

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-362
SENATE BILL 297

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT, TO CLARIFY THE LIMIT OF LIABILITY IN PROFESSIONAL ORGANIZATIONS, TO PROVIDE FOR THE REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS, AND TO REQUIRE ANNUAL REPORTS BY LIMITED LIABILITY PARTNERSHIPS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-79 reads as rewritten:

"§ 1-79. **Domestic ~~corporations.~~ corporations, limited partnerships, limited liability companies, and registered limited liability partnerships.**

(a) For the purpose of suing and being sued the residence of a domestic ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is as follows:

- (1) Where the registered or principal office of the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is located, or
- (2) Where the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership maintains a place of business.~~business, or~~
- (3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term 'residence' shall include any place where the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is regularly engaged in carrying on business.

(b) For purposes of this section, the term 'domestic' when applied to an entity means:

- (1) An entity formed under the laws of this State, or
- (2) An entity that (i) is formed under the laws of any jurisdiction other than this State, and (ii) maintains a registered office in this State pursuant to a certificate of authority from the Secretary of State."

Section 2. G.S. 55B-9(b) reads as rewritten:

"(b) Liability. – A shareholder, a director, or an officer of a professional corporation is not individually liable~~liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for the obligations of debts,~~

obligations, and liabilities of, or chargeable to, the professional corporation arising that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the course of the professional corporation's business by another shareholder, director, or officer, or by a representative of the professional corporation not working under the supervision or direction of the first shareholder, director, or officer at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first shareholder, director, or officer was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other shareholder, director, or officer or by the representative. malfeasance committed by another shareholder, director, or officer or by a representative of the professional corporation; provided, however, nothing in this Chapter shall affect the liability of a shareholder, director, or officer of a professional corporation for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. This subsection does not affect the joint and several liability of a shareholder, a director, or an officer of a professional corporation for any taxes owed by the professional corporation under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes."

Section 3. G.S. 57C-2-01(c) reads as rewritten:

"(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a "corporation" or "foreign corporation" shall be treated as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute" shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, ~~or the standards of professional conduct applicable to the rendering of the services.~~ services, or any ~~This Chapter does not relieve individuals of responsibilities, obligations, or the imposition of sanctions imposed under applicable licensing statutes, even if the sanctions are imposed for the conduct of other members of a limited liability company.~~ statutes. A member or manager of a professional limited liability company is not individually ~~liable for debts and obligations of~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company arising that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the course of the professional limited liability company's business by another member or manager or a representative of the professional limited liability company not working under the supervision or direction of the first member or manager at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first member or manager was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other member or manager or representative. by another member, manager, employee, agent, or other representative of the professional limited liability company; provided, however, nothing in this Chapter shall affect the liability of a member or manager of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services."

Section 4. G.S. 59-32 reads as rewritten:

"§ 59-32. Definition of terms.

In this Article: As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

- (1) 'Bankrupt' ~~includes means~~ bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.
- (2) 'Business' ~~includes means~~ every trade, occupation, or profession.
- (3) 'Conveyance' ~~includes means~~ every assignment, lease, mortgage, or encumbrance.
- (4) 'Court' ~~includes means~~ every court and judge having jurisdiction in the case.
- (4a) 'Foreign limited liability partnership' means a partnership that (i) is formed under laws other than the laws of this State, and (ii) has the status of a limited liability partnership or registered limited liability partnership under those laws.
- (5) 'Person' ~~includes means~~ individuals, partnerships, corporations, limited liability companies, and other associations.
- (6) 'Real property' ~~includes means~~ land and any interest or estate in land.
- (7) 'Registered limited liability partnership' means a partnership that is registered under G.S. 59-84.2 and complies with G.S. 59-84.3."

Section 5. G.S. 59-45 reads as rewritten:

"§ 59-45. Nature of partner's liability in ordinary partnerships and in registered limited liability partnerships.

(a) Except as provided by ~~subsection~~ subsections (a1) and (b) of this section, all partners are jointly and severally liable for the acts and obligations of the partnership.

(a1) Except as provided in subsection (b) of this section, a partner in a registered limited liability partnership is not individually liable for debts and obligations of the partnership incurred while it is a registered limited liability partnership solely by reason of being a partner and does not become liable by participating, in whatever capacity, in the management or control of the business of the partnership.

