, including partners who have
18 rightfully dissociated pursuant to paragraph (i), subdivi-
19 sion (2), subsection (b), section two, article six of this
20 chapter, agree to continue the partnership;

21 (ii) The express will of all of the partners to wind up
22 the partnership business; or

23 (iii) The expiration of the term or the completion of
24 the undertaking;

25 (3) An event agreed to in the partnership agreement
26 resulting in the winding up of the partnership business;

27 (4) An event that makes it unlawful for all or substan-
28 tially all of the business of the partnership to be continued,
29 but a cure of illegality within ninety days after notice to
30 the partnership of the event is effective retroactively to the
31 date of the event for purposes of this section;

32 (5) On application by a partner, a judicial determina-
33 tion that:

34 (i) The economic purpose of the partnership is likely
35 to be unreasonably frustrated;

36 (ii) Another partner has engaged in conduct relating
37 to the partnership business which makes it not reasonably
38 practicable to carry on the business in partnership with
39 that partner; or

40 (iii) It is not otherwise reasonably practicable to carry
41 on the partnership business in conformity with the part-
42 nership agreement; or

43 (6) On application by a transferee of a partner's trans-
44 ferable interest, a judicial determination that it is equitable
45 to wind up the partnership business:

46 (i) After the expiration of the term or completion of
47 the undertaking, if the partnership was for a definite term
48 or particular undertaking at the time of the transfer or
49 entry of the charging order that gave rise to the transfer;
50 or

51 (ii) At any time, if the partnership was a partnership at
52 will at the time of the transfer or entry of the charging
53 order that gave rise to the transfer.

§47B-8-2. Partnership continued after dissolution.

1 (a) Subject to subsection (b) of this section, a partner-
2 ship continues after dissolution only for the purpose of
3 winding up its business. The partnership is terminated
4 when the winding up of its business is completed.

5 (b) At any time after the dissolution of a partnership
6 and before the winding up of its business is completed, all

7 of the partners, including any dissociating partner other
8 than a wrongfully dissociating partner, may waive the right
9 to have the partnership's business wound up and the part-
10 nership terminated.

11 In that event:

12 (1) The partnership resumes carrying on its business
13 as if dissolution had never occurred, and any liability
14 incurred by the partnership or a partner after the dissolu-
15 tion and before the waiver is determined as if dissolution
16 had never occurred; and

17 (2) The rights of a third party accruing under subsec-
18 tion (1), section four, article eight of this chapter or arising
19 out of conduct in reliance on the dissolution before the
20 third party knew or received a notification of the waiver
21 may not be adversely affected.

§47B-8-3. Right to wind up partnership business.

1 (a) After dissolution, a partner who has not wrongfully
2 dissociated may participate in winding up the partnership's
3 business, but on application of any partner, partner's legal
4 representative, or transferee, the circuit court or judge
5 thereof in vacation, for good cause shown, may order
6 judicial supervision of the winding up.

7 (b) The legal representative of the last surviving part-
8 ner may wind up a partnership's business.

9 (c) A person winding up a partnership's business may
10 preserve the partnership business or property as a going
11 concern for a reasonable time, prosecute and defend ac-
12 tions and proceedings, whether civil, criminal or adminis-
13 trative, settle and close the partnership's business, dispose
14 of and transfer the partnership's property, discharge the
15 partnership's liabilities, distribute the assets of the part-
16 nership pursuant to section seven, article eight of this chapter,
17 settle disputes by mediation or arbitration, and perform
18 other necessary acts.

§47B-8-4. Partner's power to bind partnership after dissolution.

1 Subject to section five, article eight of this chapter, a
2 partnership is bound by a partner's act after dissolution
3 that:

4 (1) Is appropriate for winding up the partnership busi-
5 ness; or

6 (2) Would have bound the partnership under section
7 one, article three of this chapter before dissolution, if the
8 other party to the transaction did not have notice of the
9 dissolution.

§47B-8-5. Statement of dissolution.

