

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S2/10/97 S2/12/97 S2/28/97

A Bill

SENATE BILL 273

4
5 By: Senator Mahony
6 By: Representative Courtway

For An Act To Be Entitled

10 "AN ACT TO AMEND THE UNIFORM PARTNERSHIP ACT AND THE
11 REVISED LIMITED PARTNERSHIP ACT OF 1991 TO ALLOW LIMITED
12 LIABILITY PARTNERSHIPS AND LIMITED LIABILITY LIMITED
13 PARTNERSHIPS; AND FOR OTHER PURPOSES."

Subtitle

14
15 "TO ALLOW LIMITED LIABILITY PARTNERSHIPS
16 AND LIMITED LIABILITY LIMITED
17 PARTNERSHIPS."
18

19
20
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22
23 SECTION 1. Subsection (c) of Arkansas Code §4-32-1201 is amended to
24 read as follows:

25 "(c) As used in this subchapter, business entity or business entities
26 shall mean domestic and foreign limited liability companies, ~~and corporations,~~
27 general partnerships, limited partnerships, registered limited liability
28 partnerships and registered limited liability limited partnerships."

29
30 SECTION 2. Arkansas Code §4-42-102 is amended by adding the following
31 definition to the end thereof to read as follows:

32 "§4-42-102. Definition of terms.

33 In this chapter:

34 Court includes every court and judge having jurisdiction in the case;

35 Business includes every trade, occupation, or profession;

36 Person includes individuals, partnerships, corporations, and other

1 associations;

2 Bankrupt includes bankrupt under the Federal Bankruptcy Act or
3 insolvent under any state insolvent act;

4 Conveyance includes every assignment, lease, mortgage, or encumbrance;

5 Foreign registered limited liability partnership means a registered
6 limited liability partnership or limited liability partnership formed pursuant
7 to an agreement governed by the laws of another jurisdiction and registered
8 under the laws of such jurisdiction.

9 Professional Service means any type of professional service which may
10 be legally performed only pursuant to a license or other legally mandated
11 personal authorization. For example: the personal service rendered by
12 certified public accountants, architects, engineers, dentists, doctors and
13 attorneys at law--;

14 Real property includes land and any interest or estate in land;

15 Registered limited liability partnership means a partnership formed
16 pursuant to an agreement governed by the laws of this state and registered
17 under §4-42-703 of this chapter."

18

19 SECTION 3. Subsection (1) of Arkansas Code §4-42-201 is amended to read
20 as follows:

21 "(1) A partnership is an association of two (2) or more persons to
22 carry on as co-owners a business for profit and includes for all purposes of
23 the laws of this state, including the performance of professional services, a
24 registered limited liability partnership."

25

26 SECTION 4. Arkansas Code §4-42-307 is amended to read as follows:

27 "§4-42-307. Nature of partner's liability.

28 (1) Except as provided in subsection (2) of this section, ~~A~~all partners
29 are liable:

30 (a) Jointly and severally for everything chargeable to the
31 partnership under §§4-42-305 and 4-42-306;

32 (b) Jointly for all other debts and obligations of the
33 partnership, but any partner may enter into a separate obligation to perform a
34 partnership contract.

35 (2) Subject to subsection (3) of this section a partner in a registered
36 limited liability partnership is not liable directly or indirectly (including

1 by way of indemnification, contribution, assessment or otherwise) for debts,
2 obligations, and liabilities of or chargeable to the partnership arising,
3 whether in tort, contract or otherwise, from errors, omissions, negligence,
4 incompetence, or misconduct committed in the course of the partnership
5 business by another partner or by an employee, agent or representative of the
6 partnership.

7 (3) Subsection (2) of this section shall not affect the liability of a
8 partner in a registered limited liability partnership for his own errors,
9 omissions, negligence, incompetence, or misconduct and that of any person
10 under his direct supervision and control.

11 (4) Subsection (2) does not affect the liability of partnership assets
12 for partnership debts and obligations.

13 (5) No partnership organized under this chapter may render professional
14 service within this state except through its partners, employees of its
15 partners, employees and agents who are duly licensed or otherwise legally
16 authorized to render those professional services. However, this provision
17 shall not be interpreted to preclude clerks, secretaries, bookkeepers,
18 technicians and other assistants who are not usually and ordinarily considered
19 by custom and practice to be rendering professional service to the public for
20 which a license or other legal authorization is required from acting as
21 employees or agents of such partnership."