(b) Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A partner in a registered limited liability partnership is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts and obligations of the debts, obligations, and liabilities of, or chargeable to, the registered limited liability partnership arising—that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another partner or by an employee, agent, or other representative of the partnership; provided, however, nothing in this Chapter shall affect the liability of a partner of a professional registered limited liability partnership for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. ~~committed in the course of the partnership business by another partner or representative of the partnership not working under the supervision or direction of the first partner at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first partner was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative.~~

(c) Subsection (b) of this section does not affect any of the following:

(1) The joint and several liability of a partner for debts and obligations of the partnership arising from any cause other than those specified in subsection (b) of this section.

(2) The joint and several liability of a partner for any taxes owed by the partnership under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes.

(3) The liability of partnership assets for partnership debts and obligations.

(d) A partner in a registered limited liability partnership is not a proper party to proceedings by or against a limited liability partnership, except where the object of the proceeding is to enforce a partner's right against or liability to the limited liability partnership.

(e) The liability of partners of a registered limited liability partnership formed and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(f) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a partner of a registered limited liability partnership formed and existing under this Chapter for the debts, obligations, and liabilities of the registered limited liability partnership, this Chapter and the laws of this State shall govern in determining the liability."

Section 6. Chapter 59 of the General Statutes is amended by adding a new Article 3B to read as follows and to include current G.S. 59-84.2 and G.S. 59-84.3 as the first and second sections in Article 3B:

"ARTICLE 3B.

"Registered Limited Liability Partnerships."

Section 7. G.S. 59-84.2 reads as rewritten:

"§ 59-84.2. Registered limited liability partnerships.

(a) To become a registered limited liability partnership, a partnership must file with the Secretary of State an application ~~stating~~ stating:

- (1) ~~the~~ The name of the partnership, partnership.
- (2) ~~the~~ The street address of its principal office, office.
- (3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process.
- (4) The county in which the registered office is located.
- (5) ~~the number of partners, and a~~ A brief statement of the business in which the partnership engages.
- (6) A deferred effective date, if any.
- (7) The fiscal year end of the partnership.

~~A registration as a registered limited liability partnership must be renewed annually.~~

(a1) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(b) An application for registration as a registered limited liability partnership must be executed ~~by a majority in interest of the partners or by one or more partners authorized by a majority in interest of the partners.~~

(c) An application for registration as a registered limited liability partnership ~~or for renewal of a registration~~ must be accompanied by a fee of one hundred ~~twenty-five~~ twenty-five dollars ~~(\$100.00).~~ (\$125.00).

(d) The Secretary of State shall register ~~or renew the registration of~~ a partnership that submits a completed application with the required fee.

(e) A registration is effective ~~for one year after~~ on the later of the date the registration is filed, filed or the date specified in the application for registration, unless it is voluntarily withdrawn before then by filing with the Secretary of State a written withdrawal notice executed by ~~a majority in interest of the partners or by one or more~~

partners authorized by a majority in interest of the partners. of the partners, or is revoked pursuant to G.S. 59-84.4(f).

(f) The Secretary of State may provide forms for applications for registration or renewal of a registration.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal."

Section 8. G.S. 59-84.3 reads as rewritten:

"§ 59-84.3. Name of registered limited liability partnerships.

A registered limited liability partnership's name must contain the words 'registered limited liability partnership' or 'limited liability partnership' or the abbreviation "L.L.P." 'L.L.P.', 'R.L.L.P.', 'LLP' or 'RLLP' as the last words or letters of its name."

Section 9. Article 3B of Chapter 59, as created by Section 6 of this act, is amended by adding a new section to read:

"§ 59-84.4. Annual report for Secretary of State.

(a) Each registered limited liability partnership and each foreign limited liability partnership authorized to transact business in this State shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State, that sets forth all of the following:

- (1) The name of the registered limited liability partnership or foreign limited liability partnership and the state or country under whose law it is formed.
- (2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.
- (3) The street address and telephone number of its principal office.
- (4) A brief description of the nature of its business.
- (5) The fiscal year end of the partnership.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (4) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the registered limited liability partnership or the foreign limited liability partnership.

(c) The annual report shall be delivered to the Secretary of State by the fifteenth day of the fourth month following the close of the registered or foreign limited liability partnership's fiscal year. The annual report must be accompanied by a fee of two hundred dollars (\$200.00).

