

Amendment No. 397

Senate Amendment to Senate Bill No. 199

(BDR 7-358)

Proposed by: Committee on Judiciary**Amendment Box:****Resolves Conflicts with:** N/A**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____
Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____

Amend section 1, page 3, line 2, by deleting:

“2 to 78,” and inserting:

“1.1 to 65,”.

Amend the bill as a whole by adding new sections designated sections 1.1 through 1.9, following section 1, to read as follows:

“Sec. 1.1. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 1.2 to 1.8, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 1.2. *“Business” includes every business, trade and occupation.*

Sec. 1.3. *“Professional service” means any type of personal service that may legally be performed only pursuant to a license or certificate of registration.*

BAW

Date: 4/19/2005

S.B. No. 199—Adopts Uniform Partnership Act of 1997 and Uniform Limited Partnership Act of 2001.



Sec. 1.4. *“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

Sec. 1.5. *“Sign” means to affix a signature to a record.*

Sec. 1.6. *“Signature” means a name, word, symbol or mark executed or otherwise adopted, or a record encrypted or similarly processed in whole or in part, by a person with the present intent to identify himself and adopt or accept a record. The term includes, without limitation, an electronic signature as defined in NRS 719.100.*

Sec. 1.7. *“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.*

Sec. 1.8. *“Street address” of a resident agent means the actual physical location in this State at which a resident agent is available for service of process.*

Sec. 1.9. *The provisions of NRS 87.010 to 87.430, inclusive, apply to a partnership:*

1. Which was formed before July 1, 2006, and which does not voluntarily elect to be governed by the provisions of sections 2 to 65, inclusive, of this act; or

2. Which is formed on or after July 1, 2006, and which voluntarily elects to be governed by the provisions of NRS 87.010 to 87.430, inclusive.”.

Amend sec. 2, page 3, line 4, by deleting *“This chapter”* and inserting:
“Sections 2 to 65, inclusive, of this act”.

Amend sec. 3, page 3, line 6, by deleting *“this chapter,”* and inserting:
“sections 2 to 65, inclusive, of this act,”.

Amend the bill as a whole by deleting sec. 4 and inserting:

“**Sec. 4.** (Deleted by amendment.)”.

Amend the bill as a whole by deleting sec. 7 and inserting:

“**Sec. 7.** (Deleted by amendment.)”.

Amend the bill as a whole by deleting sec. 13 and inserting:

“**Sec. 13.** (Deleted by amendment.)”.

Amend the bill as a whole by deleting sec. 15 and inserting:

“**Sec. 15.** (Deleted by amendment.)”.

Amend sec. 16, page 4, lines 40 and 41, by deleting “*this chapter*” and inserting:

“*sections 2 to 65, inclusive, of this act*”.

Amend the bill as a whole by deleting sections 17 through 19 and inserting:

“**Secs. 17-19.** (Deleted by amendment.)”.

Amend sec. 20, page 5, line 16, after “*act*,” by inserting “*or*”.

Amend sec. 20, page 5, by deleting lines 17 through 19 and inserting:

“**5.** *An amendment or cancellation of any of the statements set forth in subsections 1 to 4, inclusive.*”.

Amend the bill as a whole by deleting sec. 21 and inserting:

“**Sec. 21.** (Deleted by amendment.)”.

Amend the bill as a whole by adding a new section designated sec. 23.5, following sec. 23, to read as follows:

“**Sec. 23.5.** *The provisions of sections 2 to 65, inclusive, of this act apply to a partnership:*

1. Which was formed before July 1, 2006; or

2. Which is formed on or after July 1, 2006,

↪ *and which voluntarily elects to be governed by the provisions of sections 2 to 65, inclusive, of this act.*”.

Amend sec. 24, page 6, lines 19 and 20, by deleting:

“this chapter governs” and inserting:

“sections 2 to 65, inclusive, of this act, govern”.

Amend sec. 24, page 7, by deleting lines 9 and 10 and inserting:

“partnership pursuant to NRS 87.560; or

(j) Restrict rights of third parties pursuant to sections 2 to 65, inclusive, of this act.”.

Amend sec. 25, page 7, by deleting lines 11 through 13 and inserting:

“Sec. 25. 1. Unless displaced by particular provisions of sections 2 to 65, inclusive, of this act, the principles of law and equity supplement the provisions of sections 2 to 65, inclusive, of this act.

2. If an obligation to pay interest arises pursuant to sections 2 to 65, inclusive, of this act”.

Amend sec. 26, page 7, lines 25, 28 and 31, by deleting *“this chapter.”* and inserting:

“sections 2 to 65, inclusive, of this act.”.

Amend sec. 26, page 7, line 35, by deleting *“this chapter”* and inserting:

“sections 2 to 65, inclusive, of this act”.

Amend sec. 27, page 8, by deleting lines 1 through 17 and inserting:

“Sec. 27. Except as otherwise provided in NRS 87.560, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.”.

Amend sec. 28, page 8, line 18, by deleting *“this chapter”* and inserting:

“sections 2 to 65, inclusive, of this act”.