22

23 SECTION 5. Arkansas Code §4-42-401 is amended to read as follows:

24 "The rights and duties of the partners in relation to the partnership
25 shall be determined, subject to any agreements between them, by the following
26 rules:

27 (a) Each partner shall be repaid his contributions, whether by way of
28 capital or advances to the partnership property, and share equally in the
29 profits and surplus remaining after all liabilities, including those to
30 partners, are satisfied and except as provided in §4-42-307(2), each partner
31 must contribute toward the losses, whether of capital or otherwise, sustained
32 by the partnership according to his share in the profits;

33 (b) The partnership must indemnify every partner in respect of payments
34 made and personal liabilities reasonably incurred by him in the ordinary and
35 proper conduct of its business or for the preservation of its business or
36 property;

1 (c) A partner, who in aid of the partnership makes any payment or
2 advance beyond the amount of capital which he agreed to contribute, shall be
3 paid interest from the date of the payment or advance;

4 (d) A partner shall receive interest on the capital contributed by him
5 only from the date when repayment should be made;

6 (e) All partners have equal right in the management and conduct of the
7 partnership business;

8 (f) No partner is entitled to remuneration for acting in the
9 partnership business, except that a surviving partner is entitled to
10 reasonable compensation for his services in winding up the partnership
11 affairs;

12 (g) No person can become a member of a partnership without the consent
13 of all the partners;

14 (h) Any difference arising as to ordinary matters connected with the
15 partnership business may be decided by a majority of the partners, but no act
16 in contravention of any agreement between the partners may be done rightfully
17 without the consent of all the partners."
18

19 SECTION 6. Arkansas Code §4-42-606 is amended to read as follows:

20 "§4-42-606. Right of partner to contribution from copartners after
21 dissolution.

22 Where the dissolution is caused by the act, death, or bankruptcy of a
23 partner, each partner is liable to his copartners for his share of any
24 liability created by any partner acting for the partnership as if the
25 partnership had not been dissolved unless:

26 (a) The dissolution being by act of any partner, the partner acting for
27 the partnership had knowledge of the dissolution; ~~or~~

28 (b) The dissolution being by the death or bankruptcy of a partner, the
29 partner acting for the partnership had knowledge or notice of the death or
30 bankruptcy; or

31 (c) The liability is for a debt or obligation for which the partner is
32 not liable as provided in §4-42-307(2)."
33

34 SECTION 7. Subsection (4) of Arkansas Code §4-42-608 is amended to read
35 as follows:

36 "(4) The individual property of a deceased partner shall be liable for

1 ~~all those~~ obligations of the partnership incurred while he was a partner and
2 for which he was liable under §4-42-307 but subject to the prior payment of
3 his separate debts."

4

5 SECTION 8. Arkansas Code §4-42-612 is amended to read as follows:

6 "§4-42-612. Rules for distribution.

7 In settling accounts between the partners after dissolution, the
8 following rules shall be observed, subject to any agreement to the contrary:

9 (a) The assets of the partnership are:

10 (I) The partnership property;

11 (II) The contributions of the partners ~~necessary for the payment~~
12 ~~of all the liabilities~~ specified in clause (b) of this paragraph;

13 (b) The liabilities of the partnership shall rank in order of payment,
14 as follows:

15 (I) Those owing to creditors other than partners;

16 (II) Those owing to partners other than for capital and profits;

17 (III) Those owing to partners in respect to capital;

18 (IV) Those owing to partners in respect of profits;

19 (c) The assets shall be applied in the order of their declaration in
20 clause (a) of this paragraph to the satisfaction of the liabilities;

21 (d) Except as provided in §4-42-307(2):

22 (I) The partners shall contribute, as provided by §4-42-401(a),
23 the amount necessary to satisfy the liabilities; but if and

24 (II) If any, but not all, of the partners are insolvent or not,
25 being subject to process, refuse to contribute, the other partners shall
26 contribute their share of the liabilities, and, in the relative proportions in
27 which they share the profits, the additional amount necessary to pay the
28 liabilities;

29 (e) An assignee for the benefit of creditors or any person appointed by
30 the court shall have the right to enforce the contributions specified in
31 clause (d) of this paragraph;

32 (f) Any partner or his legal representative shall have the right to
33 enforce the contributions specified in clause (d) of this paragraph, to the
34 extent of the amount which he has paid in excess of his share of the
35 liability;

36 (g) The individual property of a deceased partner shall be liable for

1 the contributions specified in clause (d) of this paragraph;

