

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
March 11, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Huennekens, who was excused. Jim Lear, Legislative Council, was present.

SENATE BILL 144 SENATOR HAZELBAKER, sponsor, stated this bill is to create the criminal offense of false claims to public agencies.

CHIP ERDMANN, Medicaid Fraud - DOR, was in support of the bill.  
EXHIBIT 1.

There were no further proponents.

There were no opponents.

SENATOR HAZELBAKER closed the bill.

REP. MATSKO asked why doesn't this fall under fraud. The Senator replied if it is knowingly committed it is fraud.

SENATE BILL 222 SENATOR KOLSTAD, sponsor, stated this bill is to amend 25-10-711 to provide new standards for awarding costs to a party prevailing against the state. It allows the small business to collect court costs, which is one of the recommendations of the Small Businesses last January. In October, 1980, the Equal Access Act was passed.

JANELLE FALLON, Montana Chamber of Commerce, supported the bill. This has been passed on the federal level. It will remove language that says frivolous. The changes would make it more workable. A survey her organization performed showed that 94% of the people support this type of legislation.

ED NURSE, Small Business, stated on the national level this bill passed the Senate and had only 20 votes against it in the House. It will give the small businessman equity.

DAVE GOSS, Billings Chamber of Commerce, stated businessmen support the bill. He stated a case where a car dealer had a complaint filed against him. In the long run it was cheaper for him to pay the complaint than to go to court over it.

LARRY HUSS supported the bill.

MIKE MELOY, Montana Trial Lawyers Association, supported the bill. He felt that "not" on line 9 needs to be reinserted.

There were no further proponents.

MIKE YOUNG, Department of Administration, was opposed to the bill. Those that defend the state do not get the benefit of the doubt. This law has only been on the books for two years. It has not been given a chance. A petition could be made. Commission law requires that a writ of mandamus be filed if a complaint occurs. Attorneys fees and costs are available under those provisions.

There were no further opponents.

In closing, SENATOR KOLSTAD felt this was a good bill. He felt the state benefits most of the time in these cases and the individual should receive the benefit of the doubt.

REP. TEAGUE asked if this bill were passed would it apply to the IRS. HUSS replied no.

REP. HANNAH asked how many cases were filed by the state last year. YOUNG replied there are approximately 60 in his office presently.

REP. HANNAH asked how much is paid out for each case. YOUNG replied approximately \$8-9,000 in writs in the last five years.

REP. YARDLEY asked about subsection 1 and 2. HUSS stated the bill does not involve torts.

HUSS recommended to strike "costs" and insert "attorneys fees". After some discussion it was suggested to insert "and attorneys fees" after "costs".

REP. KEYSER asked about the fiscal note. The Senator stated when it was first drawn up it included torts; as it is amended, however, it does not. Therefore, the fiscal note is not correct. YOUNG felt without torts in the fiscal note it would be reduced 5-10%. The 19 departments could lose up to five different cases a year. You never know how many will try to bring a writ case.

REP. YARDLEY asked if this would include school boards and counties. YOUNG replied it would include all governmental entities.

SENATE BILL 161 SENATOR MAZUREK, sponsor, stated this bill is to adopt revisions to the uniform limited partnership act. This was adopted in 1947 in Montana. On a national scale changes are needed. This bill represented those revisions that were made on the national scale. With the economy and the increased moving among states it is a good idea to have this law. EXHIBIT 2. EXHIBIT 3, a letter from JAMES M. HAUGHEY, was also handed out.

WARD SHANNAHAN, Chairman of the State Bar Business Section, stated

the section supports the bill. It is an investment tool. The bill as introduced in 1979 had problems with the IRS. That problem is cleared up now.

BOB MURDO, Business Law Section of the State Bar, supports the bill. EXHIBIT 4. MURDO stated since 1916 when the law was adopted, only two changes have occurred since that time. One was to change serious mental illness to insanity. It has been adopted in all fifty states except Louisiana.

RICK TUCKER, State Auditor, supports the bill.

TED DONEY, Petro-Lewis Corp., stated oil and gas utilities support the bill. Presently there is much paperwork involved if a company does business in several counties. Documents must be filed in each of the counties.

DON ALLEN, Montana Petroleum Association, supports the bill.

There were no further proponents.

There were no opponents.

SENATOR MAZUREK closed the bill.

REP. BENNETT asked about the controlling documents. SENATOR MAZUREK replied the controlling document will become the agreement.

REP. TEAGUE asked if a person owned 10% of the company would he receive 10% of the votes. SENATOR MAZUREK replied he would get an increased voice in the partnership. Yet in order to receive voting privileges he would have to be a general partner. SHANAHAN stated it would have to be spelled out in the agreement. The managing partner is the partner who is liable.

REP. EUDAILY asked about section 6 of the bill. The Senator responded that was added at the request of the Secretary of State. It is not necessary to have that in the title.

REP. KEEDY asked if limited partners could also be general partners. SHANAHAN replied many people hesitate to invest money where the managing partner does not have any money in it himself.

SENATE BILL 164 SENATOR S. BROWN, chief sponsor, stated this bill is to provide for the payment of delinquent child support by deduction from the obligor's income. EXHIBIT 5.

Out of 4877 divorces last year 2780 (57%) involved children. The average divorced family involved two children. In the Department of Revenue 4633 delinquent payments of cases have been filed.

The purpose of the bill is to require when an obligor is three months delinquent money can be deducted from his wages by way of a court order. Section 5 of the bill provides the obligor must be given notice. If payment is made within 15 days of the notice the matter is dropped. If it is not paid a hearing will be held so a judge can determine whether it shall be done. The bill specifies what the judge has to do in the order. The money that will be deducted will be in equal amounts to be paid in a two year period. Some cases might be so delinquent payments should be spread over a two year period. The judge would authorize the employer to deduct the money.

It is important that all creditors are paid yet this deduction should come before that of a car payment, etc.

This has been enacted in other states. It has been tested in New York and found to be constitutional.

BOB JAMES, Department of Revenue, stated this will help cure what can be determined as a national disgrace. There are 2.9 million mothers who are deemed head of the household, which is 15% of all families. Women who support their household earn less than 1/2 of the male counterpart who is head of the household. The average income is \$8,500. The recent statistic used to raise a child to 18 years old is \$80,000. This situation is on the rise. If they are not getting the child support their sources are limited. The state and taxpayers are paying for the care of the children. In Cascade County \$175,000 per month is spent in payments, which is 2.1 million dollars per year. There is 20 million dollars outstanding in this federally.

Men do not pay child support. Nothing will happen to the men when they don't pay. In 1975 a federal government program was started called "Nab-A-Dad", which locates fathers and requires payment. For every dollar spent \$3.65 was recovered under this program.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. HANNAH asked how many families with the woman as head of the household resulted in divorce. JAMES did not know.

REP. HANNAH asked if the imposition of this payment will reduce federal payments. JAMES stated it would. REP. HANNAH asked if this would reduce welfare. It was thought it would.

REP. EUDAILY asked about section 10 of the bill. The Senator replied payment of debt is different than a court order. A monthly payment would be worked out.

REP. SEIFERT asked the maximum percent that could be withheld. SENATOR BROWN did not know. REP. YARDLEY thought it was based on take home pay.

REP. EUDAILY asked why the increase from \$1.00 to \$5.00 on line 20. SENATOR BROWN replied it was felt that \$1.00 was not sufficient to repay the employer for the service yet it would not be appropriate to pay over \$5.00.

SENATE BILL 216 SENATOR S. BROWN, sponsor, stated this bill is to delete the supreme and district court 90-day rule regarding payment of judges. This is an unfair practice. If one decision is not made during the period the judge will not be paid. This does not take into consideration all the other cases he heard and decided on during that time frame. This bill was enacted in 1917. There has been a change in caseloads since that time.

A district court judge recently had to go through 110 transcripts in a Colstrip case. There is no way he could possibly dispose of that much material thoroughly within 90 days. There is no opportunity to escape. The judge will not be paid, which is unfair. It would be impossible for us as legislators to hear a bill and within five days decide its destiny. The law is archaic.

The Senator stressed this is not to condone a judge who does make false affidavits. There is a way at getting at this problem of the bad judge. First you can run against him at the election. Or, a "no petition" can be carried if no one runs against him.

The law does not make judges act responsible, it puts pressure on them to act irresponsible.

LEONARD LANGEN, Judges Association, supports the bill. He stated he has so many cases he has not had a paycheck in seven months. Recently he stated he would take over a case that has been going on for 15 years. The material was brought to him in a pickup truck. It is unfair and selfdefeating to expect a judge to review accurately this type of material and make a fair decision within 90 days.

DIANE BARZ, Judges Association, supported the bill. She stated she has one of the biggest caseloads. She has not knowingly filed a false affidavit. Clerical errors do occur. A case may have been misfiled or not brought to the judge's attention. A case can go past 90 days very easily if the judge has no knowlege of the case. Ninety days is not insufficient for most cases but consider the number of the cases. To get decisions out takes 15-20 hours of a normal week. A wise judge should take two working days a month to review court files, however, that is not what the taxpayers pay the judges for. Jury cases do not involve affidavits. There is a computer in the Supreme Court that lists all cases pending.

TOM HARRISON was in support of the bill. Priority is given to murder cases. Whether that will create a problem is unknown. HARRISON felt the law was unconstitutional. A statement should be provided to the ambitious judge who is willing to take the complex cases rather than punishing him.

MIKE MELOY, Montana Trial Lawyers Association, supported the bill.

J. C. WEINGARTNER, State Bar of Montana, supported the bill.

There were no further proponents.

MARGARET COTTON LA FARENAISE was opposed to the bill. A case she was personally involved in resulted in bankruptcy because of the judge's inability to make a decision on the case in a timely manner. She felt she should not go bankrupt because of the judge's decision. It should be investigated and resolved. She wondered how other states handle this matter. Judges ran because they said they could do the job. She stated when she sat on a jury case she did not have three months to decide the outcome.

LILLIAN WILLIAMS also opposed the bill. She is involved in a case currently that because of it's length her banker and her lawyer advise her to file bankruptcy. It is too bad to penalize a judge who does his job, yet most of them do not, WILLIAMS stated. Judges should learn to manage their affairs. The public should be protected. Her trial was postponed to hear other cases, which she feels is not fair.

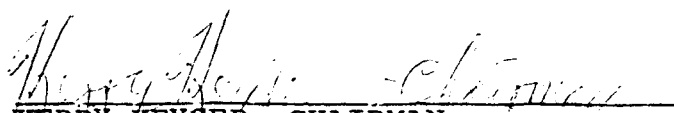
There were no further opponents.

In closing SENATOR BROWN stated this bill would not solve the opponents problems. The only real people to discipline the judges is the Commission.

REP. HANNAH asked if it was appropriate to eliminate the law altogether. SENATOR BROWN replied it would prevent having to file an affidavit to give notice why they could not complete it within the 90 days.

REP. EUDAILY asked if the supreme court justices were concerned with this. It was replied yes.

The meeting adjourned at 10:25 a.m.

  
KERRY KEYSER, CHAIRMAN  
mr

## DEPARTMENT OF REVENUE

## SENATE BILL NO. 144

SB 144 addresses the problem of false claims to government agencies. The Department of Revenue is interested in this area as a result of its involvement in the Medicaid Fraud Program. It should be noted, however, that the proposed legislation is broad sweeping and encompasses all false claims to government agencies. Present criminal laws addressing the false claim question are Sections 45-6-301, MCA, relating to theft, and 45-7-203, MCA, relating to unsworn falsification. The Department has not found these sections to be useful in the area of medicaid fraud. Consequently, the Department has prepared the new language of SB 144.

Section Analysis

Section 1. New Section. This section creates a criminal offense of false claims to public agencies. It is modeled on the California Penal Code, and has been used successfully in medicaid fraud prosecutions. The offense is classified as a misdemeanor or a felony depending on the size of the claim and the existence of a common scheme of deception.