Amend sec. 30, page 8, lines 29 and 30, by deleting *“this chapter,”* and inserting:

“sections 2 to 65, inclusive, of this act,”.

Amend sec. 30, page 8, line 31, by deleting *“this chapter.”* and inserting:

“sections 2 to 65, inclusive, of this act.”.

Amend sec. 38, page 13, lines 11 and 12, by deleting:

“vote required to become a registered limited-liability partnership” and inserting:

“filing of a certificate of registration”.

Amend sec. 43, page 16, line 7, by deleting *“this chapter;”* and inserting:

“sections 2 to 65, inclusive, of this act;”.

Amend sec. 44, page 16, line 34, by deleting *“this chapter”* and inserting:

“sections 2 to 65, inclusive, of this act”.

Amend sec. 44, page 16, lines 37 and 38, by deleting *“this chapter”* and inserting:

“sections 2 to 65, inclusive, of this act”.

Amend sec. 45, page 17, line 13, by deleting *“this chapter,”* and inserting:

“sections 2 to 65, inclusive, of this act,”.

Amend sec. 50, page 19, line 14, by deleting *“This chapter”* and inserting:

“Sections 2 to 65, inclusive, of this act”.

Amend sec. 55, page 23, by deleting lines 33 and 34 and inserting:

“business, the partnership is bound by an act of the”.

Amend sec. 56, page 24, lines 10 through 12, by deleting:

“or a surviving partnership under sections 66 to 73, inclusive, of this act,”.

Amend the bill as a whole by deleting sections 66 through 207 and the leadlines of repealed sections and adding new sections designated sections 66 through 79, following sec. 65, to read as follows:

Sec. 66. NRS 87.010 is hereby amended to read as follows:

87.010 ~~[This chapter]~~ *NRS 87.010 to 87.430, inclusive, and section 1.9 of this act* may be cited as the Uniform Partnership Act.

Sec. 67. NRS 87.020 is hereby amended to read as follows:

87.020 As used in ~~[this chapter]~~ *NRS 87.010 to 87.430, inclusive, and section 1.9 of this act*, unless the context otherwise requires:

1. “Bankrupt” includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act.

~~2. [“Business” includes every trade, occupation or profession.~~

~~—3.]~~ “Conveyance” includes every assignment, lease, mortgage or encumbrance.

~~[4.]~~ 3. “Court” includes every court and judge having jurisdiction in the case.

~~[5. —“Professional service” means any type of personal service which may legally be performed only pursuant to a license or certificate of registration.~~

~~—6.]~~ 4. “Real property” includes land and any interest or estate in land.

~~[7. —“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~

~~—8.]~~ 5. “Registered limited-liability partnership” means a partnership formed pursuant to an agreement governed by ~~[this chapter]~~ *NRS 87.010 to 87.430, inclusive, and section 1.9 of this act*

for the purpose of rendering a professional service and registered pursuant to and complying with NRS 87.440 to 87.560, inclusive.

~~[9. “Sign” means to affix a signature to a record.~~

~~—10. “Signature” means a name, word, symbol or mark executed or otherwise adopted, or a record encrypted or similarly processed in whole or in part, by a person with the present intent to identify himself and adopt or accept a record. The term includes, without limitation, an electronic signature as defined in NRS 719.100.~~

~~—11. “Street address” of a resident agent means the actual physical location in this State at which a resident agent is available for service of process.]~~

Sec. 68. NRS 87.030 is hereby amended to read as follows:

87.030 1. A person has “knowledge” of a fact within the meaning of ~~[this chapter]~~ ***NRS 87.010 to 87.430, inclusive, and section 1.9 of this act*** not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

2. A person has “notice” of a fact within the meaning of ~~[this chapter]~~ ***NRS 87.010 to 87.430, inclusive, and section 1.9 of this act*** when the person who claims the benefit of the notice:

- (a) States the fact to such person, or
- (b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

Sec. 69. NRS 87.040 is hereby amended to read as follows:

87.040 1. The rule that statutes in derogation of the common law are to be strictly construed ~~[shall have]~~ ***has*** no application to ~~[this chapter.]~~ ***NRS 87.010 to 87.430, inclusive, and section 1.9 of this act.***

2. The law of estoppel ~~[shall apply under this chapter.]~~ ***applies to NRS 87.010 to 87.430, inclusive, and section 1.9 of this act.***

3. The law of agency ~~[shall apply under this chapter.]~~

~~4. This chapter shall be so]~~ ***applies to NRS 87.010 to 87.430, inclusive, and section 1.9 of this act.***

4. *The Uniform Partnership Act must be* interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

5. ~~[This chapter]~~ ***The provisions of NRS 87.010 to 87.430, inclusive, and section 1.9 of this act*** shall not be construed so as to impair the obligations of any contract existing on July 1, 1931, nor to affect any action or proceedings begun or right accrued before July 1, 1931.

Sec. 70. NRS 87.050 is hereby amended to read as follows:

87.050 In any case not provided for in ~~[this chapter]~~ ***NRS 87.010 to 87.430, inclusive, and section 1.9 of this act,*** the rules of law and equity, including the law merchant, ~~[shall]~~ govern.