2 (h) When partnership property and the individual properties of the
3 partners are in possession of a court for distribution, partnership creditors
4 shall have priority on partnership property and separate creditors on
5 individual property, saving the rights of lien or secured creditors as
6 heretofore;

7 (i) Where a partner has become bankrupt or his estate is insolvent the
8 claims against his separate property shall rank in the following order:

9 (I) Those owing to separate creditors;

10 (II) Those owing to partnership creditors;

11 (III) Those owing to partners by way of contribution."
12

13 SECTION 9. Subchapter 7 of Chapter 42 of Title 4 of the Arkansas Code
14 is amended by adding the following new sections to the end thereof:

15 "4-42-703. Registered Limited Liability Partnerships.

16 (1) To become and continue as a registered limited liability
17 partnership, a partnership shall file with the Secretary of State an
18 application stating the name of the partnership; the address of its principal
19 office; if the partnerships principal office is not located in this state,
20 the address of a registered office and the name and address of a registered
21 agent for service of process in this state, which the partnership shall be
22 required to maintain; a brief statement of the business in which the
23 partnership engages; and that the partnership thereby applies for status as a
24 registered limited liability partnership.

25 (2) The application shall be executed by one or more partners
26 authorized to execute an application.

27 (3) The application shall be accompanied by a filing fee of fifty
28 dollars (\$50).

29 (4) The Secretary of State shall register as a registered limited
30 liability partnership any partnership that submits a completed application
31 with the required filing fee.

32 (5) Registration is effective after the date an application is filed
33 unless it is voluntarily withdrawn by filing with the Secretary of State a
34 written withdrawal notice executed by one or more partners authorized to
35 execute a withdrawal notice.

36 (6) An amended filing with the Secretary of State shall be required in

1 the event a registered limited liability partnership changes its name, the
2 address of its principal office, or the name and address of the registered
3 agent for service of process in this state. In the event the aforementioned
4 requirements are not complied with, service of process may be made by serving
5 the Secretary of State in the name of the partnership in its most recent
6 filing or in the name under which it is currently transacting business if
7 there is no filing with that name.

8 (1) A partnership continues as a registered limited liability
9 partnership if there has been substantial compliance with the requirements of
10 this chapter. The status of a partnership as a registered limited liability
11 partnership, and the liability of the partners thereof, shall not be affected
12 by:

13 (a) Errors in the information stated in an application under
14 subsection (1) of this section or a notice under subsection (5) of this
15 section,

16 (b) Changes after the filing of such an application or notice in
17 the information stated in the application or notice, or

18 (c) Failure to file with the Secretary of State the information
19 required under subsection (6) of this section.

20 (1) A partnership that registers as a registered limited
21 liability partnership shall not be deemed to have dissolved as a result
22 thereof and is for all purposes the same partnership that existed before the
23 registration and continues to be a partnership under the laws of this state.
24 If a registered limited liability partnership dissolves, a partnership which
25 is a successor to such registered limited liability partnership and which
26 intends to be a registered limited liability partnership shall not be required
27 to file a new application and shall be deemed to have filed any documents
28 required or permitted under this chapter which were filed by the predecessor
29 partnership.

30 (9) Any registered limited liability partnership formed pursuant to an
31 agreement governed by this chapter shall be exempt from the filing
32 requirements of §§ 4-70-201 to 206.

33 (10) The Secretary of State may provide forms for application under
34 subsection (1) of this section.

35 (11) A suit may be brought by or against a registered limited liability
36 partnership in its own name.

1

2 4-42-704. Name of Registered Limited Liability Partnerships.

3 The name of a registered limited liability partnership shall contain the
4 words Registered Limited Liability Partnership or the abbreviations L.L.P.
5 or LLP as the last words or letters of its name, and the word Limited may be
6 abbreviated as Ltd.

7

8 4-42-705. Applicability of Chapter to Foreign and Interstate Commerce.

9 (1) A partnership, including a registered limited liability
10 partnership, formed and existing pursuant to an agreement governed by this
11 chapter, may conduct its business, carry on its operations, and have and
12 exercise the powers granted by this chapter in any state, territory, district,
13 or possession of the United States or in any foreign country.

14 (2) It is the intent of the legislature that the legal existence of
15 registered limited liability partnerships formed and existing pursuant to an
16 agreement governed by this chapter shall be recognized outside the boundaries
17 of this state and that the laws of this state governing such registered
18 limited liability partnerships transacting business outside this state be
19 granted the protection of full faith and credit under the Constitution of the
20 United States.