Section 2. New Section. This section establishes a civil remedy in the case of false claim. The section is taken from the Federal False Claims Act. By imposing substantial penalties on the submitter of false claims, it is hoped that the legislation will act as a strong deterrent.

Proposed Amendment to SB144.

Delete "purposely and" from line 4, page 2.

The purpose of this proposed amendment is to reestablish the distinction between the burden of proof in criminal and civil actions. In the criminal section (Section one) the burden of proof is "purposely and knowingly". This is the highest burden of proof possible. Historically, the burden of proof in civil cases is lower than that required in a criminal action. This is due, in part, to the fact that a defendant in a civil case does not risk jail and the stigma associated with a criminal conviction.

While amending the criminal section, the Senate Judiciary inserted the "purposely and knowingly" language in the civil section of this bill. The committee did not intend to raise the civil burden of proof to the highest criminal burden of proof level.



## REVISED UNIFORM LIMITED PARTNERSHIP ACT

The Uniform Limited Partnership Act was promulgated originally in 1916. It has been adopted in 45 jurisdictions 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 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.

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.

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.

Exhibit 3

CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH

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KEMP WILSON  
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THOMAS F. TOPEL  
RONALD R. LODDERS  
JOHN L. GALLINGER  
STEVEN P. RUFFATTO  
ALLAN L. KARELL  
L. RANDALL BISHOP  
STEVEN J. LEHMAN  
RONALD L. FRAZEE  
MARK D. SAFTY  
TERRY G. SPEAR  
CYNTHIA FORD  
LAURA A. MITCHELL  
SHERRY J. MATTEUCCI

January 22, 1981

Senator Joe Mazurek  
Senate Judiciary Committee  
Capitol Station  
Helena, Montana 59601

Dear Joe:

I understand that LC 1119, introduced by Senators Mazurek and Turnage, which would adopt the Revised Uniform Limited Partnership Act (1976), is set for hearing at 8:00 A.M. on January 26, before the Senate Judiciary Committee. If it were possible, I should attend the hearing to urge passage of the bill, as I am convinced that enactment of the Revised Act is of real importance to the growth and development of business and industry in Montana.

Since about 1970, and particularly during the last two or three years, I have handled the formation of many limited partnerships in Montana and have been called upon for opinions as to the limited liability of limited partners in partnerships formed in other states, which desire to do business in Montana. The use of limited partnerships in business transactions has grown rapidly in recent years, and the limited partnership form is very commonly employed by land developers and developers of oil and gas and other minerals. Many limited partnerships desire to operate in several or many states, but Montana's present Uniform Limited Partnership Act (which was originally written in 1916) is wholly inadequate to provide for multi-state operations.

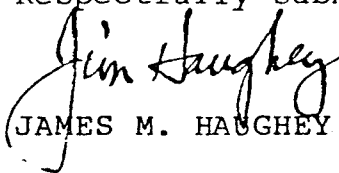
Unlike LC 1119, our present Act does not provide for the registration or qualification in Montana of a limited partnership formed in another state. Consequently, the limited partners of such a foreign limited partnership cannot be certain that they will have limited liability while doing business in Montana. The effect of this uncertainty is to discourage foreign limited partnerships to do business in Montana. To cite an example, I represent one major limited partnership which plans to invest \$100,000,000.00 per year for the next six years in oil and gas exploration and development. The limited partnership will qualify to do business in Montana if the Revised Uniform Limited Partnership Act is enacted, but it presently is unwilling to invest funds in Montana under the existing Act.

Senator Joe Mazurek  
Page 2  
January 22, 1981

In addition to the provision for qualification of foreign limited partnerships, the Revised Uniform Limited Partnership Act makes a number of changes in the law which are highly beneficial and are consistent with modern business practices.

I hope the Senate Judiciary Committee will recommend passage of LC 1119, because its enactment will encourage the investment of capital in Montana. In my opinion, the adoption of the Revised Act will also result in the expansion of employment opportunities in the state and in the increase in local and state tax revenues.

Respectfully submitted,

  
(JAMES M. HAUGHEY)

JMH/cas

Exhibit 4

UNIFORM LIMITED PARTNERSHIP ACT  
(1976)

*Drafted by the*  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

*and by it*  
APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

*at its*  
ANNUAL CONFERENCE  
MEETING IN ITS EIGHTY-FIFTH YEAR  
AT ATLANTA, GEORGIA  
JULY 31 - AUGUST 6, 1976

WITH PREFATORY NOTE AND COMMENTS

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING IN  
ATLANTA, GEORGIA, FEBRUARY 10, 1979

SPECIAL COMMITTEE ON  
UNIFORM LIMITED PARTNERSHIP ACT (1976)

BROCKENBROUGH LAMB, JR., 1200 Mutual Building, Richmond,  
VA 23219, *Chairman*

JAMES FALK, The White House, 1500 Pennsylvania Avenue,  
Washington, DC 20500

HOWARD G. KULP, JR., One Centennial Square, East  
Euclid Avenue, Haddonfield, NJ 08033

MORRIS W. MACEY, 1500 Candler Building, Atlanta, GA 30303

BEN R. MILLER, SR., 3125 McCarroll Drive, Baton Rouge, LA 70809

W. JOSEPH SHOEMAKER, 1421 Court Place, Denver, CO 80202

DAVID H. NEIDITZ, One Lewis Street, Hartford, CT 06103

THOMAS H. NEEDHAM, 250 Benefit Street, Providence, RI 02903  
*Chairman, Division B, Ex Officio*

JAMES M. BUSH, 363 North First Avenue, Phoenix, AZ 85003  
*President, Ex Officio*

STEPHEN J. FRIEDMAN, 299 Park Avenue, New York, New York 10017  
*Reporter*

UNIFORM LIMITED PARTNERSHIP ACT (1976)  
REVIEW COMMITTEE

MICHAEL P. SULLIVAN, 300 Roanoke Building, Minneapolis,  
MN 55402, *Chairman*

JOHN FOX ARNOLD, 818 Olive Street, St. Louis, MO 63101

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

645 North Michigan Avenue, Suite 510  
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## UNIFORM LIMITED PARTNERSHIP ACT (1976)

### PREFATORY NOTE

The Revised Uniform Limited Partnership Act adopted by the National Conference of Commissioners on Uniform State Laws in August, 1976, was intended to modernize the prior uniform law while retaining the special character of limited partnerships as compared with corporations. The draftsman of a limited partnership agreement has a degree of flexibility in defining the relations among the partners that is not available in the corporate form. Moreover, the relationship among partners is consensual, and requires a degree of privity that forces the general partner to seek approval of the partners (sometimes unanimous approval) under circumstances that corporate management would find unthinkable. The limited partnership was not intended to be an alternative in all cases where corporate form is undesirable for tax or other reasons, and the new Act was not intended to make it so. The new Act clarifies many ambiguities and fills interstices in the prior uniform law by adding more detailed language and mechanics. In addition, some important substantive changes and additions have been made.

Article 1 provides a list of all of the definitions used in the Act, integrates the use of limited partnership names with corporate names and provides for an office and agent for service of process in the state of organization. All of these provisions are new. Article 2 collects in one place all provisions dealing with execution and filing of certificates of limited partnership and certificates of amendment and cancellation. Articles 1 and 2 reflect an important change in the statutory scheme: recognition that the basic document in any partnership, including a limited partnership, is the partnership agreement. The certificate of limited partnership is not a constitutive document (except in the sense that it is a statutory prerequisite to creation of the limited partnership), and merely reflects matters as to which creditors should be put on notice.

Article 3 deals with the single most difficult issue facing lawyers who use the limited partnership form of organization: the powers and potential liabilities of limited partners. Section 303 lists a number of activities in which a limited partner may engage without being held to have so participated in the control of the business that he assumes the liability of a general partner. Moreover, it goes on to confine the liability of a limited



partner who merely steps over the line of participation in control to persons who actually know of that participation in control. General liability for partnership debts is imposed only on those limited partners who are, in effect, "silent general partners". With that exception, the provisions of the new Act that impose liability on a limited partner who has somehow permitted third parties to be misled to their detriment as to the limited partner's true status confine that liability to those who have actually been misled. The provisions relating to general partners are collected in Article 4.

Article 5, the finance section, makes some important changes from the prior uniform law. The contribution of services and promises to contribute cash, property or services are now explicitly permitted as contributions. And those who fail to perform promised services are required, in the absence of an agreement to the contrary, to pay the value of the services stated in the certificate of limited partnership.

A number of changes from the prior uniform law are made in Article 6, dealing with distributions from and the withdrawal of partners from the partnership. For example, Section 608 creates a statute of limitations on the right of a limited partnership to recover all or part of a contribution that has been returned to a limited partner, whether to satisfy creditors or otherwise.

The assignability of partnership interests is dealt with in considerable detail in Article 7. The provisions relating to dissolution appear in Article 8, which, among other things, imposes a new standard for seeking judicial dissolution of a limited partnership.

One of the thorniest questions for those who operate limited partnerships in more than one state has been the status of the partnership in a state other than the state of organization. Neither existing case law nor administrative practice makes it clear whether the limited partners continue to possess their limited liability and which law governs the partnership. Article 9 deals with this problem by providing for registration of foreign limited partnerships and specifying choice-of-law rules.

Finally, Article 10 of the new Act authorizes derivative actions to be brought by limited partners.

# UNIFORM LIMITED PARTNERSHIP ACT\* (1976)

## ARTICLE I

### *General Provisions*

1 SECTION 101. [Definitions.] As used in this Act, unless  
2 the context otherwise requires:

3 (1) "Certificate of limited partnership" means the certifi-  
4 cate referred to in Section 201, and the certificate as  
5 amended.

6 (2) "Contribution" means any cash, property, services  
7 rendered, or a promissory note or other binding obligation  
8 to contribute cash or property or to perform services, which a  
9 partner contributes to a limited partnership in his capacity  
10 as a partner.

11 (3) "Event of withdrawal of a general partner" means an  
12 event that causes a person to cease to be a general partner as  
13 provided in Section 402.

14 (4) "Foreign limited partnership" means a partnership formed  
15 under the laws of any State other than this State and having  
16 as partners one or more general partners and one or more limited  
17 partners.

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

22 (6) "Limited partner" means a person who has been admitted  
23 to a limited partnership as a limited partner in accordance with  
24 the partnership agreement and named in the certificate of  
25 limited partnership as a limited partner.

26 (7) "Limited partnership" and "domestic limited partner-  
27 ship" mean a partnership formed by 2 or more persons under  
28 the laws of this State and having one or more general partners  
29 and one or more limited partners.

30 (8) "Partner" means a limited or general partner.

\*The Uniform Limited Partnership Act was approved by the Commissioners on Uniform State Laws in 1916 and has been adopted, subject to local modifications, in 45 states. A revised Uniform Limited Partnership Act was approved by the Commissioners on Uniform State Laws in 1976. In brief, it provides for the creation of a limited partnership by the filing of a certificate of limited partnership and describes the rights, powers and obligations of the general partners and the limited partners.

31 (9) "Partnership agreement" means any valid agreement,  
32 written or oral, of the partners as to the affairs of a limited  
33 partnership and the conduct of its business.

34 (10) "Partnership interest" means a partner's share of the  
35 profits and losses of a limited partnership and the right to  
36 receive distributions of partnership assets.

37 (11) "Person" means a natural person, partnership, limited  
38 partnership (domestic or foreign), trust, estate, association, or  
39 corporation.

40 (12) "State" means a state, territory, or possession of the  
41 United States, the District of Columbia, or the Commonwealth of  
42 Puerto Rico.

#### COMMENT

The definitions in this section clarify a number of uncertainties in existing law and make certain changes.

*Contribution:* this definition makes it clear that a present contribution of services and a promise to make a future payment of cash, contribution of property or performance of services are permissible forms for a contribution. Accordingly, the present services or promise must be accorded a value in the certificate of limited partnership (Section 201 (5)), and, in the case of a promise, that value may determine the liability of a partner who fails to honor his agreement (Section 502). Section 3 of the prior uniform law did not permit a limited partner's contribution to be in the form of services, although that inhibition did not apply to general partners.

