

1 *Senate* BILL NO. *156*  
 2 INTRODUCED BY *Murray Turnage Goodner*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE REVISED  
 5 UNIFORM LIMITED PARTNERSHIP ACT; REPEALING SECTIONS 63-701  
 6 THROUGH 63-911, R.C.M. 1947."  
 7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Name of act. This act may be cited as the  
 10 Uniform Limited Partnership Act.

11 Section 2. Construction and application. This act  
 12 shall be so construed and applied to effect its general  
 13 purpose to make uniform the law with respect to the subject  
 14 of this act among states enacting it.

15 Section 3. Rules for cases not provided for in this  
 16 act. In any case not provided for in this act, the  
 17 provisions of the Uniform Partnership Act govern.

18 Section 4. Saving clause. This act does not affect  
 19 rights accrued, duties incurred, or proceedings begun before  
 20 July 1, 1977.

21 Section 5. Definitions. In this act the following  
 22 definitions apply:

23 (1) "Certificate of limited partnership" means the  
 24 certificate referred to in [section 12], as that certificate  
 25 is amended from time to time.

1 (2) "Contribution" means any cash, property, or  
 2 services rendered or a promissory note or other binding  
 3 obligation to contribute cash or property or to perform  
 4 services, which a partner contributes to a limited  
 5 partnership in his capacity as a partner.

6 (3) "Event of withdrawal of a general partner" means  
 7 an event that causes a person to cease to be a general  
 8 partner as provided in [section 27].

9 (4) "Foreign limited partnership" means a partnership  
 10 formed under the laws of any state other than this state and  
 11 having as partners one or more general partners and one or  
 12 more limited partners.

13 (5) "General partner" means a person who has been  
 14 admitted to a limited partnership as a general partner in  
 15 accordance with the partnership agreement and who is named  
 16 in the certificate of limited partnership as a general  
 17 partner.

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

23 (7) "Limited partnership" and "domestic limited  
 24 partnership" mean a partnership formed by two or more  
 25 persons under the laws of this state and having one or more

1 general partners and one or more limited partners.

2 (8) "Partner" means any limited partner or general  
3 partner.

4 (9) "Partnership agreement" means the agreement,  
5 written or, to the extent not prohibited by law, oral or  
6 both, of the partners as to the affairs of a limited  
7 partnership and the conduct of its business.

8 (10) "Partnership interest" has the meaning specified  
9 in [section 43].

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

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

16 Section 6. Name. The name of each limited partnership  
17 as set forth in its certificate of limited partnership:

18 (1) shall contain the words "limited partnership" in  
19 full;

20 (2) may not contain the name of a limited partner  
21 unless:

22 (a) it is also the name of a general partner; or

23 (b) the business of the limited partnership had been  
24 carried on under that name before the admission of that  
25 limited partner;

1 (3) may not contain any word or phrase indicating or  
2 implying that it is organized other than for a purpose  
3 stated in its certificate of limited partnership; and

4 (4) may not be the same as or deceptively similar to  
5 the name of any corporation or limited partnership organized  
6 under the laws of this state or licensed or registered as a  
7 foreign corporation or limited partnership in this state.

8 Section 7. Reservation of name. (1) The exclusive  
9 right to the use of a name may be reserved by:

10 (a) any person intending to organize a limited  
11 partnership under this act and to adopt that name;

12 (b) any domestic limited partnership or any foreign  
13 limited partnership registered in this state which, in  
14 either case, intends to adopt that name;

15 (c) any foreign limited partnership intending to  
16 register in this state and to adopt that name; and

17 (d) any person intending to organize a foreign limited  
18 partnership and intending to have it registered in this  
19 state and to adopt that name.

20 (2) The reservation shall be made by filing with the  
21 secretary of state an application, executed by the  
22 applicant, to reserve a specified name. If the secretary of  
23 state finds that the name is available for use by a domestic  
24 or foreign limited partnership, he shall reserve the name  
25 for the exclusive use of the applicant for a period of 120

1 days. Once having reserved a name, the same applicant may  
 2 not again reserve the same name until more than 60 days  
 3 after the expiration of the last 120-day period for which  
 4 that applicant had reserved that name. The right to the  
 5 exclusive use of a name so reserved may be transferred to  
 6 any other person by filing in the office of the secretary of  
 7 state a notice of the transfer executed by the applicant for  
 8 whom the name was reserved and specifying the name and  
 9 address of the transferee.

10 Section 8. Specified office and agent. Each limited  
 11 partnership shall continuously maintain in this state:

12 (1) an office, which may but need not be a place of  
 13 its business in this state, at which shall be kept the  
 14 records required to be maintained by [section 9]; and

15 (2) an agent for service of process on the limited  
 16 partnership, which agent must be an individual resident of  
 17 this state, a domestic corporation, or a foreign corporation  
 18 authorized to do business in this state.

19 Section 9. Records to be kept. (1) Each limited  
 20 partnership shall keep at the office referred to in  
 21 subsection (1) of [section 8] the following:

22 (a) a current list of the full name and last known  
 23 business address of each partner set forth in alphabetical  
 24 order;

25 (b) a copy of the certificate of limited partnership

1 and all certificates of amendment thereto, together with  
 2 executed copies of any powers of attorney pursuant to which  
 3 any certificate has been executed;

4 (c) copies of the limited partnership's federal,  
 5 state, and local income tax returns and reports, if any, for  
 6 the 3 most recent years; and

7 (d) copies of any then effective written partnership  
 8 agreements and of any financial statements of the limited  
 9 partnership for the 3 most recent years.

10 (2) These records shall be available for inspection  
 11 and copying at the reasonable request and at the expense of  
 12 any partner during ordinary business hours.

13 Section 10. Nature of business. A limited partnership  
 14 may carry on any business that a partnership without limited  
 15 partners may carry on.

16 Section 11. Business transactions of partner with the  
 17 partnership. Except as otherwise provided in the partnership  
 18 agreement, a partner may lend money to and transact other  
 19 business with the limited partnership and, subject to other  
 20 applicable provisions of law, has the same rights and  
 21 obligations with respect thereto as a person who is not a  
 22 partner.