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting registered or foreign limited liability partnership in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) The Secretary of State may revoke the registration of a registered limited liability partnership or foreign limited liability partnership if the Secretary of State determines that:

- (1) The registered limited liability partnership or foreign limited liability partnership has not paid, within 60 days after they are due, any penalties, fees, or other payments due under this Chapter;
- (2) The registered limited liability partnership or foreign limited liability partnership does not deliver its annual report to the Secretary of State on or before the date it is due;
- (3) The registered limited liability partnership or foreign limited liability partnership has been without a registered agent or registered office in this State for 60 days or more; or
- (4) The registered limited liability partnership or foreign limited liability partnership does not notify the Secretary of State within 60 days of the change, resignation, or discontinuance that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(g) If the Secretary of State determines that one or more grounds exist under subsection (f) of this section for revoking the registration of the registered limited liability partnership or foreign limited liability partnership, the Secretary of State shall mail the registered limited liability partnership or foreign limited liability partnership written notice of that determination. If, within 60 days after the notice is mailed, the registered limited liability partnership or foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall revoke the registration of a registered limited liability partnership or foreign limited liability partnership by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original certificate of revocation and mail a copy to the registered limited liability partnership or foreign limited liability partnership.

(h) A registered limited liability partnership or foreign limited liability partnership whose registration is revoked under this section may apply to the Secretary of State for reinstatement not later than five years after the effective date of the revocation. The procedures for reinstatement and for the appeal of any denial of the registered limited liability partnership or foreign limited liability partnership's

application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

Section 10. Chapter 59 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Foreign Limited Liability Partnerships.

"§ 59-90. Law governing foreign limited liability partnership.

(a) The law of the state or jurisdiction under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign registration by reason of any difference between the law under which the partnership was formed and the law of this State.

(c) A statement of foreign registration does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a registered limited liability partnership.

"§ 59-91. Statement of foreign registration.

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

- (1) The name of the foreign limited liability partnership that satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".
- (2) The street address of the partnership's principal office.
- (3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process, and the county in which the registered office is located.
- (4) A brief statement of the business in which the partnership is engaged.
- (5) A deferred effective date, if any.
- (6) The fiscal year end of the partnership.

The foreign limited liability partnership shall deliver with the completed application a certificate of existence, or a document with similar import, duly authenticated by the secretary of state or other official having custody of the records of registered limited liability partnerships in the state or country under whose law it is registered.

(b) The registered agent of a foreign limited liability partnership for service of process must be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business in this State whose business office is identical with the registered office. The sole duty of the registered agent to the foreign limited

liability partnership is to forward to the foreign limited liability partnership at its last known address any notice, process, or demand that is served on the registered agent.

(c) An application for registration as a foreign limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars (\$125.00).

(d) The Secretary of State shall register a partnership that submits a completed application for registration as a foreign limited liability partnership with the required fee.

(e) The status of a partnership as a foreign limited liability partnership is effective on the later of the date the registration is filed or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).

(f) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal.

(g) An application for registration as a foreign limited liability partnership must be executed by one or more partners.

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

"§ 59-92. Effect of failure to register.

(a) A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State unless it has in effect a registration as a foreign limited liability partnership.

(b) The failure of a foreign limited liability partnership to have in effect a registration as a foreign limited liability partnership does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this State without a registration as a foreign limited liability partnership.

(d) A foreign limited liability partnership failing to register as a foreign limited liability partnership as required by this Article shall be liable to the State for the years or parts thereof during which it transacted business in this State without having registered in an amount equal to all fees and taxes which would have been imposed by law upon the foreign limited liability partnership had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability partnership shall be liable for a civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year or part thereof, it transacts business in this State without having registered. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

"§ 59-93. Activities not constituting transacting business.

(a) Without excluding other activities that may not constitute transacting business in this State, a foreign limited liability partnership shall not be considered to be

transacting business in this State for the purposes of this Article by reason of carrying on in this State any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;
- (2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;
- (3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or appointing and maintaining trustees or depositories with relation to those securities;
- (5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;
- (6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sales, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;
- (7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;
- (8) Transacting business in interstate commerce;
- (9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;
- (10) Selling through independent contractors; and
- (11) Owning, without more, real or personal property.