1 (a) After dissolution, a partner who has not wrongfully
2 dissociated may file a statement of dissolution stating the
3 name of the partnership and that the partnership has dis-
4 solved and is winding up its business.

5 (b) A statement of dissolution cancels a filed statement
6 of partnership authority for the purposes of subsection
7 (d), section three, article three of this chapter and is a limi-
8 tation on authority for the purposes of subsection (e),
9 section three, article three of this chapter.

10 (c) For the purposes of section one, article three and
11 section four, article eight, both of this chapter, a person
12 not a partner is deemed to have notice of the dissolution
13 and the limitation on the partners' authority as a result of
14 the statement of dissolution ninety days after it is filed.

15 (d) After filing and, if appropriate, recording a state-
16 ment of dissolution, a dissolved partnership may file and,
17 if appropriate, record a statement of partnership authority
18 which will operate with respect to a person not a partner as
19 provided in subsections (d) and (e), section three, article
20 three of this chapter in any transaction, whether or not the
21 transaction is appropriate for winding up the partnership
22 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 other
3 partners for the partner's share of any partnership liability
4 incurred under section four, article eight of this chapter.

5 (b) A partner who, with knowledge of the dissolution,
6 incurs a partnership liability under subsection (2), section
7 four, article eight of this chapter by an act that is not ap-
8 propriate for winding up the partnership business is liable
9 to the partnership for any damage caused to the partner-
10 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 of
2 the partnership, including the contributions of the partners
3 required by this section, must be applied to discharge its
4 obligations to creditors, including, to the extent permitted
5 by law, partners who are creditors. Any surplus must be
6 applied to pay in cash the net amount distributable to
7 partners in accordance with their right to distributions
8 under subsection (b) of this section.

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

20 (c) If a partner fails to contribute, all of the other part-
21 ners shall contribute, in the proportions in which those
22 partners share partnership losses, the additional amount
23 necessary to satisfy the partnership obligations. A partner

24 or partner's legal representative may recover from the
25 other partners any contributions the partner makes to the
26 extent the amount contributed exceeds that partner's share
27 of the partnership obligations.

28 (d) After the settlement of accounts, each partner shall
29 contribute, in the proportion in which the partner shares
30 partnership losses, the amount necessary to satisfy partner-
31 ship obligations that were not known at the time of the
32 settlement.

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

35 (f) An assignee for the benefit of creditors of a part-
36 nership or a partner, or a person appointed by a court to
37 represent creditors of a partnership or a partner, may en-
38 force a partner's obligation to contribute to the partner-
39 ship.

ARTICLE 9. CONVERSIONS AND MERGERS.

§47B-9-1. Definitions.

1 In this article:

2 (1) "General partner" means a partner in a partnership
3 and a general partner in a limited partnership.

4 (2) "Limited partner" means a limited partner in a
5 limited partnership.

6 (3) "Limited partnership" means a limited partnership
7 created under section one, et seq., article nine, chapter
8 forty-seven of this code, predecessor law, or comparable
9 law of another jurisdiction.

10 (4) "Partner" includes both a general partner and a
11 limited partner.

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

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

3 (b) The terms and conditions of a conversion of a
4 partnership to a limited partnership must be approved by
5 all of the partners or by a number or percentage specified
6 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 partnership
9 in the jurisdiction in which the limited partnership is to be
10 formed. The certificate must include:

11 (1) A statement that the partnership was converted to a
12 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 is
16 less than unanimous, the number or percentage required
17 to approve the conversion under the partnership agree-
18 ment.

19 (d) The conversion takes effect when the certificate of
20 limited partnership is filed or at any later date specified in
21 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 be-
25 fore the conversion takes effect. If the other party to a
26 transaction with the limited partnership reasonably be-
27 lieves when entering the transaction that the limited part-
28 ner is a general partner, the limited partner is liable for an
29 obligation incurred by the limited partnership within nine-
30 ty days after the conversion takes effect. The limited
31 partner's liability for all other obligations of the limited
32 partnership incurred after the conversion takes effect is
33 that of a limited partner as provided in section one et seq.,
34 article nine, chapter forty-seven of this code.