23 Section 12. Certificate of limited partnership. (1)  
 24 Two or more persons desiring to form a limited partnership  
 25 shall execute a certificate of limited partnership. The

1 certificate shall be filed in the office of secretary of  
2 state and shall set forth:

- 3 (a) the name of the limited partnership;  
4 (b) the general character of its business;  
5 (c) the address of the office and the name and address  
6 of the agent for service of process required to be  
7 maintained by [section 8];  
8 (d) the name and the business address of each partner  
9 (specifying the general partners and limited partners  
10 separately);  
11 (e) the amount of cash and a description and statement  
12 of the agreed value of the other property or services  
13 contributed by each partner and which each partner has  
14 agreed to contribute in the future;  
15 (f) the times at which or events on the happening of  
16 which any additional contributions agreed to be made by each  
17 partner are to be made;  
18 (g) any power of a limited partner to grant an  
19 assignee of any part of his partnership interest the right  
20 to become a limited partner and the terms and conditions of  
21 the power;  
22 (h) if agreed upon, the time at which or the events or  
23 the happening of which a partner may terminate his  
24 membership in the limited partnership and the amount of or  
25 the method of determining the distribution to which he may

1 be entitled respecting his partnership interest and the  
2 terms and conditions of the termination and distribution;

3 (i) any right of a partner to receive distributions of  
4 property including cash from the limited partnership;

5 (j) any right of a partner to receive or of a general  
6 partner to make distributions to a partner which include a  
7 return of all or any part of the partner's contribution;

8 (k) any time at which or events upon the happening of  
9 which the limited partnership is to be dissolved and its  
10 affairs wound up;

11 (l) any right of the remaining general partners to  
12 continue the business on the happening of an event of  
13 withdrawal of a general partner; and

14 (m) any other matters the partners, in their sole  
15 discretion, determine to include therein.

16 (2) A limited partnership is formed at the time of the  
17 filing of the certificate of limited partnership in the  
18 office of the secretary of state or at any later time  
19 specified in the certificate of limited partnership if, in  
20 each case, there has been substantial compliance with the  
21 requirements of this section.

22 Section 13. Amendments to certificate. (1) A  
23 certificate of limited partnership is amended by filing a  
24 certificate of amendment thereto in the office of the  
25 secretary of state. The certificate shall set forth:

- 1 (a) the name of the limited partnership;  
 2 (b) the date of filing of the certificate; and  
 3 (c) the amendments to the certificate.

4 (2) Within 30 days after the happening of any of the  
 5 following events an amendment to a certificate of limited  
 6 partnership reflecting the occurrence of the event or events  
 7 shall be filed:

8 (a) a change in the amount or character of the  
 9 contribution of any partner or in any partner's obligation  
 10 to make a contribution;

11 (b) the admission of a new partner;

12 (c) the withdrawal of a partner; or

13 (d) the continuation of the business under [section  
 14 48] after an event of withdrawal of a general partner.

15 (3) A certificate of limited partnership must be  
 16 amended promptly by any general partner upon becoming aware  
 17 that any statement therein was false when made or that any  
 18 arrangements or other facts described have changed, making  
 19 the certificate inaccurate in any respect, but amendments to  
 20 show changes of addresses of limited partners need be filed  
 21 only once every 12 months.

22 (4) A certificate of limited partnership may be  
 23 amended at any time for any other proper purpose the general  
 24 partners may determine.

25 (5) No person is liable because an amendment to a

1 certificate of limited partnership has not been filed to  
 2 reflect the occurrence of any event referred to in  
 3 subsection (2) of this section if the amendment is filed  
 4 within the 30-day period specified in subsection (2).

5 Section 14. Cancellation of certificate. A certificate  
 6 of limited partnership shall be cancelled upon the  
 7 dissolution and the commencement of winding up of the  
 8 limited partnership and at any other time there are no  
 9 remaining limited partners. A certificate of cancellation  
 10 shall be filed in the office of the secretary of state and  
 11 shall set forth:

12 (1) the name of the limited partnership;

13 (2) the date of filing of its certificate of limited  
 14 partnership;

15 (3) the reason for filing the certificate of  
 16 cancellation;

17 (4) the effective date (which shall be a date certain)  
 18 of cancellation if it is not to be effective upon the filing  
 19 of the certificate; and

20 (5) any other information the general partners filing  
 21 the certificate may determine.

22 Section 15. Execution of certificates. (1) Each  
 23 certificate required by this chapter to be filed in the  
 24 office of the secretary of state shall be executed in the  
 25 following manner:

1 (a) Each original certificate of limited partnership  
2 must be signed by each partner named therein.

3 (b) Each certificate of amendment must be signed by at  
4 least one general partner and by each other partner who is  
5 designated in the certificate as a new partner or whose  
6 contribution is described as having been increased.

7 (c) Each certificate of cancellation must be signed by  
8 each general partner.

9 (2) Any person may sign a certificate by an  
10 attorney-in-fact, but any power of attorney to sign a  
11 certificate relating to the admission or increased  
12 contribution of a partner must specifically describe the  
13 admission or increase.

14 (3) The execution of a certificate by a general  
15 partner constitutes an affirmation under the penalties of  
16 false swearing that the facts stated therein are true.

17 Section 16. Amendment or cancellation by judicial act.  
18 If the persons required by [section 15] to execute any  
19 certificate of amendment or cancellation fail or refuse to  
20 do so, any other partner, and any assignee of a partnership  
21 interest, who is adversely affected by the failure or  
22 refusal, may petition the district court to direct the  
23 amendment or cancellation. If the court finds that the  
24 amendment or cancellation is proper and that the persons so  
25 designated have failed or refused to execute the

1 certificate, it shall order the secretary of state to record  
2 an appropriate certificate of amendment or cancellation.