(b) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

"§ 59-94. Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this Article."

Section 11. G.S. 59-102 reads as rewritten:

"§ 59-102. Definitions.

As used in this Article, unless the context otherwise requires:

- (1) 'Business' means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.

- (1a) 'Certificate of limited partnership' means the certificate referred to in G.S. 59-201, and the certificate as amended.
- (2) 'Conformed copy' shall include a photostatic or other photographic copy of the original document.
- (3) 'Contribution' means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.
- (4) 'Event of withdrawal of a general partner' means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.
- (5) 'Foreign limited partnership' means a partnership formed under the laws of any state, province, country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners.
- (6) 'General partner' means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.
- (7) 'Limited partner' means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.
- (8) 'Limited partnership' and 'domestic limited partnership' mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.
- (9) 'Partner' means a limited or general partner.
- (10) 'Partnership agreement' means any valid ~~agreement, written or oral,~~ agreement of the partners as to the affairs of a limited ~~partnership and partnership,~~ partnership, the conduct of its ~~business.~~ business, and the responsibilities and rights of its partners. The term 'partnership agreement' includes any written or oral agreement, whether or not the agreement is set forth in a document referred to by the partners as a 'partnership agreement', and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.
- (11) 'Partnership interest' means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.
- (12) 'Person' means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 12. G.S. 59-106(a)(5) reads as rewritten:

"(5) ~~Unless contained in a written partnership agreement:~~ A written record that contains:

- a. The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;
- b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
- c. Any right of a partner to receive distribution of property, including cash from the limited partnership; and
- d. Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

The written record required pursuant to this subdivision may be part of a written partnership agreement or may be contained in one or more other documents or records."

Section 13. G.S. 59-107 reads as rewritten:

"§ 59-107. Nature of business.

A limited partnership may be formed for and carry on any lawful business ~~that a partnership without limited partners may carry on.~~ business."

Section 14. G.S. 59-205 reads as rewritten:

"§ 59-205. ~~Amendment or cancellation~~ Execution by judicial act.

If a person ~~required by G.S. 59-204 to execute a certificate of amendment or cancellation~~ fails or refuses to ~~do so,~~ execute a certificate pursuant to G.S. 59-204, any other partner, and any assignee of a partnership interest, person who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office is located to direct the ~~amendment or cancellation.~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper~~ it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order an appropriate person to prepare, and the Secretary of State to record ~~record,~~ an appropriate ~~certificate of amendment or cancellation.~~ certificate."

Section 15. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by subdivision (3a) of this section ~~subsection~~ shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the 'Grantor' index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the 'Grantee' index."

Section 16. G.S. 59-301 reads as rewritten:

"§ 59-301. Admission of additional limited partners.

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner upon the later to occur of:

- (1) The formation of the limited partnership; or
- (2) The time provided for becoming a limited partner pursuant to and upon compliance with the partnership agreement.

(b) After the filing formation of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

- (1) In the case of a person acquiring a partnership interest directly from the limited partnership, at the time provided pursuant to, and upon the compliance with with, the partnership agreement, or, if the partnership agreement does not so provide, upon the written consent of all partners; agreement; and
- (2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power."

Section 17. G.S. 59-302 reads as rewritten:

"§ 59-302. Voting.

~~Subject to G.S. 59-303, the~~ The partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter."

Section 18. G.S. 59-303 reads as rewritten:

"§ 59-303. Liability to third parties.

~~(a) Except as provided in subsection (d), a limited partner is not bound by the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.~~

~~(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:~~

- ~~(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or an officer, director, or shareholder of a corporate general partner;~~
- ~~(2) Consulting with and advising a general partner with respect to the business of the limited partnership;~~
- ~~(3) Acting as surety for the limited partnership;~~
- ~~(4) Proposing, approving or disapproving an amendment to the partnership agreement;~~
- ~~(5) Proposing or voting on one or more of the following matters:~~
 - ~~a. The dissolution and winding up of the limited partnership;~~

- b. ~~The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;~~
- e. ~~The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;~~
- d. ~~A change in the nature of the business; or~~
- e. ~~The addition, removal or substitution of general partners;~~
- (6) ~~Bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to Part 10 of this Article;~~
- (7) ~~Approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership; or~~
- (8) ~~Requesting or attending a meeting of partners.~~

(e) ~~The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.~~

(d) ~~A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~

A limited partner is not liable for the obligations of a limited partnership by reason of being a limited partner and does not become liable for the obligations of a limited partnership by participating in the management or control of the business of the limited partnership."