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

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

3 (b) Notwithstanding a provision to the contrary in a
4 limited partnership agreement, the terms and conditions of
5 a conversion of a limited partnership to a partnership must
6 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 limited
9 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 limit-
14 ed partner for an obligation incurred by the limited part-
15 nership before the conversion takes effect. The partner is
16 liable as a general partner for an obligation of the partner-
17 ship incurred after the conversion takes effect.

§47B-9-4. Effect of conversion; entity unchanged.

1 (a) A partnership or limited partnership that has been
2 converted pursuant to this article is for all purposes the
3 same entity that existed before the conversion.

4 (b) When a conversion takes effect:

5 (1) All property owned by the converting partnership
6 or limited partnership remains vested in the converted
7 entity;

8 (2) All obligations of the converting partnership or
9 limited partnership continue as obligations of the convert-
10 ed entity; and

11 (3) An action or proceeding pending against the con-
12 verting partnership or limited partnership may be contin-
13 ued as if the conversion had not occurred.

§47B-9-5. Merger of partnerships.

1 (a) Pursuant to a plan of merger approved as provided
2 in subsection (c) of this section, a partnership may be
3 merged with one or more partnerships or limited partner-

4 ships.

5 (b) The plan of merger must set forth:

6 (1) The name of each partnership or limited partner-
7 ship that is a party to the merger;

8 (2) The name of the surviving entity into which the
9 other partnerships or limited partnerships will merge;

10 (3) Whether the surviving entity is a partnership or a
11 limited partnership and the status of each partner;

12 (4) The terms and conditions of the merger;

13 (5) The manner and basis of converting the interests
14 of each party to the merger into interests or obligations of
15 the surviving entity, or into money or other property, in
16 whole or part; and

17 (6) The street address of the surviving entity's chief
18 executive office.

19 (c) The plan of merger must be approved:

20 (1) In the case of a partnership that is a party to the
21 merger, by all of the partners, or a number or percentage
22 specified for merger in the partnership agreement; and

23 (2) In the case of a limited partnership that is a party
24 to the merger, by the vote required for approval of a
25 merger by the law of the state or foreign jurisdiction in
26 which the limited partnership is organized and, in the
27 absence of such a specifically applicable law, by all of the
28 partners, notwithstanding a provision to the contrary in the
29 partnership agreement.

30 (d) After a plan of merger is approved and before the
31 merger takes effect, the plan may be amended or aban-
32 doned as provided in the plan.

33 (e) The merger takes effect on the later of:

34 (1) The approval of the plan of merger by all parties
35 to the merger, as provided in subsection (c) of this section;

36 (2) The filing of all documents required by law to be
37 filed as a condition to the effectiveness of the merger; or

38 (3) Any effective date specified in the plan of merger.

§47B-9-6. Effect of merger.

1 (a) When a merger takes effect:

2 (1) The separate existence of every partnership or
3 limited partnership that is a party to the merger, other than
4 the surviving entity, ceases;

5 (2) All property owned by each of the merged part-
6 nerships or limited partnerships vests in the surviving enti-
7 ty;

8 (3) All obligations of every partnership or limited
9 partnership that is a party to the merger become the obli-
10 gations of the surviving entity; and

11 (4) An action or proceeding pending against a part-
12 nership or limited partnership that is a party to the merger
13 may be continued as if the merger had not occurred, or
14 the surviving entity may be substituted as a party to the
15 action or proceeding.

16 (b) The secretary of state of this state is the agent for
17 service of process in an action or proceeding against a
18 surviving foreign partnership or limited partnership to
19 enforce an obligation of a domestic partnership or limited
20 partnership that is a party to a merger. The surviving
21 entity shall promptly notify the secretary of state of the
22 mailing address of its chief executive office and of any
23 change of address. Upon receipt of process, the secretary
24 of state shall mail a copy of the process to the surviving
25 foreign partnership or limited partnership.