3 Section 17. Filing in the office of the secretary of  
4 state. (1) Two signed copies of the certificate of limited  
5 partnership and of any certificates of amendment or  
6 cancellation (or of any judicial decree of amendment or  
7 cancellation) shall be delivered to the secretary of state.  
8 A person who executes a certificate as an agent or fiduciary  
9 need not exhibit evidence of his authority as a prerequisite  
10 to filing. Unless the secretary of state finds that any  
11 certificate does not conform to law, upon receipt of all  
12 filing fees required by law the secretary of state shall:

13 (a) endorse on each duplicate original the word  
14 "filed" and the day, month, and year of the filing thereof;

15 (b) file one duplicate original in his office; and

16 (c) return the other duplicate original to the person  
17 who filed it or his representative.

18 (2) Upon the filing of a certificate of amendment (or  
19 judicial decree of amendment) in the office of the secretary  
20 of state, the certificate of limited partnership shall be  
21 amended as set forth therein, and upon the effective date of  
22 a certificate of cancellation (or a judicial decree  
23 thereof), the certificate of limited partnership shall be  
24 cancelled.

25 Section 18. Liability for false statement in

1 certificate. If any certificate of limited partnership or  
 2 certificate of amendment or cancellation contains a false  
 3 statement, one who suffers loss by reliance on the statement  
 4 may recover damages for the loss from:

5 (1) any person actually executing or causing another  
 6 to execute on his behalf the certificate who knew and any  
 7 general partner who knew or should have known the statement  
 8 to be false at the time the certificate was executed; and

9 (2) any general partner who thereafter knew or should  
 10 have known that any arrangements or other facts described in  
 11 the certificate have changed, making the statement  
 12 inaccurate in any respect, within a sufficient time before  
 13 the statement was relied upon to have reasonably enabled  
 14 that general partner to cancel or amend the certificate or  
 15 to file a petition for its cancellation or amendment under  
 16 [section 16].

17 Section 19. Constructive notice. The fact that a  
 18 certificate of limited partnership is on file in the office  
 19 of the secretary of state is constructive notice that the  
 20 partnership is a limited partnership and that the persons  
 21 designated therein as limited partners are limited partners  
 22 but is not constructive notice of any other fact.

23 Section 20. Delivery of certificates to limited  
 24 partners. Upon the return by the secretary of state pursuant  
 25 to [section 17] of any certificate marked "filed", the

1 general partners shall promptly deliver or mail a copy of  
 2 the certificate to each limited partner unless the  
 3 partnership agreement provides otherwise.

4 Section 21. Admission of additional limited partners.  
 5 (1) After the filing of a limited partnership's original  
 6 certificate of limited partnership, a person may be admitted  
 7 as a new limited partner:

8 (a) in the case of a person acquiring a partnership  
 9 interest directly from the limited partnership, upon  
 10 compliance with the partnership agreement or if the  
 11 partnership agreement does not so provide, upon the written  
 12 consent of all partners; and

13 (b) in the case of an assignee of a partnership  
 14 interest of a partner who has the power, as provided in  
 15 [section 46], to grant the assignee the right to become a  
 16 limited partner, upon the exercise of that power and  
 17 compliance with any conditions limiting the grant or  
 18 exercise of the power.

19 (2) In each case under subsection (1), the person  
 20 acquiring the partnership interest becomes a limited partner  
 21 only upon amendment of the certificate of limited  
 22 partnership reflecting that fact.

23 Section 22. Voting. Subject to the provisions of  
 24 [section 23], the partnership agreement may grant to all or  
 25 a specified group of the limited partners the right to vote

1 (on a per capita or any other basis) upon any matter.

2 Section 23. Liability to third parties. (1) Except as  
3 provided in subsection (4), a limited partner as such is not  
4 liable for the obligations of a limited partnership unless,  
5 in addition to the exercise of his rights and powers as a  
6 limited partner, he takes part in the control of the  
7 business. But if the limited partner's participation in the  
8 control of the business is not substantially the same as the  
9 exercise of the powers of a general partner, he is liable  
10 only to persons who transact business with the limited  
11 partnership with actual knowledge of his participation in  
12 control.

13 (2) A limited partner does not participate in the  
14 control of the business within the meaning of subsection (1)  
15 solely by doing one or more of the following:

16 (a) being a contractor for or an agent or employee of  
17 the limited partnership or of a general partner;

18 (b) consulting with and advising a general partner  
19 with respect to the business of the limited partnership;

20 (c) acting as surety for the limited partnership;

21 (d) approving or disapproving an amendment to the  
22 partnership agreement; and

23 (e) voting on one or more of the following matters:

24 (i) the dissolution and winding up of the limited  
25 partnership;

1 (ii) the sale, exchange, lease, mortgage, pledge, or  
2 other transfer of all or substantially all of the assets of  
3 the limited partnership other than in the ordinary course of  
4 its business;

5 (iii) the incurrance of indebtedness by the limited  
6 partnership other than in the ordinary course of its  
7 business;

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

9 (v) the removal of a general partner.

10 (3) The enumeration in subsection (2) does not mean  
11 that the possession or exercise of any other powers by a  
12 limited partner constitutes participation by him in the  
13 business of the limited partnership.

14 (4) A limited partner who knowingly permits his name  
15 to be used in the name of the limited partnership, except  
16 under circumstances permitted by subsection (2)(a) of  
17 [section 6], is liable to creditors who extend credit to the  
18 limited partnership without actual knowledge that the  
19 limited partner is not a general partner.

20 Section 24. Person erroneously believing himself a  
21 limited partner. (1) Except as provided in subsection (2), a  
22 person who makes a contribution to a business enterprise and  
23 erroneously and in good faith believes that he has become a  
24 limited partner in the enterprise is not a general partner  
25 in the enterprise and is not bound by its obligations by



1 reason of making the contribution, receiving distributions  
 2 from the enterprise, or exercising any rights of a limited  
 3 partner if, on ascertaining the mistake, he:

4 (a) causes an appropriate certificate of limited  
 5 partnership or a certificate of amendment to be executed and  
 6 filed; or

7 (b) withdraws from future equity participation in the  
 8 enterprise.