Section 19. G.S. 59-304 reads as rewritten:

"§ 59-304. Person erroneously believing himself limited partner.

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that ~~he~~ the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

- (1) Causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed; or
- (2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise (i) ~~before the person withdraws from the enterprise, or~~ (ii) ~~before the person gives notice to the partnership of his withdrawal from future equity participation, but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.~~ in the case in which:

- (1) The third party actually believed in good faith that the person was a general partner at the time of the transaction; and
- (2) The third party transacted business with the enterprise before either:

- a. An appropriate certificate has been filed pursuant to subsection (a) of this section to reflect that the person is not a general partner; or
- b. The person has given notice to the partnership of withdrawal from future equity participation and before the withdrawal was effective."

Section 20. G.S. 59-305 reads as rewritten:

"§ 59-305. Information.

Each limited partner has the right to:

- (1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and
- (2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable."

Section 21. G.S. 59-402(4) reads as rewritten:

- "(4) Unless otherwise provided in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ the general partner's properties;"

Section 22. G.S. 59-402(5) reads as rewritten:

- "(5) Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without ~~his~~ the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;"

Section 23. G.S. 59-502(a) reads as rewritten:

"(a) Except as provided in the ~~agreement of limited partnership, partnership agreement,~~ a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if ~~he the partner~~ is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, ~~he the partner~~ is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value of the stated contribution that has not been made. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 24. G.S. 59-503 reads as rewritten:

"§ 59-503. Sharing income, gain, loss, deduction or credit.

~~Allocation of the income, Income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. To the extent the partnership agreement does not provide for the allocation of items of income, gain, loss, deduction, or credit, then those items shall be allocated on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106.~~"

Section 25. G.S. 59-504 reads as rewritten:

"§ 59-504. Sharing of distributions.

~~Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. To the extent the partnership agreement does not provide for the sharing of distributions among the partners, distributions shall be made among the partners on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106.~~"

Section 26. G.S. 59-602 reads as rewritten:

"§ 59-602. Withdrawal of general partner.

~~After filing of the original certificate of limited partnership, partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited~~

partnership may recover from the withdrawing general partner, in addition to its other remedies, ~~and any~~ damages for breach of the partnership ~~agreement.~~ agreement and may offset the damages against the amount otherwise distributable or payable to the partner."

Section 27. G.S. 59-603 reads as rewritten:

"§ 59-603. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in and in accordance with the partnership agreement. ~~agreement, including any amendment or addendum to the partnership agreement agreed upon by the partners unanimously or in accordance with the terms of the agreement and made in connection with any permitted withdrawal.~~ If the partnership agreement does not specify in writing the time or the events upon the happening of which a limited partner may ~~withdraw~~ withdraw, a limited partner may not withdraw prior to the ~~or a definite~~ time for the dissolution and winding up of the limited partnership, ~~a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership at its registered office in this State.~~ partnership."

Section 28. G.S. 59-604 reads as rewritten:

"§ 59-604. Distribution upon withdrawal.

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which ~~he~~ the partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, ~~he~~ the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ the partner's partnership interest in the limited partnership as of the date of ~~withdrawal.~~ withdrawal, based upon the partner's right to share in distributions from the limited partnership."

Section 29. G.S. 59-606 reads as rewritten:

"§ 59-606. Right to distribution.

Subject to the other provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, ~~he~~ the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution."

Section 30. G.S. 59-608(c) reads as rewritten:

"(c) A partner receives a return of ~~his~~ the partner's contribution to the extent that a distribution to ~~him~~ the partner reduces ~~his~~ the partner's share of the fair value of the net assets of the limited partnership below the agreed value of ~~his~~ the partner's contribution which has not been distributed to ~~him~~ the partner. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 31. G.S. 59-702 reads as rewritten:

"§ 59-702. Assignment of partnership interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise

any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a ~~limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general partner ceases to be a general partner and to have the power to exercise any rights and powers of a partner upon assignment of all his~~ of the partner's partnership interest. Except as provided in the partnership agreement, neither the pledge or granting of a security interest in any or all of the partnership interest of a partner nor the pledge or granting of a lien or other encumbrance against any or all of the partnership interest of a partner shall cause the partner to cease to be a partner or cease to have the power to exercise any rights or powers of a partner."