21 (3) The internal affairs of a partnership, including registered limited
22 liability partnerships, formed and existing pursuant to an agreement governed
23 by this chapter, including the liability of partners for debts, obligations,
24 and liabilities of or chargeable to the partnership, shall be subject to and
25 governed by the laws of this state.

26 (4) Before transacting business in this state, a foreign registered
27 limited liability partnership shall file a notice with the Secretary of State,
28 on such forms as the Secretary shall provide, stating: the name of the
29 partnership; the jurisdiction the laws of which govern its partnership
30 agreement and under which it is registered as a limited liability partnership;
31 the address of its principal office; if the partnerships principal office is
32 not located in this state, the address of a registered office and the name and
33 address of a registered agent for service of process in this state; a brief
34 statement of the business in which the partnership engages; any other
35 information that the partnership determines to include; and a statement that
36 the partnership is a registered limited liability partnership. Such notice

1 shall be accompanied by a fee of three hundred dollars (\$300). Such notice
2 shall be effective until withdrawn or cancelled. The filing of such notice
3 with the Secretary of State shall make it unnecessary to file any other
4 documents under §§ 4-70-201 to 206.

5 (5) A foreign registered limited liability partnership shall file an
6 amended notice within ninety (90) days of a change in its name or registered
7 office, or in the name or address of the registered agent. Such amended
8 notice shall be accompanied by a fee of fifty dollars (\$50).

9 (6) The failure of a foreign registered limited liability partnership
10 to file a notice or to appoint and maintain a registered agent in this state
11 shall not affect the liability of the partners or impair the validity of any
12 contract or act of the foreign registered limited liability partnership and
13 shall not prevent the foreign registered limited liability partnership from
14 defending any action or proceeding in any court of this state, but the foreign
15 registered limited liability partnership shall not maintain any action or
16 proceeding in any court of this state until it has filed such notice. A
17 foreign limited liability partnership, by transacting business in this state
18 without filing a notice, appoints the Secretary of State as its agent for
19 service of process with respect to causes of action arising out of the
20 transaction of business in this state.

21 (7) It is the policy of this state that the internal affairs of foreign
22 registered limited liability partnerships, including the liability of partners
23 for debts, obligations, and liabilities of or chargeable to a foreign
24 registered limited liability partnership or another partner or partners, shall
25 be subject to and governed by the laws of the jurisdiction pursuant to the
26 laws of which the foreign registered limited liability partnership is
27 governed.

28 (8) The name of a foreign registered limited liability partnership
29 doing business in this state shall contain the words Registered Limited
30 Liability Partnership or the abbreviation L.L.P. or LLP, or such other
31 similar words or abbreviation as may be required or authorized by the laws of
32 the state where the partnership is registered, as the last words or letters of
33 its name.

34
35 4-42-706. Limited Partnerships as Registered Limited Liability Limited
36 Partnerships.

1 A domestic limited partnership may become a registered limited liability
2 limited partnership by complying with the applicable provisions of the
3 Arkansas Revised Limited Partnership Act of 1991, §§ 4-43-101 et seq."
4

5 SECTION 10. Arkansas Code §4-43-101 is amended to read as follows:

6 "§4-43-101. Definitions.

7 As used in this chapter, unless the context otherwise requires:

8 (1) Certificate of limited partnership means the certificate referred
9 to in §4-43-201, and the certificate as amended or restated;

10 (2) Contribution means any cash, property, services rendered, or a
11 promissory note or other binding obligation to contribute cash or property or
12 to perform services which a partner contributes to a limited partnership in
13 his capacity as a partner;

14 (3) Event of withdrawal of a general partner means an event that
15 causes a person to cease to be a general partner as provided in §4-43-402;

16 (4) Foreign limited partnership means a partnership formed under the
17 laws of any state other than this state and having as partners one (1) or more
18 general partners and one (1) or more limited partners;

19 (5) General partner means a person who has been admitted to a limited
20 partnership as a general partner in accordance with the partnership agreement
21 and named in the certificate of limited partnership as a general partner;

22 (6) Limited partner means a person who has been admitted to a limited
23 partnership as a limited partner in accordance with the partnership agreement;

24 (7) Limited partnership and domestic limited partnership mean a
25 partnership formed by two (2) or more persons under the laws of this state and
26 having one (1) or more general partners and one (1) or more limited partners;

27 (8) Partner means a limited or general partner;