9 (2) Any person who makes a contribution of the kind  
 10 described in subsection (1) is liable as a general partner  
 11 to any third party who transacts business with the  
 12 enterprise before the person withdraws and an appropriate  
 13 certificate if any is filed to show the withdrawal or before  
 14 an appropriate certificate is filed to show his status as a  
 15 limited partner and, in the case of an amendment, after  
 16 expiration of the 30-day period for filing an amendment  
 17 relating to the person as a limited partner under [section  
 18 13] but in each case only if the third party actually  
 19 believed in good faith that the person was a general partner  
 20 at the time of the transaction.

21 Section 25. Information. Each limited partner has the  
 22 right to:

23 (1) inspect and copy any of the partnership records  
 24 required to be maintained by [section 9]; and

25 (2) obtain from the general partners from time to time

1 upon reasonable demand:

2 (a) true and full information regarding the state of  
 3 the business and financial condition of the limited  
 4 partnership;

5 (b) promptly after becoming available, a copy of the  
 6 limited partnership's federal, state, and local income tax  
 7 return for each year; and

8 (c) any other information regarding the affairs of the  
 9 limited partnership as is just and reasonable.

10 Section 26. Admission. After the filing of a limited  
 11 partnership's original certificate of limited partnership,  
 12 new general partners may be admitted only with the specific  
 13 written consent of each partner.

14 Section 27. Events of withdrawal. Except as otherwise  
 15 approved by the specific written consent at the time of all  
 16 partners, a person ceases to be a general partner of a  
 17 limited partnership upon the happening of any of the  
 18 following events:

19 (1) the general partner withdraws from the limited  
 20 partnership as provided in [section 36];

21 (2) the general partner ceases to be a member of the  
 22 limited partnership as provided in [section 44];

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

25 (4) unless otherwise provided in the certificate of

1 limited partnership, the general partner:

2 (a) makes an assignment for the benefit of creditors;

3 (b) files a voluntary petition in bankruptcy;

4 (c) is adjudicated a bankrupt or insolvent;

5 (d) files any petition or answer seeking for himself

6 any reorganization, arrangement, composition, readjustment,

7 liquidation, dissolution, or similar relief under any

8 statute, law, or regulation;

9 (e) files any answer or other pleading admitting or

10 failing to contest the material allegations of a petition

11 filed against him in any proceeding of this nature; or

12 (f) seeks, consents to, or acquiesces in the

13 appointment of any trustee, receiver, or liquidator of the

14 general partner or of all or any substantial part of his

15 properties;

16 (5) unless otherwise provided in the certificate of

17 limited partnership, 120 days after the commencement of any

18 proceeding against the general partner seeking any

19 reorganization, arrangement, composition, readjustment,

20 liquidation, dissolution, or similar relief under any

21 statute, law, or regulation, the proceeding has not been

22 dismissed or if, within 90 days after the appointment

23 without his consent or acquiescence of any trustee,

24 receiver, or liquidator of the general partner or of all or

25 any substantial part of his properties, the appointment is

1 not vacated or stayed or if, within 90 days after the

2 expiration of any stay, the appointment is not vacated;

3 (6) in the case of a general partner who is a natural

4 person:

5 (a) his death; or

6 (b) the entry by a court of competent jurisdiction

7 adjudicating him incompetent to manage his person or his

8 property;

9 (7) in the case of a general partner who is acting as

10 such in the capacity of a trustee of a trust, the

11 termination of the trust (but not merely the substitution of

12 a new trustee);

13 (8) in the case of a general partner that is a

14 partnership, the dissolution and commencement of winding up

15 of the partnership;

16 (9) in the case of a general partner that is a

17 corporation, the filing of a certificate of dissolution or

18 its equivalent for the corporation or the revocation of its

19 charter; and

20 (10) in the case of an estate, the distribution by the

21 fiduciary of all of the estate's interest in the

22 partnership.

23 Section 28. General powers and liabilities. Except as

24 otherwise provided in this act and in the partnership

25 agreement, a general partner of a limited partnership has

1 all the rights and powers and is subject to all the  
2 restrictions and liabilities of a partner in a partnership  
3 without limited partners.

4 Section 29. Contributions by a general partner. A  
5 general partner may make contributions to a limited  
6 partnership and share in the profits and losses of and in  
7 distributions from the limited partnership as a general  
8 partner. A general partner may also make contributions to  
9 and share in profits, losses, and distributions as a limited  
10 partner. A person who is both a general partner and a  
11 limited partner has all the rights and powers and is subject  
12 to all the restrictions and liabilities of a general partner  
13 and also has, except as otherwise provided in the  
14 partnership agreement, all powers and is subject to the  
15 restrictions of a limited partner to the extent he is  
16 participating in the partnership as a limited partner.

17 Section 30. Voting. The partnership agreement may  
18 grant to all or a specified group of general partners the  
19 right to vote (on a per capita or any other basis),  
20 separately or with all or any class of the limited partners,  
21 on any matter.

22 Section 31. Form of contributions. The contribution of  
23 a partner may be in cash, property, or services rendered or  
24 a promissory note or other obligation to contribute cash or  
25 property or to perform services.

1 Section 32. Liability for contributions. (1) Except as  
2 otherwise provided in the certificate of limited  
3 partnership, a partner is obligated to the limited  
4 partnership to perform any promise to contribute cash or  
5 property or to perform services regardless of whether he is  
6 unable to perform because of death, disability, or any other  
7 reason. If a partner does not make the required  
8 contribution of property or services, he is obligated at the  
9 option of the limited partnership to contribute cash equal  
10 to that portion of the value (as stated in the certificate  
11 of limited partnership) of the stated contribution that has  
12 not been made.

13 (2) Unless otherwise provided in the partnership  
14 agreement, the obligation of a partner to make a  
15 contribution or return money or other property paid or  
16 distributed in violation of this act may be compromised only  
17 by consent of all of the partners. Notwithstanding a  
18 compromise so authorized, a creditor of a limited  
19 partnership who extends credit, or whose claim arises, after  
20 the filing of the certificate of limited partnership or an  
21 amendment thereto which, in either case, reflects the  
22 obligation and before the amendment or cancellation thereof  
23 to reflect the compromise may enforce the precompromise  
24 obligation.