*Foreign limited partnership:* the Act only deals with foreign limited partnerships formed under the laws of another "State" of the United States (see subdivision 12 of Section 101), and any adopting State that desires to deal by statute with the status of entities formed under the laws of foreign countries must make appropriate changes throughout the Act. The exclusion of such entities from the Act was not intended to suggest that their "limited partners" should not be accorded limited liability by the courts of a State adopting the Act. That question would be resolved by the choice-of-law rules of the forum State.

*General partner:* this definition recognizes the separate functions of the partnership agreement and the certificate of limited partnership. The partnership agreement establishes the basic grant of management power to the persons named as general partners; but because of the passive role played by the limited partners, the separate, formal step of embodying that grant of power in the certificate of limited partnership has been preserved to emphasize its importance.

*Limited partner:* as in the case of general partners, this definition provides for admission of limited partners through the partnership agreement and solemnization in the certificate of limited partnership. In addition, the definition makes it clear that being named in the certificate of limited partnership is a prerequisite to limited partner status. Failure to file does not, however, mean that the participant is a general partner or that he has general liability. See Sections 202 (e) and 303.

*Partnership agreement:* the prior uniform law did not refer to the partnership agreement, assuming that all important matters affecting limited partners would be set forth in the certificate of limited partnership. Under modern practice, however, it has been common for the partners to enter into a comprehensive partnership agreement, only part of which was required to be included in the certificate of limited partnership. As reflected in Section 201, the certificate of limited partnership is confined principally to matters respecting the addition and withdrawal of partners and of capital, and other important issues are left to the partnership agreement.

*Partnership interest:* this definition is new and is intended to define what it is that is transferred when a partnership interest is assigned.

1 SECTION 102. [*Name.*] The name of each limited partner-  
2 ship as set forth in its certificate of limited partnership:  
3 (1) shall contain without abbreviation the words "limited  
4 partnership";  
5 (2) may not contain the name of a limited partner unless (i) it  
6 is also the name of a general partner or the corporate name  
7 of a corporate general partner, or (ii) the business of the  
8 limited partnership had been carried on under that name  
9 before the admission of that limited partner;  
10 (3) may not contain any word or phrase indicating or implying  
11 that it is organized other than for a purpose stated in its  
12 certificate of limited partnership;  
13 (4) may not be the same as, or deceptively similar to,  
14 the name of any corporation or limited partnership organized  
15 under the laws of this State or licensed or registered as a  
16 foreign corporation or limited partnership in this State; and  
17 (5) may not contain the following words [here insert  
18 prohibited words].

COMMENT

Subdivision (2) of Section 102 has been carried over from Section 5 of the prior uniform law with certain editorial changes. The remainder of Section 102 is new and primarily reflects the intention to integrate the registration of limited partnership names with that of corporate names. Accordingly, Section 201 provides for central, State-wide filing of certificates of limited partnership, and subdivisions (3), (4) and (5) of Section 102 contain standards to be applied by the filing officer in determining whether the certificate should be filed. Subdivision (1) requires that the proper name of a limited partnership contain the words "limited partnership" in full.

1 SECTION 103. [*Reservation of Name.*]  
2 (a) The exclusive right to the use of a name may be  
3 reserved by:  
4 (1) any person intending to organize a limited  
5 partnership under this Act and to adopt that name;  
6 (2) any domestic limited partnership or any foreign  
7 limited partnership registered in this State which, in either  
8 case, intends to adopt that name;  
9 (3) any foreign limited partnership intending to register  
10 in this State and adopt that name; and  
11 (4) any person intending to organize a foreign limited  
12 partnership and intending to have it register in this State  
13 and adopt that name.  
14 (b) The reservation shall be made by filing with the Sec-  
15 retary of State an application, executed by the applicant, to  
16 reserve a specified name. If the Secretary of State finds  
17 that the name is available for use by a domestic or foreign

18 limited partnership, he shall reserve the name for the exclusive  
19 use of the applicant for a period of 120 days. Once having  
20 so reserved a name, the same applicant may not again reserve  
21 the same name until more than 60 days after the expiration of  
22 the last 120-day period for which that applicant reserved that  
23 name. The right to the exclusive use of a reserved name may be  
24 transferred to any other person by filing in the office of the  
25 Secretary of State a notice of the transfer, executed by the  
26 applicant for whom the name was reserved and specifying  
27 the name and address of the transferee.

COMMENT

Section 103 is new. The prior uniform law did not provide for registration of names.

1 SECTION 104. [*Specified Office and Agent.*] Each limited  
2 partnership shall continuously maintain in this State:

3 (1) an office, which may but need not be a place of its  
4 business in this State, at which shall be kept the records  
5 required by Section 105 to be maintained; and

6 (2) an agent for service of process on the limited partner-  
7 ship, which agent must be an individual resident of this State,  
8 a domestic corporation, or a foreign corporation authorized  
9 to do business in this State.

COMMENT

Section 104 is new. It requires that a limited partnership have certain minimum contacts with its State of organization, i.e., an office at which the constitutive documents and basic financial information is kept and an agent for service of process.

1 SECTION 105. [*Records to be Kept.*] Each limited part-  
2 nership shall keep at the office referred to in Section 104(1)  
3 the following: (1) a current list of the full name and last known  
4 business address of each partner set forth in alphabetical order,  
5 (2) a copy of the certificate of limited partnership and all  
6 certificates of amendment thereto, together with executed  
7 copies of any powers of attorney pursuant to which any certi-  
8 ficate has been executed, (3) copies of the limited partner-  
9 ship's federal, state and local income tax returns and reports,  
10 if any, for the 3 most recent years, and (4) copies of  
11 any then effective written partnership agreements and of any  
12 financial statements of the limited partnership for the 3  
13 most recent years. Those records are subject to inspection and  
14 copying at the reasonable request, and at the expense, of any  
15 partner during ordinary business hours.

COMMENT

Section 105 is new. In view of the passive nature of the limited partner's position, it has been widely felt that limited partners are entitled to access to certain basic documents, including the certificate of limited partnership and any partnership agreement. In view of the great diversity among limited partnerships, it was thought inappropriate to require a standard form of financial report, and Section 105 does no more than require retention of tax returns and any other financial statements that are prepared. The names and addresses of the partners are made available to the general public.

- 1 SECTION 106. [*Nature of Business.*] A limited partnership
- 2 may carry on any business that a partnership without limited part-
- 3 ners may carry on except [here designate prohibited activities].

COMMENT

Section 106 is identical to Section 3 of the prior uniform law. Many states require that certain regulated industries, such as banking, may be carried on only by entities organized pursuant to special statutes, and it is contemplated that the prohibited activities would be confined to the matters covered by those statutes.

- 1 SECTION 107. [*Business Transactions of Partner with Partner-*
- 2 *ship.*] Except as provided in the partnership agree-
- 3 ment, a partner may lend money to and transact other business
- 4 with the limited partnership and, subject to other applicable
- 5 law, has the same rights and obligations with respect there-
- 6 to as a person who is not a partner.

COMMENT

Section 107 makes a number of important changes in Section 13 of the prior uniform law. Section 13, in effect, created a special fraudulent conveyance provision applicable to the making of secured loans by limited partners and the repayment by limited partnerships of loans from limited partners. Section 107 leaves that question to a State's general fraudulent conveyance statute. In addition, Section 107 eliminates the prohibition in former Section 13 against a general partner (as opposed to a limited partner) sharing pro rata with general creditors in the case of an unsecured loan. Of course, other doctrines developed under bankruptcy and insolvency laws may require the subordination of loans by partners under appropriate circumstances.

ARTICLE 2

*Formation: Certificate of Limited Partnership*

- 1 SECTION 201. [*Certificate of Limited Partnership.*]
- 2 (a) In order to form a limited partnership two or more per-
- 3 sons must execute a certificate of limited partnership. The certi-
- 4 ficate shall be filed in the office of the Secretary of State
- 5 and set forth:

- 6 (1) the name of the limited partnership;  
7 (2) the general character of its business;  
8 (3) the address of the office and the name and address of  
9 the agent for service of process required to be maintained by  
10 Section 104;  
11 (4) the name and the business address of each partner  
12 (specifying separately the general partners and limited  
13 partners);  
14 (5) the amount of cash and a description and statement  
15 of the agreed value of the other property or services contrib-  
16 uted by each partner and which each partner has agreed to contrib-  
17 ute in the future;  
18 (6) the times at which or events on the happening of  
19 which any additional contributions agreed to be made by each  
20 partner are to be made;  
21 (7) any power of a limited partner to grant the right to be-  
22 come a limited partner to an assignee of any part of his part-  
23 nership interest, and the terms and conditions of the power;  
24 (8) if agreed upon, the time at which or the events on the  
25 happening of which a partner may terminate his membership  
26 in the limited partnership and the amount of, or the method  
27 of determining, the distribution to which he may be entitled  
28 respecting his partnership interest, and the terms and  
29 conditions of the termination and distribution;  
30 (9) any right of a partner to receive distributions of prop-  
31 erty, including cash from the limited partnership;  
32 (10) any right of a partner to receive, or of a general  
33 partner to make, distributions to a partner which include a  
34 return of all or any part of the partner's contribution;  
35 (11) any time at which or events upon the happening of  
36 which the limited partnership is to be dissolved and its affairs  
37 wound up;  
38 (12) any right of the remaining general partners to con-  
39 tinue the business on the happening of an event of withdrawal  
40 of a general partner; and  
41 (13) any other matters the partners determine to include  
42 therein.  
43 (b) A limited partnership is formed at the time of the filing  
44 of the certificate of limited partnership in the office of the  
45 Secretary of State or at any later time specified in the certi-  
46 ficate of limited partnership if, in either case, there has  
47 been substantial compliance with the requirements of this  
48 section.

COMMENT

The matters required to be set forth in the certificate of limited partnership are not dif-

ferent in kind from those required by Section 2 of the prior uniform law, although certain additions and deletions have been made and the description has been revised to conform with the rest of the Act. In general, the certificate is intended to serve two functions: first, to place creditors on notice of the facts concerning the capital of the partnership and the rules regarding additional contributions to and withdrawals from the partnership; second, to clearly delineate the time at which persons become general partners and limited partners. Subparagraph (b), which is based upon the prior uniform law, has been retained to make it clear that the existence of the limited partnership depends only upon compliance with this section. Its continued existence is not dependent upon compliance with other provisions of this Act.

1     SECTION 202. [*Amendment to Certificate.*]

2     (a) A certificate of limited partnership is amended by filing  
3     a certificate of amendment thereto in the office of the Secretary  
4     of State. The certificate shall set forth:

- 5         (1) the name of the limited partnership;  
6         (2) the date of filing the certificate; and  
7         (3) the amendment to the certificate.

8     (b) Within 30 days after the happening of any of the  
9     following events, an amendment to a certificate of limited part-  
10    nership reflecting the occurrence of the event or events shall be  
11    filed:

- 12         (1) a change in the amount or character of the contribu-  
13         tion of any partner, or in any partner's obligation to make a  
14         contribution;  
15         (2) the admission of a new partner;  
16         (3) the withdrawal of a partner; or  
17         (4) the continuation of the business under Section 801  
18         after an event of withdrawal of a general partner.

19     (c) A general partner who becomes aware that any state-  
20     ment in a certificate of limited partnership was false when  
21     made or that any arrangements or other facts described have  
22     changed, making the certificate inaccurate in any respect, shall  
23     promptly amend the certificate, but an amendment to show a  
24     change of address of a limited partner need be filed only once  
25     every 12 months.

26     (d) A certificate of limited partnership may be amended at  
27     any time for any other proper purpose the general partners de-  
28     termine.

29     (e) No person has any liability because an amendment  
30     to a certificate of limited partnership has not been filed to re-  
31     flect the occurrence of any event referred to in subsection (b)  
32     of this Section if the amendment is filed within the 30-day  
33     period specified in subsection (b).