Section 32. G.S. 59-704(b) reads as rewritten:

"(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Article. An assignee who becomes a limited partner also is liable for the obligations of ~~his~~ the assignee's assignor to make and return contributions as provided in ~~Part~~ Parts 5 and 6 of this Article. However, the assignee is not obligated for liabilities that (i) are unknown to the assignee at the time he ~~the assignee~~ became a limited partner and which (ii) could not be ascertained from the written provisions of the partnership agreement."

Section 33. G.S. 59-801 reads as rewritten:

"§ 59-801. Nonjudicial dissolution.

(a) A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) At the time specified in the certificate of limited partnership or upon the happening of events specified in writing in the partnership agreement;
- (2) Written consent of all partners;
- (3) An event of withdrawal of a general partner ~~unless at~~ unless:

a. At the time there is at least one other general partner and the written provisions of the partnership agreement permit partner, in which case, unless otherwise provided in a written partnership agreement or agreed upon by all remaining partners, (i) the limited partnership is not dissolved, (ii) the limited partnership shall not be wound up, and (iii) the business of the limited partnership to be carried on shall be continued by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within partners; or

b. Within 90 days after the withdrawal, all remaining partners partners, or a lesser number or portion of the partners provided in the partnership agreement, agree in writing to continue the

business of the limited partnership and to the appointment of one or more additional general partners if necessary or ~~desired~~; ~~or desired~~, in which case the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal;

(3a) Ninety days after the withdrawal of the limited partnership's last limited partner, unless the limited partnership admits at least one limited partner before the end of the 90 days; or

(4) Entry of a decree of judicial dissolution under G.S. 59-802.

(b) The causes of dissolution of a limited partnership shall be governed solely by this Article. Article 2 of this Chapter, which governs the causes of dissolution of a partnership without limited partners, does not apply and shall not govern the causes of dissolution of a limited partnership."

Section 34. G.S. 59-901 reads as rewritten:

§ 59-901. Law governing.

Subject to the Constitution of this State, ~~(1)~~ (i) the laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its ~~limited~~ partners, and ~~(2)~~ (ii) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State."

Section 35. G.S. 59-903 reads as rewritten:

"§ 59-903. Issuance of registration.

~~(a)~~ If the Secretary of State finds that an application satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

- (1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;
- (2) File in the office of the Secretary of State the application;
- (3) Issue a certificate of authority to transact business in this State to which the Secretary shall affix the conformed copy of the application; and
- (4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

Section 36. G.S. 59-907(e) reads as rewritten:

"(e) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without registration."

Section 37. G.S. 59-1002 reads as rewritten:

"§ 59-1002. Proper plaintiff.

In a derivative action, the plaintiff must be a partner at the time of bringing the action and ~~(1)~~ (i) must have been a partner at the time of the transaction of which he complains that is the subject of the complaint or ~~(2)~~ ~~his~~ (ii) the plaintiff's status as a partner had ~~must have~~ devolved upon ~~him~~ the partner by operation of law or pursuant to

the terms of the partnership agreement from a person who was a partner at the time of the transaction."

Section 38. Sections 2, 3, and 5 become effective October 1, 1999, and apply to liabilities arising on or after that date. Section 4 becomes effective January 1, 2000. Sections 6, 7, and 8 become effective January 1, 2000, and apply to registered limited liability partnerships existing on or after that date. Section 9 becomes effective January 1, 2000, and applies to registered limited liability partnerships and foreign limited liability partnerships whose fiscal year ends on or after that date. Section 10 becomes effective January 1, 2000, and applies to foreign limited liability partnerships transacting business in this State on or after that date, except that any foreign limited liability partnership that, as of that effective date, was already registered with the Secretary of State as a registered limited liability partnership shall not be required to register anew as a foreign limited liability partnership under G.S. 59-91. Section 27 becomes effective October 1, 1999, and applies to (i) any limited partnership formed before that date, only if validly adopted in writing by its partners or otherwise as a part of its partnership agreement, and (ii) all limited partnerships formed on or after that date. The remainder of this act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:14 p.m. this 4th day of August, 1999