25 Section 33. Sharing of profits and losses. The profits

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

9 Section 34. Sharing of distributions. Distributions of  
 10 cash or other assets of a limited partnership shall be  
 11 allocated among the partners and among classes of partners  
 12 in the manner provided in the partnership agreement. If the  
 13 partnership agreement does not so provide, distributions  
 14 shall be made on the basis of the value (as stated in the  
 15 certificate of limited partnership) of the contributions  
 16 actually made by each partner to the extent they have not  
 17 been returned.

18 Section 35. Interim distributions. Except as otherwise  
 19 provided in this act, a partner is entitled to receive  
 20 distributions from a limited partnership before his  
 21 withdrawal from the limited partnership and before the  
 22 dissolution and winding up thereof:

23 (1) to the extent and at the times or upon the  
 24 happening of the events specified in the partnership  
 25 agreement, and

1 (2) if any distribution constitutes a return of any  
 2 part of his contribution under subsection (2) of [section  
 3 42], to the extent and at the times or upon the happening of  
 4 the events specified in the certificate of limited  
 5 partnership.

6 Section 36. Withdrawal of general partner. A general  
 7 partner may withdraw from a limited partnership at any time  
 8 by giving written notice to the other partners, but if the  
 9 withdrawal violates the partnership agreement, the limited  
 10 partnership may recover from the withdrawing general partner  
 11 damages for breach of the partnership agreement and offset  
 12 the damages against the amount otherwise distributable to  
 13 him.

14 Section 37. Withdrawal of limited partner. A limited  
 15 partner may withdraw from a limited partnership at the time  
 16 or upon the happening of the events specified in the  
 17 certificate of limited partnership and in accordance with  
 18 any procedures provided in the partnership agreement. If the  
 19 certificate of limited partnership does not specify the time  
 20 or the events upon the happening of which a limited partner  
 21 may withdraw from the limited partnership or a definite time  
 22 for the dissolution and winding up of the limited  
 23 partnership, a limited partner may withdraw from the limited  
 24 partnership upon not less than 6 months' prior written  
 25 notice to each general partner at his address on the books

1 of the limited partnership at its office in this state.

2 Section 38. Distributions upon withdrawal. Except as  
3 provided in this chapter, upon withdrawal any withdrawing  
4 partner is entitled to receive any distributions to which he  
5 is entitled under the partnership agreement and, if not  
6 provided, he is entitled to receive, within a reasonable  
7 time after withdrawal, the fair value of his interest in the  
8 limited partnership as of the date of withdrawal based upon  
9 his right to share in distributions from the limited  
10 partnership.

11 Section 39. Distributions in kind. Except as provided  
12 in the certificate of limited partnership, a partner,  
13 regardless of the nature of his contribution, has no right  
14 to demand and receive any distribution from a limited  
15 partnership in any form other than cash. Except as provided  
16 in the partnership agreement, a partner may not be compelled  
17 to accept a distribution of any asset in kind from a limited  
18 partnership to the extent that the percentage of the asset  
19 distributed to him exceeds a percentage of that asset which  
20 is equal to the percentage in which he shares in  
21 distributions from the limited partnership.

22 Section 40. Right to distributions. At the time a  
23 partner becomes entitled to receive a distribution, he has  
24 the status of and is entitled to all of the remedies  
25 available to a creditor of the limited partnership with

1 respect to the distribution.

2 Section 41. Limitations on distributions. A partner  
3 may not receive a distribution from a limited partnership to  
4 the extent that, after giving effect to the distribution,  
5 all liabilities of the limited partnership other than  
6 liabilities to partners on account of their partnership  
7 interests exceed the fair value of the partnership's assets.

8 Section 42. Liability upon return of contributions.  
9 (1) If a partner has received the return of any part of his  
10 contribution without violation of the partnership agreement  
11 or this act, for a period of 1 year thereafter he is liable  
12 to the limited partnership for the amount of his  
13 contribution returned but only to the extent necessary to  
14 discharge the limited partnership's liabilities to creditors  
15 who extended credit to the limited partnership during the  
16 period the contribution was held by the partnership.

17 (2) If a partner has received the return of any part  
18 of his contribution in violation of the partnership  
19 agreement or this act, for a period of 6 years thereafter he  
20 is liable to the limited partnership for the amount of the  
21 contribution wrongfully returned.

22 (3) A partner has received a return of his  
23 contribution to the extent that a distribution to him  
24 reduces his share of the fair value of the net assets of the  
25 limited partnership below the value (as set forth in the

1 certificate of limited partnership) of his contributions  
2 which have not theretofore been distributed to him.

3 Section 43. Nature of partnership interest. A  
4 partnership interest is a partner's share of the profits and  
5 losses of a limited partnership and the right to receive  
6 distributions of partnership assets. A partnership interest  
7 is personal property.

8 Section 44. Assignment of partnership interest. Except  
9 as otherwise provided in the partnership agreement, a  
10 partnership interest is assignable in whole or in part. An  
11 assignment of a partnership interest does not dissolve a  
12 limited partnership or entitle the assignee to become a  
13 partner or to exercise any of the rights thereof. An  
14 assignment only entitles the assignee to receive, to the  
15 extent assigned, any distributions to which the assignor  
16 would be entitled. Except as otherwise provided in the  
17 partnership agreement, a partner ceases to be a partner upon  
18 assignment of all his partnership interest.

19 Section 45. Rights of creditors. On due application to  
20 a court of competent jurisdiction by any judgment creditor  
21 of a partner, the court may charge the partnership interest  
22 of the partner with payment of the unsatisfied amount of the  
23 judgment debt with interest thereon. To the extent so  
24 charged, the judgment creditor has only the rights of an  
25 assignee of the partnership interest. This act does not

1 deprive any partner of the benefit of any exemption laws  
2 applicable to his partnership interest.