COMMENT

Section 202 makes substantial changes in Section 24 of the prior uniform law. Paragraph (b) lists the basic events — the addition or withdrawal of partners or capital or capital



obligations — that are so central to the function of the certificate of limited partnership that they require prompt amendment. Paragraph (c) makes it clear, as it was not clear under subdivision (2) (g) of former Section 24, that the certificate of limited partnership is intended to be an accurate description of the facts to which it relates at all times and does not speak merely as of the date it is executed. Paragraph (c) provides a "safe harbor" against claims of creditors or others who assert that they have been misled by the failure to amend the certificate of limited partnership to reflect changes in any of the important facts referred to in paragraph (b); if the certificate of limited partnership is amended within 30 days of the occurrence of the event, no creditor or other person can recover for damages sustained during the interim. Additional protection is afforded by the provisions of Section 304.

1 SECTION 203. [*Cancellation of Certificate.*] A certi-  
2 cate of limited partnership shall be cancelled upon the dissol-  
3 ution and the commencement of winding up of the partner-  
4 ship or at any other time there are no limited partners. A  
5 certificate of cancellation shall be filed in the office of the  
6 Secretary of State and set forth:

- 7 (1) the name of the limited partnership;
- 8 (2) the date of filing of its certificate of limited part-  
9 nership;
- 10 (3) the reason for filing the certificate of cancellation;
- 11 (4) the effective date (which shall be a date certain) of  
12 cancellation if it is not to be effective upon the filing of  
13 the certificate; and
- 14 (5) any other information the general partners filing the  
15 certificate determine.

#### COMMENT

Section 203 changes Section 24 of the prior uniform law by making it clear that the certificate of cancellation should be filed upon the commencement of winding up of the limited partnership. Section 24 provided for cancellation "when the partnership is dissolved".

1 SECTION 204. [*Execution of Certificates.*]

2 (a) Each certificate required by this Article to be filed in  
3 the office of the Secretary of State shall be executed in the  
4 following manner:

5 (1) an original certificate of limited partnership must  
6 be signed by all partners named therein;

7 (2) a certificate of amendment must be signed by at least  
8 one general partner and by each other partner designated in  
9 the certificate as a new partner or whose contribution is de-  
10 scribed as having been increased; and

11 (3) a certificate of cancellation must be signed by all  
12 general partners;

13 (b) Any person may sign a certificate by an attorney-in-fact,  
14 but a power of attorney to sign a certificate relating to the  
15 admission, or increased contribution, of a partner must speci-

16 fically describe the admission or increase.

17 (c) The execution of a certificate by a general partner con-  
18 stitutes an affirmation under the penalties of perjury that the  
19 facts stated therein are true.

#### COMMENT

Section 204 collects in one place the formal requirements for the execution of certificates which were set forth in Sections 2 and 25 of the prior uniform law. Those sections required that each certificate be signed by all partners, and there developed an unnecessarily cumbersome practice of having each limited partner sign powers of attorney to authorize the general partners to execute certificates of amendment on their behalf. Section 204 insures that each partner must sign a certificate when he becomes a partner or when the certificates reflect any increase in his obligation to make contributions. Certificates of amendment are required to be signed by only one general partner and all general partners must sign certificates of cancellation. Section 204 prohibits blanket powers of attorney for the execution of certificates in many cases, since those conditions under which a partner is required to sign have been narrowed to circumstances of special importance to that partner. The former requirement that all certificates be sworn has been confined to statements by the general partners, recognizing that the limited partner's role is a limited one.

1 SECTION 205. [*Amendment or Cancellation by Judicial Act.*] If  
2 a person required by Section 204 to execute a certificate  
3 of amendment or cancellation fails or refuses to do so, any other  
4 partner, and any assignee of a partnership interest, who is  
5 adversely affected by the failure or refusal, may petition the  
6 [here designate the proper court] to direct the amend-  
7 ment or cancellation. If the court finds that the amendment or  
8 cancellation is proper and that any person so designated has failed  
9 or refused to execute the certificate, it shall order the Sec-  
10 retary of State to record an appropriate certificate of amend-  
11 ment or cancellation.

#### COMMENT

Section 205 changes subdivisions (3) and (4) of Section 25 of the prior uniform law by confining the persons who have standing to seek judicial intervention to partners and to those assignees who are adversely affected by the failure or refusal of the appropriate persons to file a certificate of amendment or cancellation.

1 SECTION 206. [*Filing in Office of Secretary of State.*]  
2 (a) Two signed copies of the certificate of limited part-  
3 nership and of any certificates of amendment or cancellation  
4 (or of any judicial decree of amendment or cancellation) shall  
5 be delivered to the Secretary of State. A person who executes  
6 a certificate as an agent or fiduciary need not exhibit evidence  
7 of his authority as a prerequisite to filing. Unless the  
8 Secretary of State finds that any certificate does not conform  
9 to law, upon receipt of all filing fees required by law he shall:  
10 (1) endorse on each duplicate original the word "Filed"  
11 and the day, month and year of the filing thereof;  
12 (2) file one duplicate original in his office; and

13 (3) return the other duplicate, original to the person who  
14 filed it or his representative.

15 (b) Upon the filing of a certificate of amendment (or judi-  
16 cial decree of amendment) in the office of the Secretary of State,  
17 the certificate of limited partnership shall be amended as set forth  
18 therein, and upon the effective date of a certificate of cancel-  
19 lation (or a judicial decree thereof), the certificate of limit-  
20 ed partnership is cancelled.

#### COMMENT

Section 206 is new. In addition to providing mechanics for the central filing system, the second sentence of this section does away with the requirement, formerly imposed by some local filing officers, that persons who have executed certificates under a power of attorney exhibit executed copies of the power of attorney itself. Paragraph (b) changes subdivision (5) of Section 25 of the prior uniform law by providing that certificates of cancellation are effective upon their effective date under Section 203.

1 SECTION 207. [*Liability for False Statement in Certificate.*]  
2 If any certificate of limited partnership or certificate of amend-  
3 ment or cancellation contains a false statement, one who  
4 suffers loss by reliance on the statement may recover damages for  
5 the loss from:

6 (1) any person who executes the certificate, or causes an-  
7 other to execute it on his behalf, and knew, and any general  
8 partner who knew or should have known, the statement to be false  
9 at the time the certificate was executed; and

10 (2) any general partner who thereafter knows or should have  
11 known that any arrangement or other fact described in the cer-  
12 tificate has changed, making the statement inaccurate in any  
13 respect within a sufficient time before the statement was relied  
14 upon reasonably to have enabled that general partner to can-  
15 cel or amend the certificate, or to file a petition for its cancel-  
16 lation or amendment under Section 205.

#### COMMENT

Section 207 changes Section 6 of the prior uniform law by providing explicitly for the liability of persons who sign a certificate as agent under a power of attorney and by confining the obligation to amend a certificate of limited partnership in light of future events to general partners.

1 SECTION 208. [*Notice.*] The fact that a certificate of  
2 limited partnership is on file in the office of the Sec-  
3 retary of State is notice that the partnership is a limited part-  
4 nership and the persons designated therein as limited partners are  
5 limited partners, but it is not notice of any other fact.

#### COMMENT

Section 208 is new. By stating that the filing of a certificate of limited partnership only

results in notice of the limited liability of the limited partners, it obviates the concern that third parties may be held to have notice of special provisions set forth in the certificate. While this section is designed to preserve the limited liability of limited partners, the notice provided is not intended to change any liability of a limited partner which may be created by his action or inaction under the law of estoppel, agency, fraud, or the like.

1 SECTION 209. [*Delivery of Certificates to Limited Partners.*]  
2 Upon the return by the Secretary of State pursuant to Section  
3 206 of a certificate marked "Filed", the general partners  
4 shall promptly deliver or mail a copy of the certificate of limit-  
5 ed partnership and each certificate to each limited partner  
6 unless the partnership agreement provides otherwise.

COMMENT

This section is new.

ARTICLE 3

*Limited Partners*

1 SECTION 301. [*Admission of Additional Limited Partners.*]  
2 (a) After the filing of a limited partnership's original  
3 certificate of limited partnership, a person may be admitted as an  
4 additional limited partner:  
5 (1) in the case of a person acquiring a partnership  
6 interest directly from the limited partnership, upon the com-  
7 pliance with the partnership agreement or, if the partnership-  
8 agreement does not so provide, upon the written consent of all  
9 partners; and  
10 (2) in the case of an assignee of a partnership interest  
11 of a partner who has the power, as provided in Section 704,  
12 to grant the assignee the right to become a limited partner,  
13 upon the exercise of that power and compliance with any conditions  
14 limiting the grant or exercise of the power.  
15 (b) In each case under subsection (a), the person acquiring  
16 the partnership interest becomes a limited partner only upon  
17 amendment of the certificate of limited partnership reflecting  
18 that fact.

COMMENT

Subdivision (1) of Section 301(a) adds to Section 8 of the prior uniform law an explicit recognition of the fact that unanimous consent of all partners is required for admission of new limited partners unless the partnership agreement provides otherwise. Subdivision (2) is derived from Section 19 of the prior uniform law but abandons the former terminology of "substituted limited partner".

1 SECTION 302. [*Voting.*] Subject to Section 303, the part-  
2 nership agreement may grant to all or a specified group of the  
3 limited partners the right to vote (on a per capita or other  
4 basis) upon any matter.

COMMENT

Section 302 is new, and must be read together with subdivision (b) (5) of Section 303. Although the prior uniform law did not speak specifically of the voting powers of limited partners, it is not uncommon for partnership agreements to grant such power to limited partners. Section 302 is designed only to make it clear that the partnership agreement may grant such power to limited partners. If such powers are granted to limited partners beyond the "safe harbor" of Section 303(b) (5), a court may hold that, under the circumstances, the limited partners have participated in "control of the business" within the meaning of Section 303(a). Section 303(c) simply means that the exercise of powers beyond the ambit of Section 303(b) is not ipso facto to be taken as taking part in the control of the business.

1 SECTION 303. [*Liability to Third Parties.*]

2 (a) Except as provided in subsection (d), a limited part-  
3 ner is not liable for the obligations of a limited partnership  
4 unless he is also a general partner or, in addition to the exercise of  
5 his rights and powers as a limited partner, he takes part in the  
6 control of the business. However, if the limited partner's parti-  
7 cipation in the control of the business is not substantially the  
8 same as the exercise of the powers of a general partner, he is  
9 liable only to persons who transact business with the limited  
10 partnership with actual knowledge of his participation in control.

11 (b) A limited partner does not participate in the con-  
12 trol of the business within the meaning of subsection (a) sole-  
13 ly by doing one or more of the following:

14 (1) being a contractor for or an agent or employee of  
15 the limited partnership or of a general partner;

16 (2) consulting with and advising a general partner with re-  
17 spect to the business of the limited partnership;

18 (3) acting as surety for the limited partnership;

19 (4) approving or disapproving an amendment to the part-  
20 nership agreement; or

21 (5) voting on one or more of the following matters:

22 (i) the dissolution and winding up of the limited part-  
23 nership;

24 (ii) the sale, exchange, lease, mortgage, pledge, or other  
25 transfer of all or substantially all of the assets of the limit-  
26 ed partnership other than in the ordinary course of its business;

27 (iii) the incurrence of indebtedness by the limited part-  
28 nership other than in the ordinary course of its business;

29 (iv) a change in the nature of the business; or

30 (v) the removal of a general partner.

31 (c) The enumeration in subsection (b) does not mean that  
32 the possession or exercise of any other powers by a limited part-  
33 ner constitutes participation by him in the business of the limit-

34 ed partnership.

35 (d) A limited partner who knowingly permits his name to be  
36 used in the name of the limited partnership, except under circum-  
37 stances permitted by Section 102(2)(i), is liable to creditors  
38 who extend credit to the limited partnership without actual know-  
39 ledge that the limited partner is not a general partner.

