

SENATE BILL 357

IN THE SENATE

February 3, 1979

Introduced and referred to
Committee on Judiciary.

April 20, 1979

Died in Committee.

1 *Senate* BILL NO. *357*
 2 INTRODUCED BY *Boakover Turnage*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE REVISED
 5 UNIFORM LIMITED PARTNERSHIP ACT; REPEALING SECTIONS
 6 35-12-101 THROUGH 35-12-403, MCA."

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

9 Section 1. Short title. [This act] may be cited as the
 10 "Uniform Limited Partnership Act".

11 Section 2. Construction and application. [This act]
 12 must be so construed and applied to effect its general
 13 purpose to make uniform the law with respect to limited
 14 partnerships 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 (Title 35, chapter
 18 10) govern.

19 Section 4. Definitions. In [this act], the following
 20 definitions apply:

21 (1) "Certificate of limited partnership" means the
 22 certificate referred to in [section 11], as that certificate
 23 is amended from time to time.

24 (2) "Contribution" means any cash, property, or
 25 services rendered or a promissory note or other binding

1 obligation to contribute cash or property or to perform
 2 services, which a partner contributes to a limited
 3 partnership in his capacity as a partner.

4 (3) "Event of withdrawal of a general partner" means
 5 an event that causes a person to cease to be a general
 6 partner as provided in [section 26].

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

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

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

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

25 (8) "Partner" means any limited partner or general

1 partner.

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

6 (10) "Partnership interest" has the meaning specified
7 in [section 42].

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

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

14 Section 5. Name. The name of each limited partnership
15 as set forth in its certificate of limited partnership:

16 (1) shall contain the words "limited partnership" in
17 full;

18 (2) may not contain the name of a limited partner
19 unless:

20 (a) it is also the name of a general partner; or
21 (b) the business of the limited partnership had been
22 carried on under that name before the admission of that
23 limited partner;

24 (3) may not contain any word or phrase indicating or
25 implying that it is organized other than for a purpose

1 stated in its certificate of limited partnership; and

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

6 Section 6. Reservation of name. (1) The exclusive
7 right to the use of a name may be reserved by:

8 (a) any person intending to organize a limited
9 partnership under [this act] and to adopt that name;

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

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

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

18 (2) The reservation must be made by filing with the
19 secretary of state an application, executed by the
20 applicant, to reserve a specified name. If the secretary of
21 state finds that the name is available for use by a domestic
22 or foreign limited partnership, he shall reserve the name
23 for the exclusive use of the applicant for a period of 120
24 days. Once having reserved a name, the applicant may not
25 again reserve the name until more than 60 days after the

1 expiration of the last 120-day period for which that
 2 applicant had reserved that name. The right to the exclusive
 3 use of a name so reserved may be transferred to any other
 4 person by filing in the office of the secretary of state a
 5 notice of the transfer, executed by the applicant for whom
 6 the name was reserved and specifying the name and address of
 7 the transferee.

8 Section 7. Specified office and agent. Each limited
 9 partnership shall continuously maintain in this state:

10 (1) an office, which may but need not be a place of
 11 its business in this state, at which must be kept the
 12 records required to be maintained by [section 8]; and

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

17 Section 8. Records to be kept. (1) Each limited
 18 partnership shall keep at the office referred to in [section
 19 7(1)] the following:

20 (a) a current list of the full name and last-known
 21 business address of each partner, set forth in alphabetical
 22 order;

23 (b) a copy of the certificate of limited partnership
 24 and all certificates of amendment thereto, together with
 25 executed copies of any powers of attorney pursuant to which

1 any certificate has been executed;

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

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

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

11 Section 9. Nature of business. A limited partnership
 12 may carry on any business that a partnership without limited
 13 partners may carry on.

14 Section 10. Business transactions of partner with the
 15 partnership. Except as otherwise provided in the partnership
 16 agreement, a partner may lend money to and transact other
 17 business with the limited partnership and, subject to other
 18 applicable provisions of law, has the same rights and
 19 obligations with respect thereto as a person who is not a
 20 partner.

21 Section 11. Certificate of limited partnership. (1)
 22 Two or more persons desiring to form a limited partnership
 23 shall execute a certificate of limited partnership. The
 24 certificate must be filed in the office of the secretary of
 25 state and shall set forth:

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

1 (i) any right of a partner to receive distributions of
 2 property, including cash, from the limited partnership;
 3 (j) any right of a partner to receive or of a general
 4 partner to make distributions to a partner which include a
 5 return of all or any part of the partner's contribution;
 6 (k) any time at which or events on the happening of
 7 which the limited partnership is to be dissolved and its
 8 affairs wound up;
 9 (l) any right of the remaining general partners to
 10 continue the business on the happening of an event of
 11 withdrawal of a general partner; and
 12 (m) any other matters the partners, in their sole
 13 discretion, determine to include therein.
 14 (2) A limited partnership is formed at the time of the
 15 filing of the certificate of limited partnership in the
 16 office of the secretary of state or at any later time
 17 specified in the certificate of limited partnership if, in
 18 each case, there has been substantial compliance with the
 19 requirements of this section.
 20 Section 12. Amendments to certificate. (1) A
 21 certificate of limited partnership is amended by filing a
 22 certificate of amendment thereto in the office of the
 23 secretary of state. The certificate shall set forth:
 24 (a) the name of the limited partnership;
 25 (b) the date of filing of the certificate; and

1 (c) the amendments to the certificate.