3 Section 46. Right of assignee to become limited  
4 partner. (1) An assignee of a partnership interest,  
5 including an assignee of a general partner, may become a  
6 limited partner if and to the extent that:

7 (a) the assignor gives the assignee that right in  
8 accordance with authority described in the certificate of  
9 limited partnership; or

10 (b) in the absence of that authority, all other  
11 partners consent.

12 (2) An assignee who has become a limited partner has,  
13 to the extent assigned, all the rights and powers and is  
14 subject to all the restrictions and liabilities of a limited  
15 partner under the partnership agreement and this act. An  
16 assignee who becomes a limited partner is also liable for  
17 the obligations of his assignor to make and return  
18 contributions as provided in [sections 35 through 42], but  
19 the assignee is not obligated for liabilities unknown to the  
20 assignee at the time he became a limited partner and which  
21 could not be ascertained from the certificate of limited  
22 partnership.

23 (3) If an assignee of a partnership interest becomes a  
24 limited partner, the assignor is not released from the  
25 liability to the limited partnership under [sections 18 and

1 32].

2 Section 47. Power of estate of deceased or incompetent  
3 partner. If a partner who is a natural person dies or a  
4 court of competent jurisdiction adjudges him to be  
5 incompetent to manage his person or his property, the  
6 partner's personal representative, guardian, conservator, or  
7 other legal representative may exercise all of the partner's  
8 rights for the purpose of settling his estate or  
9 administering his property, including any power the partner  
10 had to give an assignee the right to become a limited  
11 partner. If a partner that is a corporation, trust, or  
12 other entity other than a natural person is dissolved or  
13 terminated, those powers may be exercised by the legal  
14 representative or successor of the partner.

15 Section 48. Nonjudicial dissolution. A limited  
16 partnership is dissolved and its affairs shall be wound up  
17 upon the happening of the first to occur of the following:

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

20 (2) upon the unanimous written consent of all  
21 partners;

22 (3) upon the happening of an event of withdrawal of a  
23 general partner unless at the time there is at least one  
24 other general partner and the certificate of limited  
25 partnership permits the business of the limited partnership

1 to be carried on by the remaining general partner and he  
2 does so, but the limited partnership may not be dissolved or  
3 wound up by reason of any event of withdrawal if, within 90  
4 days after the withdrawal, all partners agree in writing to  
5 continue the business of the limited partnership and to the  
6 appointment of one or more new general partners if necessary  
7 or desired; or

8 (4) upon entry of a decree of judicial dissolution in  
9 accordance with [section 49].

10 Section 49. Dissolution by decree of court. On  
11 application by or for a partner the district court may  
12 decree a dissolution of a limited partnership whenever it is  
13 not reasonably practicable to carry on the business in  
14 conformity with the partnership agreement.

15 Section 50. Winding up. Unless otherwise provided in  
16 the partnership agreement, the general partners who have not  
17 wrongfully dissolved the limited partnership or, if none,  
18 the limited partners may wind up the limited partnership's  
19 affairs; but any partner, his legal representative, or his  
20 assignee, upon cause shown, may obtain winding up by the  
21 district court.

22 Section 51. Distribution of assets. Upon the winding  
23 up of a limited partnership, the assets shall be distributed  
24 as follows:

25 (1) to creditors, including partners who are creditors

1 (to the extent otherwise permitted by law), in satisfaction  
 2 of liabilities of the limited partnership other than  
 3 liabilities for distributions to partners pursuant to  
 4 [section 35 or 38];

5 (2) except as otherwise provided in the partnership  
 6 agreement, to partners and ex-partners in satisfaction of  
 7 liabilities for distributions pursuant to [section 35 or  
 8 38]; and

9 (3) except as otherwise provided in the partnership  
 10 agreement, to partners first for the return of their  
 11 contributions and second respecting their partnership  
 12 interests, in the proportions in which the partners share in  
 13 distributions.

14 Section 52. Law governing. Subject to the constitution  
 15 and public policy of this state, the laws of the state under  
 16 which a foreign limited partnership is organized govern its  
 17 organization and internal affairs and the liability of its  
 18 limited partners and a foreign limited partnership may not  
 19 be denied registration by reason of any difference between  
 20 those laws and the laws of this state.

21 Section 53. Registration. Before transacting business  
 22 in this state, a foreign limited partnership shall register  
 23 with the secretary of state. In order to register, a foreign  
 24 limited partnership shall submit to the secretary of state  
 25 in duplicate an application for registration as a foreign

1 limited partnership, signed and sworn to by a general  
 2 partner and setting forth:

3 (1) the name of the foreign limited partnership and,  
 4 if different, the name under which it proposes to transact  
 5 business and register in this state;

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

7 (3) the general character of the business it proposes  
 8 to transact in this state;

9 (4) the name and address of any agent for service of  
 10 process on the foreign limited partnership whom the foreign  
 11 limited partnership desires to appoint, which agent must be  
 12 an individual resident of this state, a domestic  
 13 corporation, or a foreign corporation authorized to do  
 14 business in this state and with a place of business in this  
 15 state;

16 (5) a statement that the secretary of state is  
 17 appointed the agent of the foreign limited partnership for  
 18 service of process if no agent has been appointed pursuant  
 19 to subsection (4) or, if appointed, the agent's authority  
 20 has been revoked or the agent cannot be found or served with  
 21 the exercise of reasonable diligence;

22 (6) the address of the office required to be  
 23 maintained in the state of its organization by the laws of  
 24 that state or, if not so required, of the principal office  
 25 of the foreign limited partnership; and



1 (7) if the certificate of limited partnership filed in  
 2 the foreign limited partnership's state of organization is  
 3 not required to include the names and business addresses of  
 4 the partners, a list of the names and addresses.

5 Section 54. Issuance of registration. (1) If the  
 6 secretary of state finds that an application for  
 7 registration conforms to law and all requisite fees have  
 8 been paid, he shall:

9 (a) endorse on the application the word "filed" and  
 10 the month, day, and year of the filing thereof;

11 (b) file in his office one of the duplicate originals  
 12 of the application; and

13 (c) issue a certificate of registration to transact  
 14 business in this state.