#### COMMENT

Section 303 makes several important changes in Section 7 of the prior uniform law. The first sentence of Section 303 (a) carries over the basic test from former Section 7 — whether the limited partner “takes part in the control of the business” — in order to insure that judicial decisions under the prior uniform law remain applicable to the extent not expressly changed. The second sentence of Section 303 (a) reflects a wholly new concept. Because of the difficulty of determining when the “control” line has been overstepped, it was thought it unfair to impose general partner’s liability on a limited partner except to the extent that a third party had knowledge of his participation in control of the business. On the other hand, in order to avoid permitting a limited partner to exercise all of the powers of a general partner while avoiding any direct dealings with third parties, the “is not substantially the same as” test was introduced. Paragraph (b) is intended to provide a “safe harbor” by enumerating certain activities which a limited partner may carry on for the partnership without being deemed to have taken part in control of the business. Paragraph (d) is derived from Section 5 of the prior uniform law, but adds as a condition to the limited partner’s liability the fact that a limited partner must have knowingly permitted his name to be used in the name of the limited partnership.

#### 1 SECTION 304. [*Person Erroneously Believing Himself Limited* 2 *Partner.*]

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

11 (1) causes an appropriate certificate of limited part-  
12 nership or a certificate of amendment to be executed and  
13 filed; or

14 (2) withdraws from future equity participation in the  
15 enterprise.

16 (b) A person who makes a contribution of the kind des-  
17 cribed in subsection (a) is liable as a general partner to any  
18 third party who transacts business with the enterprise (i) be-  
19 fore the person withdraws and an appropriate certificate is  
20 filed to show withdrawal, or (ii) before an appropriate cer-  
21 tificate is filed to show his status as a limited partner  
22 and, in the case of an amendment, after expiration of the 30-day  
23 period for filing an amendment relating to the person as a  
24 limited partner under Section 202, but in either case only if

25 the third party actually believed in good faith that the person was  
26 a general partner at the time of the transaction.

#### COMMENT

Section 304 is derived from Section 11 of the prior uniform law. The "good faith" requirement has been added in the first sentence of Section 304 (a). The provisions of subdivision (2) of Section 304 (a) are intended to clarify an ambiguity in the prior law by providing that a person who chooses to withdraw from the enterprise in order to protect himself from liability is not required to renounce any of his then current interest in the enterprise so long as he has no further participation as an equity participant. Paragraph (b) preserves the liability of the equity participant prior to withdrawal (and after the time for appropriate amendment in the case of a limited partnership) to any third party who has transacted business with the person believing in good faith that he was a general partner.

1 SECTION 305. [*Information.*] Each limited partner has the right  
2 to:  
3 (1) inspect and copy any of the partnership records re-  
4 quired to be maintained by Section 105; and  
5 (2) obtain from the general partners from time to time  
6 upon reasonable demand (i) true and full information regarding  
7 the state of the business and financial condition of the  
8 limited partnership, (ii) promptly after becoming available, a  
9 copy of the limited partnership's federal, state and local  
10 income tax returns for each year, and (iii) other information  
11 regarding the affairs of the limited partnership as is just and  
12 reasonable.

#### COMMENT

Section 305 changes and restates the rights of limited partners to information about the partnership formerly provided by Section 10 of the prior uniform law.

### ARTICLE 4

#### *General Partners*

1 SECTION 401. [*Admission of Additional General Partners.*] Af-  
2 ter the filing of a limited partnership's original certificate  
3 of limited partnership, additional general partners may be admit-  
4 ted only with the specific written consent of each partner.

#### COMMENT

Section 401 is derived from Section 9 (1) (e) of the prior law and carries over the unwaivable requirement that all limited partners must consent to the admission of an additional general partner and that such consent must specifically identify the general partner involved.

1 SECTION 402. [*Events of Withdrawal.*] Except as approved by

2 the specific written consent of all partners at the time, a  
3 person ceases to be a general partner of a limited partnership  
4 upon the happening of any of the following events:

5 (1) the general partner withdraws from the limited part-  
6 nership as provided in Section 602;

7 (2) the general partner ceases to be a member of the limit-  
8 ed partnership as provided in Section 702;

9 (3) the general partner is removed as a general partner  
10 in accordance with the partnership agreement;

11 (4) unless otherwise provided in the certificate of lim-  
12 ited partnership, the general partner: (i) makes an assignment  
13 for the benefit of creditors; (ii) files a voluntary petition  
14 in bankruptcy; (iii) is adjudicated a bankrupt or insolvent;  
15 (iv) files a petition or answer seeking for himself any re-  
16 organization, arrangement, composition, readjustment, liquid-  
17 ation, dissolution or similar relief under any statute, law, or  
18 regulation; (v) files an answer or other pleading admitting  
19 or failing to contest the material allegations of a petition  
20 filed against him in any proceeding of this nature; or (vi) seeks,  
21 consents to, or acquiesces in the appointment of a trustee,  
22 receiver, or liquidator of the general partner or of all or any  
23 substantial part of his properties;

24 (5) unless otherwise provided in the certificate of limit-  
25 ed partnership, [120] days after the commencement of any pro-  
26 ceeding against the general partner seeking reorganization,  
27 arrangement, composition, readjustment, liquidation, dissolution  
28 or similar relief under any statute, law, or regulation, the  
29 proceeding has not been dismissed, or if within [90] days after  
30 the appointment without his consent or acquiescence of a  
31 trustee, receiver, or liquidator of the general partner or of  
32 all or any substantial part of his properties, the appointment  
33 is not vacated or stayed or within [90] days after the expiration  
34 of any such stay, the appointment is not vacated;

35 (6) in the case of a general partner who is a natural person,  
36 (i) his death; or  
37 (ii) the entry by a court of competent jurisdiction ad-  
38 judicating him incompetent to manage his person or his estate;

39 (7) in the case of a general partner who is acting as a  
40 general partner by virtue of being a trustee of a trust, the termi-  
41 nation of the trust (but not merely the substitution of a new trustee);

42 (8) in the case of a general partner that is a separate part-  
43 nership, the dissolution and commencement of winding up of the  
44 separate partnership;

45 (9) in the case of a general partner that is a corporation,  
46 the filing of a certificate of dissolution, or its equivalent, for  
47 the corporation or the revocation of its charter; or



48 (10) in the case of an estate, the distribution by the fiduciary  
49 of the estate's entire interest in the partnership.

COMMENT

Section 402 expands considerably the provisions of Section 20 of the prior uniform law which provided for dissolution in the event of the retirement, death or insanity of a general partner. Subdivisions (1), (2) and (3) recognize that the general partner's agency relationship is terminable at will, although it may result in a breach of the partnership agreement giving rise to an action for damages. Subdivisions (4) and (5) reflect a judgment that, unless the limited partners agree otherwise, they ought to have the power to rid themselves of a general partner who is in such dire financial straits that he is the subject of proceedings under the National Bankruptcy Act or a similar provision of law. Subdivisions (6) through (10) simply elaborate on the notion of death in the case of a general partner who is not a natural person. Of course, the addition of the words "and in the partnership agreement" was not intended to suggest that liabilities to third parties could be affected by provisions in the partnership agreement.

1 SECTION 403. [*General Powers and Liabilities.*] Except as pro-  
2 vided in this Act or in the partnership agreement, a general  
3 partner of a limited partnership has the rights and powers and  
4 is subject to the restrictions and liabilities of a partner in  
5 a partnership without limited partners.

COMMENT

Section 403 is derived from Section 9 (1) of the prior uniform law.

1 SECTION 404. [*Contributions by General Partner.*] A general  
2 partner of a limited partnership may make contributions to the part-  
3 nership and share in the profits and losses of, and in distri-  
4 butions from, the limited partnership as a general partner. A gen-  
5 eral partner also may make contributions to and share in pro-  
6 fits, losses, and distributions as a limited partner. A person  
7 who is both a general partner and a limited partner has the  
8 rights and powers, and is subject to the restrictions and li-  
9 abilities, of a general partner and, except as provided in the part-  
10 nership agreement, also has the powers, and is subject to the  
11 restrictions, of a limited partner to the extent of his parti-  
12 cipation in the partnership as a limited partner.

COMMENT

Section 404 is derived from Section 12 of the prior uniform law and makes clear that the partnership agreement may provide that a general partner who is also a limited partner may exercise all of the powers of a limited partner.

1 SECTION 405. [*Voting.*] The partnership agreement may grant  
2 to all or certain identified general partners the right to vote  
3 (on a per capita or any other basis), separately or with all or any  
4 class of the limited partners, on any matter.

Section 405 is new and is intended to make it clear that the Act does not require that the limited partners have any right to vote on matters as a separate class.

## ARTICLE 5

### *Finance*

1 SECTION 501. [*Form of Contribution.*] The contribution of  
2 a partner may be in cash, property, or services rendered, or  
3 a promissory note or other obligation to contribute cash or  
4 property or to perform services.

#### COMMENT

As noted in the comment to Section 101, the explicit permission to make contributions of services expands Section 4 of the prior uniform law.

1 SECTION 502. [*Liability for Contribution.*]

2 (a) Except as provided in the certificate of limit-  
3 ed partnership, a partner is obligated to the limited part-  
4 nership to perform any promise to contribute cash or property  
5 or to perform services, even if he is unable to perform because  
6 of death, disability or any other reason. If a partner does  
7 not make the required contribution of property or services,  
8 he is obligated at the option of the limited partnership to  
9 contribute cash equal to that portion of the value (as stated  
10 in the certificate of limited partnership) of the stated con-  
11 tribution that has not been made.

12 (b) Unless otherwise provided in the partnership agree-  
13 ment, the obligation of a partner to make a contribution  
14 or return money or other property paid or distributed in violation  
15 of this Act may be compromised only by consent of all the  
16 partners. Notwithstanding the compromise, a creditor of a limit-  
17 ed partnership who extends credit, or whose claim arises, after  
18 the filing of the certificate of limited partnership or an  
19 amendment thereto which, in either case, reflects the obligation,  
20 and before the amendment or cancellation thereof to reflect the  
21 compromise, may enforce the original obligation.

#### COMMENT

Although Section 17 (1) of the prior uniform law required a partner to fulfill his promise to make contributions, the addition of contributions in the form of a promise to render services means that a partner who is unable to perform those services because of death or disability as well as because of an intentional default is required to pay the cash value of the services unless the certificate of limited partnership provides otherwise. Subdivision (b) is derived from Section 17 (3) of the prior uniform law.

1 SECTION 503. [*Sharing of Profits and Losses.*] The profits

2 and losses of a limited partnership shall be allocated  
3 among the partners, and among classes of partners, in the manner  
4 provided in the partnership agreement. If the partnership  
5 agreement does not so provide, profits and losses shall be allo-  
6 cated on the basis of the value (as stated in the certificate  
7 of limited partnership) of the contributions made by  
8 each partner to the extent they have been received by the partner-  
9 ship and have not been returned.

COMMENT

Section 503 is new. The prior uniform law did not provide for the basis on which partners share profits and losses in the absence of agreement.

1 SECTION 504. [*Sharing of Distributions.*] Distributions of  
2 cash or other assets of a limited partnership shall be  
3 allocated among the partners, and among classes of partners,  
4 in the manner provided in the partnership agreement. If the  
5 partnership agreement does not so provide, distributions shall be  
6 made on the basis of the value (as stated in the certificate  
7 of limited partnership) of the contributions made by each  
8 partner to the extent they have been received by the part-  
9 nership and have not been returned.

COMMENT

Section 504 is new. The prior uniform law did not provide for the basis on which partners share distributions in the absence of agreement. This section also recognizes that partners may choose to share in distribution on a different basis than they share in profits and losses.

ARTICLE 6

*Distributions and Withdrawal*

1 SECTION 601. [*Interim Distributions.*] Except as provided  
2 in this Article, a partner is entitled to receive distri-  
3 butions from a limited partnership before his withdrawal  
4 from the limited partnership and before the dissolution and  
5 winding up thereof:  
6 (1) to the extent and at the times or upon the happen-  
7 ing of the events specified in the partnership agreement; and  
8 (2) if any distribution constitutes a return of any  
9 part of his contribution under Section 608(b), to the extent  
10 and at the times or upon the happening of the events specified  
11 in the certificate of limited partnership.

