

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 26, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:30 a.m. on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members were present for the meeting except Senator Warden who was excused.

CONSIDERATION OF SENATE BILL 156:

This is the revised Uniform Limited Partnership Act. Senator Murray, District 50, who is a member of this committee, read a prepared statement to the committee about this bill. (See Attachment #1)

Leonard C. Larson, Corporations Deputy, Secretary of State's office, testified on Senate Bill 156, stating that his department would like to see some amendments made to the bill, especially in regard to filing fees and a definition of general and limited partnerships. Senator Turnage, Chairman, requested Mr. Larson to prepare the suggested amendments and present them to the committee for consideration.

There were no proponents or opponents present at this meeting.

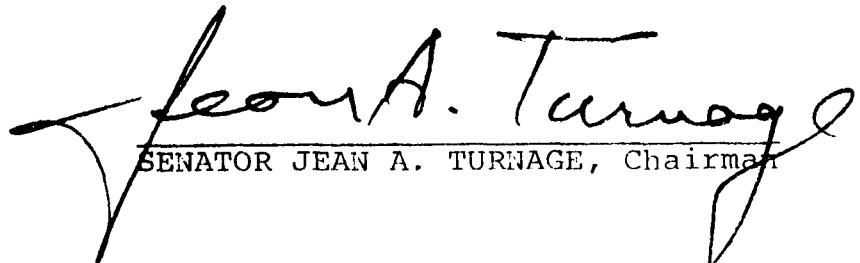
CONSIDERATION OF SENATE BILL 34:

Joan Mayer, Legislative Council, resumed her explanation of changes she had made in drafting this bill, beginning on page 53.

Senator Roberts moved to strike sections 35 and 36 on pages 53 and 54 in their entirety. The motion carried unanimously.

They proceeded through the bill to section 77, page 95. After discussing this section, the Chairman requested Joan to come up with an amendment on this.

There being no further time for this meeting, the committee adjourned at 10:58 a.m..


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 1/26/77

Each day attach to minutes.

~~Within the limits of practicality, due process requires that all individuals be afforded a meaningful opportunity to be heard. A class action is a procedure by which people with small claims or limited means can exercise their rights and thereby make our system of justice more responsive to their needs.~~

REVISED UNIFORM LIMITED PARTNERSHIP ACT

The Uniform Limited Partnership Act was promulgated originally in 1916. It has been adopted in 45 jurisdictions (including Montana) and, with the Uniform Partnership Act, is the basis for law regulating partnerships in the United States. The limited partnership is distinguished from a general partnership by the existence of limited partners who invest in the partnership with liability limited to the amount invested. A general partner is liable individually for all the obligations of the partnership. In return for limited liability, the limited partner relinquishes any right of control or management of partnership affairs.

Limited partnerships have become, in 60 years, an important means of business organization and are used extensively. Over the 60 years of generally salubrious usage, this form of organization has encountered some problems. In 1976, a revision has been drafted, based on 60 years of extensive experience, to improve this method of organization even more.

The most important changes have been made in the scope of the limited partner's activities vis-a-vis the partnership. Under the original Uniform Limited Partnership Act, a limited partner could not contribute services to the partnership. He had to contribute property or other valuable obligations to obtain his status. Under the revision, services may now be contributed, as well as property or valuable obligations. The second change regards voting rights. The original Uniform Limited Partnership Act did not deny voting rights to limited partners, but neither did it permit them. The revision allows limited partners to be granted voting rights in the partnership agreement. These two provisions both change and enhance a limited partner's status.

When a limited partner can vote and contribute services, the question of control or participation in management becomes more critical. The Revised Act, therefore, takes special care in distinguishing those acts which do not alone determine control. The question of control is to be answered in the light of all facts and circumstances, but, if the limited partner does singly any of certain things, he or she is not by that fact liable as a general partner. These things include being a contractor for or agent of a general partner, consulting or advising a general partner with respect to partnership business, acting as a surety for the limited partnership, approving or disapproving an amendment to the partnership agreement, or voting on certain specific matters. The object of these specific enumerations is to prevent unreasonable determinations that a limited partner takes part in the control of the business.

The original Uniform Limited Partnership Act provided only for a certificate of partnership. It made no mention of partnership agreements. The Revised Act changes the face of the partnership by changing the emphasis from the

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certificate to the agreement. Under the Revised Act, the certificate of limited partnership is confined principally to matters respecting the addition and withdrawal of partners and of capital. Other issues that are important are left to the agreement.

For example, a partner may lend money to and transact other business with a limited partnership as if the partner were a total outsider, except as otherwise provided in the partnership agreement. The partnership agreement determines the distribution of voting rights. The shares in profits and losses are decided in the partnership agreement. The partnership agreement becomes the important working document in the operation of the partnership.

(4) There are other important changes, also, in the Revised Act. For example, a central registry is provided for limited partnerships. It is anticipated that the registrar for corporations and other business organizations, usually the Secretary of State, will also perform the function for limited partnerships. There is provision, also new, for registration of a name during the period of formation for a limited partnership. Another important addition guarantees limited partners the right to partnership records, a right not before accorded. This permits a limited partner to protect his or her investment in the partnership by keeping better track of the business itself. Also provided is a derivative action by limited partners against the partnership to redress mismanagement affecting a limited partner's interests. This would be very like a stockholder's derivative suit against a corporation. One of the historically apparent difficulties of limited partnerships has been protection of limited partner's rights. People have been induced to invest only to find that the investment has been squandered, and nothing could be done until general insolvency. These changes would curtail this problem.

(5) Another significant, new contribution of the Revised Act is registration of foreign limited partnerships. Doing business interstate is a commonality for all business organizations, including limited partnerships. Therefore, the problems of jurisdiction and notice parallel those of corporations. Accordingly, a registration requirement for limited partnerships from other states doing business in an enacting state is established. This is required now in almost all jurisdictions for a foreign business corporation. The requirement recognizes the scope of the limited partnership as utilized in the United States today.

The Uniform Limited Partnership Act, the 1916 version, has served well as the backbone of the law on limited partnerships. However, usages change, and new problems arise. The old Act is remarkably resilient, considering the historical record. Its revision now comes forward as a response to the changes that have occurred. It is the same business organization, but with characteristics for today's business. It should be good, at least, for another 60 years.