15 (2) The certificate of registration, together with one  
 16 duplicate original of the application, shall be returned to  
 17 the person who filed the application or his representative.

18 Section 55. Name. A foreign limited partnership may  
 19 register with the secretary of state under any name (whether  
 20 or not it is the name under which it is registered in its  
 21 state of organization) that includes the words "limited  
 22 partnership" and that could be registered by a domestic  
 23 limited partnership.

24 Section 56. Changes and amendments. If any statement  
 25 in a foreign limited partnership's application for

1 registration was false when made or any arrangements or  
 2 other facts described have changed making the application  
 3 inaccurate in any respect, the foreign limited partnership  
 4 shall promptly file in the office of the secretary of state  
 5 a certificate, signed and sworn to by a general partner,  
 6 correcting the statement.

7 Section 57. Cancellation of registration. A foreign  
 8 limited partnership may cancel its registration by filing  
 9 with the secretary of state a certificate of cancellation  
 10 signed and sworn to by a general partner. A cancellation  
 11 does not terminate the authority of the secretary of state  
 12 to accept service of process on the foreign limited  
 13 partnership with respect to claims for relief arising out of  
 14 the transaction of business in this state.

15 Section 58. Transaction of business without  
 16 registration. (1) A foreign limited partnership transacting  
 17 business in this state without registration may not maintain  
 18 any action, suit, or proceeding in any court of this state  
 19 until it has registered.

20 (2) The failure of a foreign limited partnership to  
 21 register in this state does not impair the validity of any  
 22 contract or act of the foreign limited partnership and does  
 23 not prevent the foreign limited partnership from defending  
 24 any action, suit, or proceeding in any court of this state.

25 (3) A limited partner of a foreign limited partnership

1 is not liable as a general partner of the foreign limited  
2 partnership solely by reason of the foreign limited  
3 partnership's transacting business in this state without  
4 registration.

5 (4) A foreign limited partnership, by transacting  
6 business in this state without registration, appoints the  
7 secretary of state as its agent for service of process with  
8 respect to claims for relief arising out of the transaction  
9 of business in this state.

10 Section 59. Action by attorney general. The attorney  
11 general may bring an action to restrain a foreign limited  
12 partnership from transacting business in this state in  
13 violation of this act.

14 Section 60. Right of action. A limited partner may  
15 bring an action in the right of a limited partnership to  
16 recover a judgment in its favor if the general partners  
17 having authority to do so have refused to bring the action  
18 or an effort to cause those general partners to bring the  
19 action is not likely to succeed.

20 Section 61. Proper plaintiff. In a derivative action,  
21 the plaintiff must be a partner at the time of bringing the  
22 action and at the time of the transaction of which he  
23 complains or his status as a partner must have devolved upon  
24 him by operation of law or pursuant to the terms of the  
25 partnership agreement from a person who was a partner at the

1 time of the transaction.

2 Section 62. Pleading. In any derivative action, the  
3 complaint shall set forth with particularity the effort of  
4 the plaintiff to secure initiation of the action by a  
5 general partner having authority to do so or the reasons for  
6 not making the effort.

7 Section 63. Expenses. If a derivative action is  
8 successful, in whole or in part, or anything is received by  
9 the plaintiff as a result of a judgment, compromise, or  
10 settlement of an action or claim, the court may award the  
11 plaintiff reasonable expenses, including reasonable  
12 attorney's fees, and shall direct him to account to the  
13 limited partnership for the remainder of the proceeds so  
14 received by him.

15 Section 64. Repealer. Sections 63-701 through 63-911,  
16 R.C.M. 1947, are repealed.

-End-

Approved by Committee  
on Judiciary

1 SENATE BILL NO. 156

2 INTRODUCED BY MURRAY, TURNAGE, GOODOVER

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE REVISED  
5 UNIFORM LIMITED PARTNERSHIP ACT; REPEALING SECTIONS 63-701  
6 THROUGH 63-911, R.C.M. 1947."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Name of act. This act may be cited as the  
10 Uniform Limited Partnership Act.

11 Section 2. Construction and application. This act  
12 shall be so construed and applied to effect its general  
13 purpose to make uniform the law with respect to the subject  
14 of this act among states enacting it.

15 Section 3. Rules for cases not provided for in this  
16 act. In any case not provided for in this act, the  
17 provisions of the Uniform Partnership Act govern.

18 Section 4. Saving clause. This act does not affect  
19 rights accrued, duties incurred, or proceedings begun before  
20 July 1, 1977.

21 Section 5. Definitions. In this act the following  
22 definitions apply:

23 (1) "Certificate of limited partnership" means the  
24 certificate referred to in [section 12], as that certificate  
25 is amended from time to time.

1 (2) "Contribution" means any cash, property, or  
2 services rendered or a promissory note or other binding  
3 obligation to contribute cash or property or to perform  
4 services, which a partner contributes to a limited  
5 partnership in his capacity as a partner.

6 (3) "Event of withdrawal of a general partner" means  
7 an event that causes a person to cease to be a general  
8 partner as provided in [section 27].

9 (4) "Foreign limited partnership" means a partnership  
10 formed under the laws of any state other than this state and  
11 having as partners one or more general partners and one or  
12 more limited partners.

13 (5) "General partner" means a person who has been  
14 admitted to a limited partnership as a general partner in  
15 accordance with the partnership agreement and who is named  
16 in the certificate of limited partnership as a general  
17 partner.

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

23 (7) "Limited partnership" and "domestic limited  
24 partnership" mean a partnership formed by two or more  
25 persons under the laws of this state and having one or more

*The changes in SB 156 are on pages 13 & 16  
Please refer to White Copy.* SECOND READING

1 certificate. If any certificate of limited partnership or  
2 certificate of amendment or cancellation contains a false  
3 statement, one who suffers loss by reliance on the statement  
4 may recover damages for the loss from:

5 (1) any person actually executing or causing another  
6 to execute on his behalf the certificate who knew and any  
7 general partner who knew or should have known the statement  
8 to be false at the time the certificate was executed; and

9 (2) any general partner who thereafter knew or should  
10 have known that any arrangements or other facts described in  
11 the certificate have HAD changed, making the statement  
12 inaccurate in any respect, within a sufficient time before  
13 the statement was relied upon to have reasonably enabled  
14 that general partner to cancel or amend the certificate or  
15 to file a petition for its cancellation or amendment under  
16 [section 16].