COMMENT

Section 601 is new.

1 SECTION 602. [*Withdrawal of General Partner.*] A general  
2 partner may withdraw from a limited partnership at any time  
3 by giving written notice to the other partners, but if the  
4 withdrawal violates the partnership agreement, the limited part-  
5 nership may recover from the withdrawing general partner  
6 damages for breach of the partnership agreement and offset the  
7 damages against the amount otherwise distributable to him.

COMMENT

Section 602 is new but is generally derived from Section 38 of the Uniform Partnership Act.

1 SECTION 603. [*Withdrawal of Limited Partner.*] A limited  
2 partner may withdraw from a limited partnership at the time  
3 or upon the happening of events specified in the certificate  
4 of limited partnership and in accordance with the partner-  
5 ship agreement. If the certificate does not specify the time or the  
6 events upon the happening of which a limited partner may with-  
7 draw or a definite time for the dissolution and winding up  
8 of the limited partnership, a limited partner may withdraw  
9 upon not less than 6 months' prior written notice to each general  
10 partner at his address on the books of the limited part-  
11 nership at its office in this State.

COMMENT

Section 603 is derived from Section 16 (c) of the prior uniform law.

1 SECTION 604. [*Distribution Upon Withdrawal.*] Except as  
2 provided in this Article, upon withdrawal any withdrawing partner  
3 is entitled to receive any distribution to which he is entitled  
4 under the partnership agreement and, if not otherwise provided  
5 in the agreement, he is entitled to receive, within a reasonable  
6 time after withdrawal, the fair value of his interest in  
7 the limited partnership as of the date of withdrawal based  
8 upon his right to share in distributions from the limited  
9 partnership.

COMMENT

Section 604 is new. It fixes the distributive share of a withdrawing partner in the absence of an agreement among the partners.

1 SECTION 605. [*Distribution in Kind.*] Except as pro-  
2 vided in the certificate of limited partnership, a partner, regard-  
3 less of the nature of his contribution, has no right to demand  
4 and receive any distribution from a limited partnership in  
5 any form other than cash. Except as provided in the partnership  
6 agreement, a partner may not be compelled to accept a distri-

7 bution of any asset in kind from a limited partnership to the  
8 extent that the percentage of the asset distributed to him  
9 exceeds a percentage of that asset which is equal to the percent-  
10 age in which he shares in distributions from the limited  
11 partnership

COMMENT

The first sentence of Section 605 is derived from Section 16 (3) of the prior uniform law. The second sentence is new, and is intended to protect a limited partner (and the remaining partners) against a distribution in kind of more than his share of particular assets.

1 SECTION 606. [*Right to Distribution.*] At the time a partner  
2 becomes entitled to receive a distribution, he has the status of,  
3 and is entitled to all remedies available to, a creditor of the limit-  
4 ed partnership with respect to the distribution.

COMMENT

Section 606 is new and is intended to make it clear that the right of a partner to receive a distribution, as between the partners, is not subject to the equity risks of the enterprise. On the other hand, since partners entitled to distributions have creditor status, there did not seem to be a need for the extraordinary remedy of Section 16 (4) (a) of the prior uniform law, which granted a limited partner the right to seek dissolution of the partnership if he was unsuccessful in demanding the return of his contribution. It is more appropriate for the partner to simply sue as an ordinary creditor and obtain a judgment.

1 SECTION 607. [*Limitations on Distribution.*] A partner may  
2 not receive a distribution from a limited partnership to the  
3 extent that, after giving effect to the distribution, all liabilities  
4 of the limited partnership, other than liabilities to partners on  
5 account of their partnership interests, exceed the fair  
6 value of the partnership assets.

COMMENT

Section 607 is derived from Section 16 (1) (a) of the prior uniform law.

1 SECTION 608. [*Liability Upon Return of Contribution.*]  
2 (a) If a partner has received the return of any part  
3 of his contribution without violation of the partnership  
4 agreement or this Act, he is liable to the limited partnership  
5 for a period of one year thereafter for the amount of the  
6 returned contribution, but only to the extent necessary to  
7 discharge the limited partnership's liabilities to creditors  
8 who extended credit to the limited partnership during the period  
9 the contribution was held by the partnership.  
10 (b) If a partner has received the return of any part of  
11 his contribution in violation of the partnership agreement  
12 or this Act, he is liable to the limited partnership for a  
13 period of 6 years thereafter for the amount of the contribution

14 wrongfully returned.

15 (c) A partner receives a return of his contribution  
16 to the extent that a distribution to him reduces his share of  
17 the fair value of the net assets of the limited partnership  
18 below the value (as set forth in the certificate of limited  
19 partnership) of his contribution which has not been distributed  
20 to him.

#### COMMENT

Paragraph (a) is derived from Section 17 (4) of the prior uniform law, but the one year statute of limitations has been added. Paragraph (b) is derived from Section 17 (2) (b) of the prior uniform law but, again, a statute of limitations has been added. Paragraph (c) is new. The provisions of former Section 17 (2) that referred to the partner holding as "trustee" any money or specific property wrongfully returned to him have been eliminated.

### ARTICLE 7

#### *Assignment of Partnership Interests*

1 SECTION 701. [*Nature of Partnership Interest.*] A partnership  
2 interest is personal property.

#### COMMENT

This section is derived from Section 18 of the prior uniform law.

1 SECTION 702. [*Assignment of Partnership Interest.*] Except as  
2 provided in the partnership agreement, a partnership in-  
3 terest is assignable in whole or in part. An assignment of a part-  
4 nership interest does not dissolve a limited partnership or  
5 entitle the assignee to become or to exercise any rights of a  
6 partner. An assignment entitles the assignee to receive, to  
7 the extent assigned, only the distribution to which the assignor  
8 would be entitled. Except as provided in the partnership agree-  
9 ment, a partner ceases to be a partner upon assignment of  
10 all his partnership interest.

#### COMMENT

Section 19 (1) of the prior uniform law provided simply that "a limited partner's interest is assignable", raising a question whether any limitations on the right of assignment were permitted. While the first sentence of Section 702 recognizes that the power to assign may be restricted in the partnership agreement, there was no intention to affect in any way the usual rules regarding restraints on alienation of personal property. The second and third sentences of Section 702 are derived from Section 19 (3) of the prior uniform law. The last sentence is new.

1 SECTION 703. [*Rights of Creditor.*] On application to a court of

2 competent jurisdiction by any judgment creditor of a partner,  
3 the court may charge the partnership interest of the partner  
4 with payment of the unsatisfied amount of the judgment with  
5 interest. To the extent so charged, the judgment creditor  
6 has only the rights of an assignee of the partnership interest.  
7 This Act does not deprive any partner of the benefit of any  
8 exemption laws applicable to his partnership interest.

#### COMMENT

Section 703 is derived from Section 22 of the prior uniform law but has not carried over some provisions that were thought to be superfluous. For example, references in Section 22 (1) to specific remedies have been omitted, as has a prohibition in Section 22 (2) against discharge of the lien with partnership property. Ordinary rules governing the remedies available to a creditor and the fiduciary obligations of general partners will determine those matters.

#### 1 SECTION 704. [*Right of Assignee to Become Limited Partner.*]

2 (a) An assignee of a partnership interest, including an  
3 assignee of a general partner, may become a limited partner  
4 if and to the extent that (1) the assignor gives the assignee that  
5 right in accordance with authority described in the certificate  
6 of limited partnership, or (2) all other partners consent.

7 (b) An assignee who has become a limited partner has, to  
8 the extent assigned, the rights and powers, and is subject to the  
9 restrictions and liabilities, of a limited partner under the  
10 partnership agreement and this Act. An assignee who becomes  
11 a limited partner also is liable for the obligations of his  
12 assignor to make and return contributions as provided in Article  
13 6. However, the assignee is not obligated for liabilities un-  
14 known to the assignee at the time he became a limited partner  
15 and which could not be ascertained from the certificate of  
16 limited partnership.

17 (c) If an assignee of a partnership interest becomes a  
18 limited partner, the assignor is not released from his liability  
19 to the limited partnership under Sections 207 and 502.

#### COMMENT

Section 704 is derived from Section 19 of the prior uniform law, but paragraph (b) defines more narrowly than Section 19 the obligations of the assignor that are automatically assumed by the assignee.

1 SECTION 705. [*Power of Estate of Deceased or Incompetent*  
2 *Partner.*] If a partner who is an individual dies or a court  
3 of competent jurisdiction adjudges him to be incompetent to man-  
4 age his person or his property, the partner's executor, administra-  
5 tor guardian, conservator, or other legal representative may  
6 exercise all the partner's rights for the purpose of set-  
7 tling his estate or administering his property, including any

8 power the partner had to give an assignee the right to become  
9 a limited partner. If a partner is a corporation, trust, or  
10 other entity and is dissolved or terminated, the powers of  
11 that partner may be exercised by its legal representative or  
12 successor.

#### COMMENT

Section 705 is derived from Section 21 (1) of the prior uniform law. Former Section 21 (2), making a deceased limited partner's estate liable for his liabilities as a limited partner was deleted as superfluous, with no intention of changing the liability of the estate.

### ARTICLE 8

#### *Dissolution*

1 SECTION 801. [*Nonjudicial Dissolution.*] A limited part-  
2 nership is dissolved and its affairs shall be wound up upon the  
3 happening of the first to occur of the following:

4 (1) at the time or upon the happening of events specified in  
5 the certificate of limited partnership;

6 (2) written consent of all partners;

7 (3) an event of withdrawal of a general partner un-  
8 less at the time there is at least one other general partner  
9 and the certificate of limited partnership permits the business  
10 of the limited partnership to be carried on by the remaining  
11 general partner and that partner does so, but the limit-  
12 ed partnership is not dissolved and is not required to be wound  
13 up by reason of any event of withdrawal, if, within 90 days after  
14 the withdrawal, all partners agree in writing to continue the  
15 business of the limited partnership and to the appointment of  
16 one or more additional general partners if necessary or desired; or

17 (4) entry of a decree of judicial dissolution under Sec-  
18 tion 802.

#### COMMENT

Section 801 merely collects in one place all of the events causing dissolution. Paragraph (3) is derived from Sections 9 (1) (g) and 20 of the prior uniform law, but adds the 90-day grace period.

1 SECTION 802. [*Judicial Dissolution.*] On application by or  
2 for a partner the [here designate the proper court] court  
3 may decree dissolution of a limited partnership whenever it is  
4 not reasonably practicable to carry on the business in con-  
5 formity with the partnership agreement.



COMMENT

Section 802 is new.

1 SECTION 803. [*Winding Up.*] Except as provided in  
2 the partnership agreement, the general partners who have not  
3 wrongfully dissolved a limited partnership or, if none, the lim-  
4 ited partners, may wind up the limited partnership's affairs; but  
5 the [here designate the proper court] court may wind  
6 up the limited partnership's affairs upon application of any part-  
7 ner, his legal representative, or assignee.

COMMENT

Section 803 is new and is derived in part from Section 37 of the Uniform General Partnership Act.

1 SECTION 804. [*Distribution of Assets.*] Upon the winding up  
2 of a limited partnership, the assets shall be distributed as  
3 follows:

4 (1) to creditors, including partners who are creditors, to the  
5 extent permitted by law, in satisfaction of liabilities of the  
6 limited partnership other than liabilities for distributions  
7 to partners under Section 601 or 604;

8 (2) except as provided in the partnership agreement, to  
9 partners and former partners in satisfaction of liabilities for  
10 distributions under Section 601 or 604; and

11 (3) except as provided in the partnership agreement, to part-  
12 ners *first* for the return of their contributions and  
13 *secondly* respecting their partnership interests, in the pro-  
14 portions in which the partners share in distributions.