28 (9) Partnership agreement means any agreement, written or oral, of the
29 partners as to the affairs of a limited partnership and the conduct of its
30 business;

31 (10) Partnership interest means a partner's share of the profits and
32 losses of a limited partnership and the right to receive distributions of
33 partnership assets;

34 (11) Person means a natural person, partnership, limited partnership
35 (domestic or foreign), trust, estate, association, or corporation;

36 (12) State means a state, territory, or possession of the United

1 States, the District of Columbia, or the Commonwealth of Puerto Rico.

2 (13) Registered limited liability limited partnership means a
3 partnership formed pursuant to the laws of this state and registered pursuant
4 to §4-43-1110 and § 4-42-703."

5

6 SECTION 11. Subchapter 11 of Chapter 43 of Title 4 of the Arkansas Code
7 is amended by adding a new section to read as follows:

8 "4-43-1110. Limited partnerships as registered limited liability
9 limited partnerships.

10 (1) To become and continue as a registered limited liability limited
11 partnership, a limited partnership shall, in addition to complying with the
12 requirements of this chapter:

13 (a) File an application as provided in § 4-42-703 of the Arkansas
14 Uniform Partnership Act, as permitted by the limited partnerships partnership
15 agreement or, if the limited partnerships partnership agreement does not
16 provide for the limited partnerships becoming a registered limited liability
17 limited partnership, with the approval (i) by all general partners, and (ii)
18 by the limited partners or, if there is more than one class or group of
19 limited partners, by each class or group of limited partners, and in either
20 case, by limited partners who own more than fifty percent (50%) of the then
21 current percentage or other interest in the profits of the limited partnership
22 owned by all of the limited partners or by the limited partners in each class
23 or group, as appropriate; and

24 (b) Have as the last words or letters of its name the words
25 Registered Limited Liability Limited Partnership, or the abbreviation
26 L.L.L.P. or LLLP, and the word Limited may be abbreviated as Ltd.

27 (2) In applying §4-42-703 of the Arkansas Uniform Partnership Act to a
28 limited partnership:

29 (a) An application to become a registered limited liability
30 limited partnership, or a withdrawal notice, shall be executed by at least one
31 general partner of the limited partnership;

32 (b) All references to partners mean general partners only; and

33 (c) With respect to the initial filing of a certificate of
34 limited partnership by a limited partnership which also files an application
35 as provided in § 4-42-703 to become a registered limited liability limited
36 partnership, there shall only be one filing fee, which shall equal the greater

1 of the filing fee under this chapter or the filing fee provided in § 4-42-703.

2 (3) If a limited partnership is a registered limited liability limited
3 partnership, its partners who are liable for the debts, liabilities and other
4 obligations of the limited partnership shall have the limitation on liability
5 afforded to partners of registered limited liability partnerships under §§ 4-
6 42-307 and 4-42-310 of the Arkansas Uniform Partnership Act."

7

8 SECTION 12. Arkansas Code §4-70-201 is amended to read as follows:

9 "§4-70-201. Applicability of subchapter.

10 (a) This subchapter shall not apply to any limited partnership which
11 has filed its certificate of limited partnership with the Secretary of State
12 pursuant to §4-44-102 [Repealed].

13 (b) This subchapter shall not apply to any domestic or foreign
14 corporation lawfully doing business in this state.

15 (c) This subchapter shall not apply to any limited partnership which
16 has filed its certificate of limited partnership with the Secretary of State
17 pursuant to §4-43-201.

18 (d) This subchapter shall not apply to any limited liability company
19 which has filed its articles of organization with the Secretary of State
20 pursuant to §4-32-202.

21 (e) This subchapter shall not apply to any registered limited liability
22 partnership which has filed its application with the Secretary of State
23 pursuant to § 4-42-703."

24

25 SECTION 13. All provisions of this act of a general and permanent
26 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
27 Code Revision Commission shall incorporate the same in the Code.

28

29 SECTION 14. If any provision of this act or the application thereof to
30 any person or circumstance is held invalid, such invalidity shall not affect
31 other provisions or applications of the act which can be given effect without
32 the invalid provision or application, and to this end the provisions of this
33 act are declared to be severable.

34

35 SECTION 15. All laws and parts of laws in conflict with this act are
36 hereby repealed.

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SECTION 16. Emergency. It is hereby found and determined by the General Assembly of the State of Arkansas that the general and limited partners statues need amending in order to be consistent with current trends. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

/s/Mahony et al