17 Section 19. Constructive notice. The fact that a  
18 certificate of limited partnership is on file in the office  
19 of the secretary of state is constructive notice that the  
20 partnership is a limited partnership and that the persons  
21 designated therein as limited partners are limited partners  
22 but is not constructive notice of any other fact.

23 Section 20. Delivery of certificates to limited  
24 partners. Upon the return by the secretary of state pursuant  
25 to [section 17] of any certificate marked "filed", the

1 (ii) the sale, exchange, lease, mortgage, pledge, or  
2 other transfer of all or substantially all of the assets of  
3 the limited partnership other than in the ordinary course of  
4 its business;

5 (iii) the incurrence of indebtedness by the limited  
6 partnership other than in the ordinary course of its  
7 business;

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

9 (v) the removal of a general partner.

10 (3) The enumeration in subsection (2) does not mean  
11 that the possession or exercise of any other powers by a  
12 limited partner constitutes participation by him in the  
13 business of the limited partnership.

14 (4) A limited partner who knowingly permits his name  
15 to be used in the name of the limited partnership, except  
16 under circumstances permitted by subsection (2)(a) of  
17 [section 6], is liable to creditors who extend credit to the  
18 limited partnership without actual knowledge that the  
19 limited partner is not a general partner.

20 Section 24. Person erroneously believing himself a  
21 limited partner. (1) Except as provided in subsection (2), a  
22 person who makes a contribution to a business enterprise and  
23 erroneously and in good faith believes that he has become a  
24 limited partner in the enterprise is not a general partner  
25 in the enterprise and is not bound by its obligations by

1                   SENATE BILL NO. 156  
2                   INTRODUCED BY MURRAY, TURNAGE, GOODOVER  
3  
4   A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE REVISED  
5   UNIFORM LIMITED PARTNERSHIP ACT; REPEALING SECTIONS 63-701  
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8   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
9       Section 1. Name of act. This act may be cited as the  
10   Uniform Limited Partnership Act.  
11       Section 2. Construction and application. This act  
12   shall be so construed and applied to effect its general  
13   purpose to make uniform the law with respect to the subject  
14   of this act among states enacting it.  
15       Section 3. Rules for cases not provided for in this  
16   act. In any case not provided for in this act, the  
17   provisions of the Uniform Partnership Act govern.  
18       Section 4. Saving clause. This act does not affect  
19   rights accrued, duties incurred, or proceedings begun before  
20   July 1, 1977.  
21       Section 5. Definitions. In this act the following  
22   definitions apply:  
23       (1) "Certificate of limited partnership" means the  
24   certificate referred to in [section 12], as that certificate  
25   is amended from time to time.

1                   (2) "Contribution" means any cash, property, or  
2   services rendered or a promissory note or other binding  
3   obligation to contribute cash or property or to perform  
4   services, which a partner contributes to a limited  
5   partnership in his capacity as a partner.  
6       (3) "Event of withdrawal of a general partner" means  
7   an event that causes a person to cease to be a general  
8   partner as provided in [section 27].  
9       (4) "Foreign limited partnership" means a partnership  
10   formed under the laws of any state other than this state and  
11   having as partners one or more general partners and one or  
12   more limited partners.  
13       (5) "General partner" means a person who has been  
14   admitted to a limited partnership as a general partner in  
15   accordance with the partnership agreement and who is named  
16   in the certificate of limited partnership as a general  
17   partner.  
18       (6) "Limited partner" means a person who has been  
19   admitted to a limited partnership as a limited partner in  
20   accordance with the partnership agreement and who is named  
21   in the certificate of limited partnership as a limited  
22   partner.  
23       (7) "Limited partnership" and "domestic limited  
24   partnership" mean a partnership formed by two or more  
25   persons under the laws of this state and having one or more

There are no changes in SB 156 and due to length will not be rerun. Please refer to yellow copy for complete text.

1 general partners and one or more limited partners.

2 (8) "Partner" means any limited partner or general  
3 partner.

4 (9) "Partnership agreement" means the agreement,  
5 written or, to the extent not prohibited by law, oral or  
6 both, of the partners as to the affairs of a limited  
7 partnership and the conduct of its business.

8 (10) "Partnership interest" has the meaning specified  
9 in [section 43].

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

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

16 Section 6. Name. The name of each limited partnership  
17 as set forth in its certificate of limited partnership:

18 (1) shall contain the words "limited partnership" in  
19 full;

20 (2) may not contain the name of a limited partner  
21 unless:

22 (a) it is also the name of a general partner; or

23 (b) the business of the limited partnership had been  
24 carried on under that name before the admission of that  
25 limited partner;

1 (3) may not contain any word or phrase indicating or  
2 implying that it is organized other than for a purpose  
3 stated in its certificate of limited partnership; and

4 (4) may not be the same as or deceptively similar to  
5 the name of any corporation or limited partnership organized  
6 under the laws of this state or licensed or registered as a  
7 foreign corporation or limited partnership in this state.

8 Section 7. Reservation of name. (1) The exclusive  
9 right to the use of a name may be reserved by:

10 (a) any person intending to organize a limited  
11 partnership under this act and to adopt that name;

12 (b) any domestic limited partnership or any foreign  
13 limited partnership registered in this state which, in  
14 either case, intends to adopt that name;

15 (c) any foreign limited partnership intending to  
16 register in this state and to adopt that name; and

17 (d) any person intending to organize a foreign limited  
18 partnership and intending to have it registered in this  
19 state and to adopt that name.

20 (2) The reservation shall be made by filing with the  
21 secretary of state an application, executed by the  
22 applicant, to reserve a specified name. If the secretary of  
23 state finds that the name is available for use by a domestic  
24 or foreign limited partnership, he shall reserve the name  
25 for the exclusive use of the applicant for a period of 120