COMMENT

Section 804 revises Section 23 of the prior uniform law by providing that (1) to the extent partners are also creditors, other than in respect of their interests in the partnership, they share with other creditors, (2) once the partnership's obligation to make a distribution accrues, it must be paid before any other distributions of an "equity" nature are made, and (3) general and limited partners rank on the same level except as otherwise provided in the partnership agreement.

ARTICLE 9

*Foreign Limited Partnerships*

1 SECTION 901. [*Law Governing.*] Subject to the Consti-  
2 tution of this State, (1) the laws of the state under which  
3 a foreign limited partnership is organized govern its organi-  
4 zation and internal affairs and the liability of its limited

5 partners, and (2) a foreign limited partnership may not be  
6 denied registration by reason of any difference between those  
7 laws and the laws of this State.

COMMENT

Section 901 is new.

1 SECTION 902. [*Registration.*] Before transacting busi-  
2 ness in this State, a foreign limited partnership shall reg-  
3 ister with the Secretary of State. In order to register, a  
4 foreign limited partnership shall submit to the Secretary of  
5 State, in duplicate, an application for registration as a for-  
6 eign limited partnership, signed and sworn to by a general part-  
7 ner and setting forth:

8 (1) the name of the foreign limited partnership and,  
9 if different, the name under which it proposes to register  
10 and transact business in this State;

11 (2) the state and date of its formation;

12 (3) the general character of the business it proposes to  
13 transact in this State;

14 (4) the name and address of any agent for service of  
15 process on the foreign limited partnership whom the foreign  
16 limited partnership elects to appoint; the agent must be an  
17 individual resident of this state, a domestic corporation, or  
18 a foreign corporation having a place of business in,  
19 and authorized to do business in, this State;

20 (5) a statement that the Secretary of State is appoint-  
21 ed the agent of the foreign limited partnership for service  
22 of process if no agent has been appointed under paragraph

23 (4) or, if appointed, the agent's authority has been revoked  
24 or if the agent cannot be found or served with the exercise  
25 of reasonable diligence;

26 (6) the address of the office required to be main-  
27 tained in the State of its organization by the laws of  
28 that State or, if not so required, of the principal office  
29 of the foreign limited partnership; and

30 (7) if the certificate of limited partnership filed in  
31 the foreign limited partnership's state of organization is  
32 not required to include the names and business addresses of  
33 the partners, a list of the names and addresses.

COMMENT

Section 902 is new. It was thought that requiring a full copy of the certificate of limited partnership and all amendments thereto to be filed in each state in which the partnership does business would impose an unreasonable burden on interstate limited partnerships and that the information on file was sufficient to tell interested persons where they could write to obtain copies of those basic documents.

1 SECTION 903. [*Issuance of Registration.*]

2 (a) If the Secretary of State finds that an application  
3 for registration conforms to law and all requisite fees  
4 have been paid, he shall:

5 (1) endorse on the application the word "Filed", and  
6 the month, day and year of the filing thereof;

7 (2) file in his office a duplicate original of the appli-  
8 cation; and

9 (3) issue a certificate of registration to transact  
10 business in this State.

11 (b) The certificate of registration, together with a  
12 duplicate original of the application, shall be returned to the  
13 person who filed the application or his representative.

1 SECTION 904. [*Name.*] A foreign limited partnership  
2 may register with the Secretary of State under any name  
3 (whether or not it is the name under which it is registered  
4 in its state of organization) that includes without abbreviation  
5 the words "limited partnership" and that could be registered  
6 by a domestic limited partnership.

COMMENT

Section 904 is new.

1 SECTION 905. [*Changes and Amendments.*] If any  
2 statement in the application for registration of a foreign  
3 limited partnership was false when made or any arrangements  
4 or other facts described have changed, making the application  
5 inaccurate in any respect, the foreign limited partnership  
6 shall promptly file in the office of the Secretary of State  
7 a certificate, signed and sworn to by a general partner, correct-  
8 ing such statement.

COMMENT

Section 905 is new.

1 SECTION 906. [*Cancellation of Registration.*] A  
2 foreign limited partnership may cancel its registration  
3 by filing with the Secretary of State a certificate  
4 of cancellation signed and sworn to by a general partner.  
5 A cancellation does not terminate the authority of the  
6 Secretary of State to accept service of process on the  
7 foreign limited partnership with respect to [claims for  
8 relief] [causes of action] arising out of the trans-  
9 actions of business in this State.

COMMENT

Section 906 is new.

1 SECTION 907. [*Transaction of Business Without Registra-*  
2 *tion.*]

3 (a) A foreign limited partnership transacting business in  
4 this State may not maintain any action, suit, or proceeding  
5 in any court of this State until it has registered in this  
6 State.

7 (b) The failure of a foreign limited partnership to regis-  
8 ter in this State does not impair the validity of any contract or  
9 act of the foreign limited partnership or prevent the for-  
10 eign limited partnership from defending any action, suit, or  
11 proceeding in any court of this State.

12 (c) A limited partner of a foreign limited partnership is not  
13 liable as a general partner of the foreign limited partnership  
14 solely by reason of having transacted business in this State  
15 without registration.

16 (d) A foreign limited partnership, by transacting business  
17 in this State without registration, appoints the Secretary of  
18 State as its agent for service of process with respect to  
19 [claims for relief] [causes of action] arising out of the  
20 transaction of business in this State.

COMMENT

Section 907 is new.

1 SECTION 908. [*Action by [Appropriate Official].*]  
2 The [appropriate official] may bring an action to restrain  
3 a foreign limited partnership from transacting business in  
4 this State in violation of this Article.

COMMENT

Section 908 is new.

ARTICLE 10

*Derivative Actions*

1 SECTION 1001. [*Right of Action.*] A limited partner  
2 may bring an action in the right of a limited partnership to  
3 recover a judgment in its favor if general partners with author-  
4 ity to do so have refused to bring the action or if an effort  
5 to cause those general partners to bring the action is not  
6 likely to succeed.

COMMENT

Section 1001 is new.

1 SECTION 1002. [*Proper Plaintiff.*] In a derivative  
2 action, the plaintiff must be a partner at the time of bring-  
3 ing the action and (1) at the time of the transaction of which  
4 he complains or (2) his status as a partner had devolved upon  
5 him by operation of law or pursuant to the terms of the part-  
6 nership agreement from a person who was a partner at the time  
7 of the transaction.

COMMENT

Section 1002 is new.

1 SECTION 1003. [*Pleading.*] In a derivative action,  
2 the complaint shall set forth with particularity the effort  
3 of the plaintiff to secure initiation of the action by a gen-  
4 eral partner or the reasons for not making the effort.

COMMENT

Section 1003 is new.

1 SECTION 1004. [*Expenses.*] If a derivative action  
2 is successful, in whole or in part, or if anything  
3 is received by the plaintiff as a result of a judgment,  
4 compromise or settlement of an action or claim, the  
5 court may award the plaintiff reasonable expenses, in-  
6 cluding reasonable attorney's fees, and shall direct him  
7 to remit to the limited partnership the remainder of those  
8 proceeds received by him.

COMMENT

Section 1004 is new.

ARTICLE 11  
*Miscellaneous*

1 SECTION 1101. [*Construction and Application.*] This Act  
2 shall be so applied and construed to effectuate its general pur-  
3 pose to make uniform the law with respect to the subject of  
4 this Act among states enacting it.

1 SECTION 1102. [*Short Title.*] This Act may be cited as the  
2 Uniform Limited Partnership Act.

1 SECTION 1103. [*Severability.*] If any provision of this Act

2 or its application to any person or circumstance is held  
3 invalid, the invalidity does not affect other provisions  
4 or applications of the Act which can be given effect  
5 without the invalid provision or application, and to this  
6 end the provisions of this Act are severable.

1 SECTION 1104 [*Effective Date, Extended Effective Date*  
2 *and Repeal.*] Except as set forth below, the effective date of  
3 this Act is and the following Acts [list prior limited part-  
4 nership acts] are hereby repealed:

5 (1) The existing provisions for execution and filing of  
6 certificates of limited partnerships and amendments thereunder  
7 and cancellations thereof continue in effect until [specify  
8 time required to create central filing system], the  
9 extended effective date, and Sections 102, 103, 104, 105,  
10 201, 202, 203, 204 and 206 are not effective until the extended  
11 effective date.

12 (2) Section 402, specifying the conditions under which a  
13 general partner ceases to be a member of a limited partnership,  
14 is not effective until the extended effective date, and the  
15 applicable provisions of existing law continue to govern until  
16 the extended effective date.

17 (3) Sections 501, 502 and 608 apply only to contributions  
18 and distributions made after the effective date of this Act.

19 (4) Section 704 applies only to assignments made after the  
20 effective date of this Act.

21 (5) Article 9, dealing with registration of foreign limited  
22 partnerships, is not effective until the extended effective  
23 date.

1 SECTION 1105. [*Rules for Cases Not Provided for in This*  
2 *Act.*] In any case not provided for in this Act the provisions of  
3 the Uniform Partnership Act govern.

# Collecting support from some parents is demanding — and expensive — task

By PAULA WILMOT  
Tribune Staff Writer

Who's taking care of the children? Mom fills that role by herself in about 15 percent of American families, primarily because of divorce.

## First in a series

And 75 percent of divorced or separated fathers aren't paying court-ordered child support.

**MOM'S LOW EARNING** capacity — less than half (46.9 percent) of what male heads of households are paid — coupled with high unemployment often leaves her little choice but welfare.

That's what Aid to Families with Dependent Children is for, taking care of the children.

But high non-support rates means the government is picking up a lot of parental responsibility. Last year the government spent \$10 billion to maintain 2.4 million single-parent families.

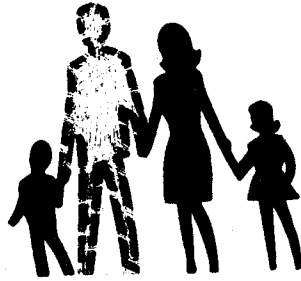
AFDC benefits are about \$175,000 a month in Cascade County alone.

Every day district court judges order non-custodial parents to pay regular support payments to help raise their children, and every day those court orders — fair or not — are ignored.

That's why the Child Support Enforcement Program was started in 1975.

With 75 percent federal funding, the state Department of Revenue works to collect delinquent child-support payments for those on public assistance and even for those who aren't.

**IT'S WORKING**, and in spite of popular anti-government sentiments, expansion is recommended at state



and federal levels.

It's become known as the "nab a dad" program because about 95 percent of the absent parents in welfare cases are fathers.

According to Dennis Shober, who has run the Great Falls regional office since it opened in 1975, the program operates on the belief it's slowing the rise of welfare expenditures.

He says it's cost-effective too, collecting \$1.20 for every \$1 spent on administration. With a staff of 37 statewide, 1980 gross collections were \$1.6 million. According to Shober, records indicate collections could increase to the national average of \$3.65 for every \$1 spent with more staff. Pennsylvania, he said, reports a \$14 return on its dollar.

Money collected by the enforcement program is distributed to the non-welfare mothers on whose behalf it was collected or to the federal, state and county governments which paid part of the AFDC benefits to the mothers who are on assistance.

When a divorced parent applies for assistance, she — occasionally he — assigns support rights to the welfare office in exchange. Then the Department of Revenue proceeds to enforce

the child support order in the divorce decree in order to recover what has become an account due the state.

**SHOBER SAID** it's rare that his office goes after a non-supporting mother, since most custodial parents are mothers. "It happens though," he said.

First a writ of execution is issued and the sheriff attempts to collect support money owing by execution against bank accounts, wages or any other available property. At the same time, the district court is asked to order the delinquent parent to appear and show cause why the support isn't being paid as ordered.

If the parent fails to show good cause for non-support, he can be jailed for five days for contempt of court. If the non-supporting parent fails to appear the judge usually issues an arrest warrant, which can result in jail time too.

If the parent is employed, the state also starts proceedings to attach wages.

This procedure continues at six-month intervals as long as non-support continues.