Sec. 71. NRS 87.060 is hereby amended to read as follows:

87.060 1. Except as otherwise provided in subsection 2, a partnership is an association of two or more persons to carry on as co-owners a business for profit, and includes a registered limited-liability partnership.

2. Any association formed under any other statute of this State, or any statute adopted by authority, other than the authority of this State, is not a partnership under ~~[this chapter,]~~ ***NRS 87.010 to 87.430, inclusive, and section 1.9 of this act,*** unless the association would have been a partnership in this State before July 1, 1931. ~~[This chapter applies]~~ ***The provisions of NRS 87.010 to***

87.430, inclusive, and section 1.9 of this act apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent with it.

Sec. 72. NRS 87.110 is hereby amended to read as follows:

87.110 An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by ~~[this chapter]~~ **NRS 87.010 to 87.430, inclusive, and section 1.9 of this act** is evidence against the partnership.

Sec. 73. NRS 87.250 is hereby amended to read as follows:

87.250 1. A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

2. The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of ~~[this chapter]~~ **NRS 87.010 to 87.430, inclusive, and section 1.9 of this act** and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such

property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs or next of kin.

Sec. 74. NRS 87.280 is hereby amended to read as follows:

87.280 1. On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

2. The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

- (a) With separate property, by any one or more of the partners; or
- (b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

3. Nothing in ~~[this chapter]~~ ***the provisions of NRS 87.010 to 87.430, inclusive, and section 1.9 of this act*** shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

Sec. 75. NRS 88.635 is hereby amended to read as follows:

88.635 In any case not provided for in this chapter, the provisions of ~~chapter 87 of~~ NRS *87.010 to 87.430, inclusive, and section 1.9 of this act* govern.

Sec. 76. NRS 89.200 is hereby amended to read as follows:

89.200 The provisions of chapter 87 of NRS ~~[(Uniform Partnership Act)]~~ do not apply to professional associations.

Sec. 77. The amendatory provisions of this act do not affect an action or proceeding commenced or right accrued before July 1, 2006.

Sec. 78. If a partnership formed before July 1, 2006, voluntarily elects to be governed by the provisions of sections 2 to 65, inclusive, of this act, the provisions of sections 2 to 65, inclusive, of this act relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within 1 year before the partnership's election to be governed by the provisions of sections 2 to 65, inclusive, of this act only if the third party knows or has received a notification of the partnership's election to be governed by the provisions of sections 2 to 65, inclusive, of this act.

Sec. 79. This act becomes effective on July 1, 2006.”.

Amend the title of the bill by deleting the second and third lines and inserting:

“Partnership Act (1997) and providing for its applicability on a voluntary basis; and providing other matters”.

Amend the summary of the bill to read as follows:

“SUMMARY—Adopts Uniform Partnership Act (1997) and provides for its applicability on voluntary basis. (BDR 7-358)”.

**If this amendment is adopted, the Legislative
Counsel's Digest will be changed to read as follows:**

Legislative Counsel's Digest:

The Uniform Partnership Act was first adopted by the National Conference of Commissioners on State Laws in 1914 and has provided the basic law governing partnerships in the United States since that time. Nevada has adopted the Uniform Partnership Act, which is currently codified as Chapter 87 of the Nevada Revised Statutes. The Uniform Partnership Act has been revised several times since the initial approval of the Act. At least 30 states, the District of Columbia and Puerto Rico have adopted these revisions. This bill allows an existing partnership or a future partnership to elect to be governed by the provisions of the existing Act or the provisions of the Act, as revised by the bill.

The nature of a partnership under the existing Act is somewhat of a hybrid between an aggregate of partners and a separate legal entity. The revised Act establishes a partnership as a separate legal entity, and not merely as an aggregate of partners.

The existing Act provides that the existing Act operates as a default in the event that there is no express provision in the partnership agreement, while the revised Act expressly recognizes the primacy of the partnership agreement over statute, including the revised Act itself. The agreement controls and the rules of the revised Act are regarded as default rules, with the exception of certain specific rules that protect the interests of the partner in the partnership. For example, the duty of loyalty and good faith of a partner cannot be abrogated by agreement.

The existing Act requires partners to provide full disclosure to each other. The revised Act expands the fiduciary duties of partners to each other, by providing for express obligations of

loyalty, due care and good faith. An agreement cannot abrogate these fiduciary duties. There is a duty not to engage in business on behalf of someone with an adverse interest to the partnership and a partner must refrain from business in competition with the partnership. The standard of care with respect to other partners is gross negligence or reckless conduct. Ordinary negligence does not create liability.

The existing Act provides for the dissolution of a partnership upon the occurrence of specific events. At dissolution, the business of the partnership is wound up and the assets of the partnership, after payment of creditors, are distributed among the partners. The revised Act provides that the ordinary dissociation of a partner does not result in the dissolution of the entity. Certain events must occur to cause the partnership to dissolve. Unless at least one-half of the remaining partners move by express will to dissolve the partnership within 90 days after the initial dissociation of a partner, the partnership continues.

The revised Act also makes various other changes recommended by the Uniform Law Commissioners and technical changes to carry out the recommendations.