26 (c) A partner of the surviving partnership or limited
27 partnership is liable for:

28 (1) All obligations of a party to the merger for which
29 the partner was personally liable before the merger;

30 (2) All other obligations of the surviving entity in-
31 curred before the merger by a party to the merger, but
32 those obligations may be satisfied only out of property of
33 the entity; and

34 (3) All obligations of the surviving entity incurred
35 after the merger takes effect, but those obligations may be
36 satisfied only out of property of the entity if the partner is
37 a limited partner.

38 (d) If the obligations incurred before the merger by a
39 party to the merger are not satisfied out of the property of
40 the surviving partnership or limited partnership, the gener-
41 al partners of that party immediately before the effective
42 date of the merger shall contribute the amount necessary
43 to satisfy that party's obligations to the surviving entity, in
44 the manner provided in section seven, article eight of this
45 chapter or in the limited partnership act of the jurisdiction
46 in which the party was formed, as the case may be, as if the
47 merged party were dissolved.

48 (e) A partner of a party to a merger who does not
49 become a partner of the surviving partnership or limited
50 partnership is dissociated from the entity, of which that
51 partner was a partner, as of the date the merger takes ef-
52 fect. The surviving entity shall cause the partner's interest
53 in the entity to be purchased under section one, article
54 seven of this chapter or another statute specifically appli-
55 cable to that partner's interest with respect to a merger.
56 The surviving entity is bound under section two, article
57 seven of this chapter by an act of a general partner disso-
58 ciated under this subsection, and the partner is liable under
59 section three, article seven of this chapter for transactions
60 entered into by the surviving entity after the merger takes
61 effect.

§47B-9-7. Statement of merger.

1 (a) After a merger, the surviving partnership or limited
2 partnership may file a statement that one or more partner-
3 ships or limited partnerships have merged into the surviv-
4 ing entity.

5 (b) A statement of merger must contain:

6 (1) The name of each partnership or limited partner-
7 ship that is a party to the merger;

8 (2) The name of the surviving entity into which the
9 other partnerships or limited partnership were merged;

10 (3) The street address of the surviving entity's chief
11 executive office and of an office in this state, if any; and

12 (4) Whether the surviving entity is a partnership or a
13 limited partnership.

14 (c) Except as otherwise provided in subsection (d) of
15 this section, for the purposes of section two, article three of
16 this chapter, property of the surviving partnership or limit-
17 ed partnership which before the merger was held in the
18 name of another party to the merger is property held in
19 the name of the surviving entity upon filing a statement of
20 merger.

21 (d) For the purposes of section two, article three of this
22 chapter, real property of the surviving partnership or limit-
23 ed partnership which before the merger was held in the
24 name of another party to the merger is property held in
25 the name of the surviving entity upon recording a certified
26 copy of the statement of merger in the office for record-
27 ing transfers of that real property.

28 (e) A filed and, if appropriate, recorded statement of
29 merger, executed and declared to be accurate pursuant to
30 subsection (c), section five, article one of this chapter,
31 stating the name of a partnership or limited partnership
32 that is a party to the merger in whose name property was
33 held before the merger and the name of the surviving
34 entity, but not containing all of the other information
35 required by subsection (b) of this section, operates with
36 respect to the partnerships or limited partnerships named
37 to the extent provided in subsections (c) and (d) of this
38 section.

§47B-9-8. Nonexclusive.

1 This article is not exclusive. Partnerships or limited
2 partnerships may be converted or merged in any other
3 manner provided by law.

ARTICLE 10. MISCELLANEOUS PROVISIONS.

§47B-10-1. Uniformity of application and construction.

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

§47B-10-2. Short title.

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

§47B-10-3. Severability clause.

1 If any provision of this chapter or its application to
2 any 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 provision
5 or application, and to this end the provisions of this
6 chapter are severable.

§47B-10-4. Applicability.

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

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

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

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

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

§47B-10-5. Savings clause.

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

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

Randy Schoonover
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll B. Abner
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Earl K. Calkins
Speaker of the House of Delegates

The within is approved this the 24th
day of March, 1995.

Gaston Caputo
Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/95

Time 11:50 AM