A woman doesn't have to be on welfare to get help from the support enforcement program, but she has to pay for it. A fee schedule was instituted last Nov. 1, under which a non-welfare mother is charged \$20 to apply, plus a percentage of collections made on her behalf. The percentage is based on the applicant's income, up to a maximum of 10 percent.

**THE SUPPORT** enforcement office has no staff lawyers. Instead, the DOR of which it is a division contracts with law firms and county attorneys to go to court. The Great Falls firm of James, Gray & McCafferty is one of the contractors.

Robert F. James of that firm has proposed a bill that would make support enforcement easier in cases in which the non-supporting parent is employed. The bill would allow the state, the mother or the child's guardian go to court for a wage garnishment order whenever support payments fall six months in arrears. If the employer fails to deduct the court-ordered amount, he could become liable for the payments, according to the proposal.

James said he suggested the bill on his own, not on behalf of the DOR, but the DOR supports it. Introduced as Senate Bill 164 by Helena Sen. Steve Brown, the bill takes court discretion out of the wage attachment procedure, according to James.

The bill will probably be amended to shorten the delinquency period and delete the employer's liability, James continued. As it is, the proposal provides for wage attachment in the amount of current support due, plus an installment on delinquent support sufficient to repay it in a year.

"Some of the senators were concerned that a guy would get in pretty deep in six months. They said they'd like to shorten to two or three months the period a person can get behind before wage attachment can be requested," James said.

Shober said the bill, entitled the Child Support Income Deduction Act of 1981, will eliminate much of the delinquency problem.

**A GOOD PORTION** of the past-due support belongs to the governments which have been footing the bill in AFDC, he said. He estimated the past-due tab in his nine-county region to be about \$20 million.

**Next: The caseload includes 10,000 dependents in the nine-county Great Falls area.**

# Child support obligations not to be easily shrugged off

By PAULA WILMOT  
Tribune Staff Writer

Don't have the kids if you can't afford to support them.

That's the advice of Robert F. James, a Great Falls attorney who works for the state Department of Revenue establishing paternity and collecting court-ordered child support.

James is a member of the law firm of James, Gray & McCafferty, which has been contracting with the state in its Child Support Enforcement program for three years.

## Last in a series

"There's a common misconception among men that nothing will happen to them if they don't pay support for their children," he said. "They don't realize that under the law children are more important than debts. They can take out bankruptcy if their debts are too great, but they can't discharge child support in bankruptcy. The obligation remains."

Statewide the support enforcement program located 2,222 absent parents and established paternity in 170 cases last year, bringing in a total of \$1.6 million in child support.

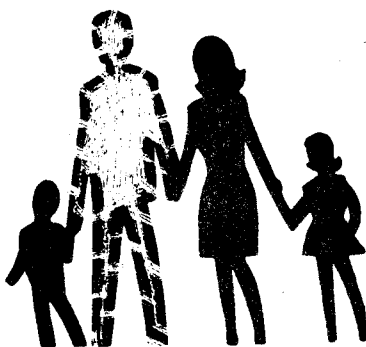
The caseload statewide is 25,708 and 10,000 of those are in the nine-county area which has offices in Great Falls. Dennis Shober heads this region.

"I opened this office in 1975," Shober said, "and in spite of the thankless nature of the job I'm a believer in its worth."

Shober said the system in which three-fourths of divorced or separated fathers pay no support is wrong. Tired of hassles, many women become satisfied to be on welfare while fathers get off free, he said.

He quoted statistics that last year the government paid out \$10 billion to support 2.4 million single-parent households. "It's not fair that the rest of us have to take responsibility for them when the courts have ordered them to pay support for their kids," he said.

Shober said the liens filed early in the legal proceedings against a non-supporting parent may not show immediate results either, but "Some of these guys will be surprised years from now when they try to sell a piece of property and find we've got a lien against it."



Sometimes the courts haven't ordered support until Shober's office intervenes and establishes who the father is. Last year 23 paternitys were established here.

**PROVING PATERNITY** can take several months and takes the mother's cooperation.

When a mother assigns her support rights to the welfare department in order to get assistance, she gives the state the right to seek recovery of past due child support. In cases where the child was born outside marriage, she gives the state the right to look for the father and attempt to establish a child-support obligation.

In addition to that hope, James said, there's the possibility of establishing eligibility for Social Security, Champus or other medical benefits and simply identity. If the father is underage, he's not forced to pay support until he turns 18.

Crossing state lines is easier in paternity cases than in routine non-support cases, James said. With state and federal locator services at his disposal he said he can find a man almost anywhere. He said he has served papers on men in England, Canada and aboard the

USS Kittyhawk.

The state's need for establishing paternity has been increasing in recent years, James said. Unmarried pregnant girls used to go away to have their babies and adopt them out, but now 90 percent of them keep their children.

James said he's handled 150 paternitys in three years and only two or three of the girls weren't truthful. Some have married the fathers of their children after he found them, he added.

The office has also had cases in which girls who initially kept their babies later put them up for adoption. In those cases, he said, the natural father is released from his obligation.

**PROSECUTING WELFARE FRAUD** is another branch of the support enforcement program. Last year there were eight successful prosecutions in Cascade County, totaling about \$8,000.

James said the best way to prevent welfare fraud is to get fathers to pay support and keep Mom off welfare.

Shober conceded that the amount of assistance is low enough that it tends to encourage cheating.

A woman convicted of fraud last July was receiving assistance in the amount of \$331 a month, plus medical benefits and food stamps, to support three children. When she received \$1,050 from her former husband, she didn't report it to the welfare department.

Another woman raising two children on \$167 a month admitted outside income of \$2,576 after she was charged with a felony.

Both women were ordered to make restitution for their crimes, and Shober wonders about their ability to repay such large amounts while they continue on the same level of welfare.

At the same time, he said, benefits have to be kept low enough to give people an incentive to get off welfare.



from:

Joe Renders  
P.O. Box 1243  
Helena, MT 59624

# Mothers on Their Own Making It After All

Nearly three million American women must be both mother and father to their children. At last they may be getting some help.

By Marilyn Murray Willson

"My ex-husband has a huge salary compared with mine. After all, he's a doctor — in part, because I worked him through medical school. Not only is my salary low, but so are the child-support payments I receive. While it hurts me, it hurts my son a lot more. He's too young to fully understand why Daddy's so rich and Mommy's so poor." Joanne, a 34-year-old stenographer, divorcee and mother.

In recent movies like *An Unmarried Woman* and *Kramer vs. Kramer*, we saw the emotional side effects of divorce. But few movies and books have accurately depicted an equally devastating consequence of divorce. In millions of homes across the country, there are women who find themselves under economic hardships because they are forced to bring home the bacon while they simultaneously bring up baby.

This gloomy new sub-genre of the economic charts is composed of 2.9 million mothers who, in large part because of the divorce rate, are now the heads of households (with children under 18) and the major or sole breadwinners for their families. Where these women were once regarded as rarities, they now head close to 15 percent of American families. Single-parent families increased 79 percent since the 1970 Census, and there is every indication the growth will continue. Though there are, of course, single-parent households headed by men, a staggering 90 percent of them are headed by women.

But what is difficult for these women is not just the enormous responsibility they face as heads of their families. It's the economic hardship they must contend with. According to figures released this year by the Bureau of Labor Statistics, women who support their families earn less than half (46.9 percent) the amount earned by male heads of household. There are several factors that exert an adverse influence on working single mothers: the emergence of a two-paycheck society, women's poor earning power, the rising expense of raising children and the ineffectual en-

forcement of child-support payment.

The two-paycheck family has had a significant effect on consumer market demographics. Today's advertising campaigns are being geared toward upwardly mobile couples — with two cars, two career wardrobes and plenty of disposable income for goodies like microwave ovens and vacations in the

Valerie Bertinelli and Bonnie Franklin cope with the problems of a single parent household in *One Day at a Time*.



Real-life divorcee Marjorie Marks — a research assistant — with sons Zachary and Leon.

sun — and the struggling single mother realizes all too soon that she has been squeezed out of America's economic mainstream. Today there are actually more families with two wage earners than there are with only a single worker. Census Bureau data indicate that two-paycheck families have an average income of \$20,900 per year — while the average income for a working female head-of-household is only \$8,500.

Gracie, a 43-year-old former actress, who is divorced from her attorney husband, explains, "I'm supporting my three kids on a budget of \$5 per day per child. Parents who each have a paycheck can give their children luxuries like summer camp and music lessons. But they're beyond my standard of living. I think my kids are painfully aware of the difference between their friends' status and theirs, but there's nothing I can do about it. Nothing at all."

A particularly disturbing contributor to the financial woes of single working mothers is the surprising lack of advancement in pay levels for working women — whether married or single. Women, as a group, are still finding it difficult to escape the stigma of sexually stereotyped dead-end jobs. Of the women in the work force as recently as 1979, about 75 percent were

in clerical, sales, service, factory or plant jobs.

In spite of the overall belief that women are enjoying much better economic status these days than ever before, today's 40 million plus working women still earn only 62 cents to every dollar earned by men.

Barbara, a 29-year-old secretary who is raising two young daughters, remarks, "I know every year prices will rise and my expenses will go up. If I'm barely making ends meet now on my secretary's salary, how will I manage to support our family five years from now?"

**T**he ineffectual child-support system that exists in most states is another financial whammy for divorced mothers. Several national surveys conducted during the 70's highlighted the disturbing plight of women who were awarded child support at the time of their divorce but who rarely see the money earmarked for their children's well-being. According to current estimates, it costs over \$80,000 to raise a child to age 18, and divorced mothers who can't collect child-support payments are under a heavy financial burden.

Fortunately, this trend may be decelerating, thanks to a Government-sponsored program designed to

assist divorcees whose ex-husbands refuse to help them financially. (Husbands often declare bogus bankruptcy or "forget" to send checks, or "disappear.") An emergency-assistance program called "Child Support Enforcement Program," which was started in 1975 and is run by the Federal Government, now uses local agencies to track down "runaway" parents who shirk their financial obligations. Internal Revenue Service records and other Federal files are made available to the agencies, according to Louis Hays, deputy director of the Office of Child Support Enforcement. As of 1978, \$1.6 billion had been collected from close to a million parents who had tried to escape making payments.

Another bright spot: In California, the State Legislature recently passed a bill designed to authorize mandatory deduction of child-support payments from the paychecks of fathers who miss two child-support payment periods. Making child support an automatic deduction (like taxes or Social Security) may be the answer to many mothers' money worries.

The picture isn't rosy. Betty Friedman, feminist and author of the upcoming book, *The Second Stage* (which discusses the problems of working mothers), says that things will get worse before they get better. But she does believe that relief could come if women begin to mobilize on a local level — the legislation mentioned above is a good example of what can be done.

Until then, single working mothers try to make it work. Says, a 58-year-old working mother who raised four children single-handedly, "It's very tough. But you do your best — because you care about your kids and you care about yourself." **FW**

Ms. Willson is the author of *Diary Of A Divorced Mother* (Bantam).

WITNESS STATEMENT

NAME LARRY HUSS BILL No. 58222  
ADDRESS Bx 514 HELLERS DATE 3-11-81  
WHOM DO YOU REPRESENT Self  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

# VISITORS' REGISTER

SENATE	HOUSE	JUDICIARY	COMMITTEE
BILL	216		Date 3/11/81
SPONSOR	S. Brown		

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

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# VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 164

Date 3/11/81

SPONSOR S. Brown

[illegible]

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# VISITORS' REGISTER

	HOUSE	JUDICIARY	COMMITTEE
SENATE			
BILL	222		Date 3/11/81
SPONSOR	Kolstad		

[illegible]

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# VISITORS' REGISTER

	HOUSE	JUDICIARY	COMMITTEE
SENATE			
BILL	161		Date 3/11/81
SPONSOR	Mazurek		

[illegible]

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# VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

SENATE  
BILL

144

Date 3/11/81

SPONSOR Hazelbaker

[illegible]

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