2 (2) An amendment to a certificate of limited
3 partnership reflecting the occurrence of the event or events
4 must be filed within 30 days after the happening of any of
5 the following events:

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

9 (b) the admission of a new partner;

10 (c) the withdrawal of a partner; or

11 (d) the continuation of the business under [section
12 47] after an event of withdrawal of a general partner.

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

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

23 (5) No person is liable because an amendment to a
24 certificate of limited partnership has not been filed to
25 reflect the occurrence of any event referred to in

1 subsection (2) of this section if the amendment is filed
2 within the 30-day period specified in subsection (2).

3 Section 13. Cancellation of certificate. A certificate
4 of limited partnership must be canceled upon the dissolution
5 and the commencement of winding up of the limited
6 partnership and at any other time there are no remaining
7 limited partners. A certificate of cancellation must be
8 filed in the office of the secretary of state and shall set
9 forth:

10 (1) the name of the limited partnership;

11 (2) the date of filing of the certificate of limited
12 partnership;

13 (3) the reason for filing the certificate of
14 cancellation;

15 (4) the effective date (which must be a date certain)
16 of cancellation if it is not to be effective upon the filing
17 of the certificate; and

18 (5) any other information the general partners filing
19 the certificate may determine.

20 Section 14. Execution of certificates. (1) Each
21 certificate required by [sections 11 through 19] to be filed
22 in the office of the secretary of state shall be executed in
23 the following manner:

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

SB 357

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

5 (c) Each certificate of cancellation must be signed by
 6 each general partner.

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

12 (3) The execution of a certificate by a general
 13 partner constitutes an affirmation under the penalties of
 14 perjury that the facts stated therein are true.

15 Section 15. Amendment or cancellation by judicial act.
 16 If the persons required by [section 14] to execute any
 17 certificate of amendment or cancellation fail or refuse to
 18 do so, any other partner, and any assignee of a partnership
 19 interest, who is adversely affected by the failure or
 20 refusal, may petition the district court to direct the
 21 amendment or cancellation. If the court finds that the
 22 amendment or cancellation is proper and that the persons so
 23 designated have failed or refused to execute the
 24 certificate, it shall order the secretary of state to record
 25 an appropriate certificate of amendment or cancellation.

1 Section 16. Filing in the office of the secretary of
 2 state. (1) Two signed copies of the certificate of limited
 3 partnership and of any certificates of amendment or
 4 cancellation (or of any judicial decree of amendment or
 5 cancellation) must be delivered to the secretary of state. A
 6 person who executes a certificate as an agent or fiduciary
 7 need not exhibit evidence of his authority as a prerequisite
 8 to filing. Unless the secretary of state finds that any
 9 certificate does not conform to law, upon receipt of all
 10 filing fees required by law the secretary of state shall:

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

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

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

16 (2) Upon the filing of a certificate of amendment (or
 17 judicial decree of amendment) in the office of the secretary
 18 of state, the certificate of limited partnership is amended
 19 as set forth therein; and upon the effective date of a
 20 certificate of cancellation (or a judicial decree thereof),
 21 the certificate of limited partnership is canceled.

22 Section 17. Liability for false statement in
 23 certificate. If any certificate of limited partnership or
 24 certificate of amendment or cancellation contains a false
 25 statement, one who suffers loss by reliance on the statement

1 may recover damages for the loss from:

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

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

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

20 Section 19. Delivery of certificates to limited
21 partners. Upon the return by the secretary of state pursuant
22 to [section 16] of any certificate marked "filed", the
23 general partners shall promptly deliver or mail a copy of
24 the certificate to each limited partner unless the
25 partnership agreement provides otherwise.

1 Section 20. Admission of additional limited partners.

2 (1) After the filing of a limited partnership's original
3 certificate of limited partnership, a person may be admitted
4 as a new limited partner:

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

10 (b) in the case of an assignee of a partnership
11 interest of a partner who has the power, as provided in
12 [section 45], to grant the assignee the right to become a
13 limited partner, upon the exercise of that power and
14 compliance with any conditions limiting the grant or
15 exercise of the power.

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

20 Section 21. Voting. Subject to the provisions of
21 [section 22], the partnership agreement may grant to all or
22 a specified group of the limited partners the right to vote
23 (on a per capita or any other basis) upon any matter.

24 Section 22. Liability to third parties. (1) Except as
25 provided in subsection (4), a limited partner as such is not

1 liable for the obligations of a limited partnership unless,
 2 in addition to the exercise of his rights and powers as a
 3 limited partner, he takes part in the control of the
 4 business. However, if the limited partner's participation in
 5 the control of the business is not substantially the same as
 6 the exercise of the powers of a general partner, he is
 7 liable only to persons who transact business with the
 8 limited partnership with actual knowledge of his
 9 participation in control.

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

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

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

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

18 (d) approving or disapproving an amendment to the
 19 partnership agreement; and

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

21 (i) the dissolution and winding up of the limited
 22 partnership;

23 (ii) the sale, exchange, lease, mortgage, pledge, or
 24 other transfer of all or substantially all of the assets of
 25 the limited partnership other than in the ordinary course of

1 its business;

2 (iii) the incurrance of indebtedness by the limited
 3 partnership other than in the ordinary course of its
 4 business;

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

6 (v) the removal of a general partner.

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

11 (4) A limited partner who knowingly permits his name
 12 to be used in the name of the limited partnership, except
 13 under circumstances permitted by [section 5(2)(a)], is
 14 liable to creditors who extend credit to the limited
 15 partnership without actual knowledge that the limited
 16 partner is not a general partner.

17 Section 23. Person erroneously believing himself a
 18 limited partner. (1) Except as provided in subsection (2), a
 19 person who makes a contribution to a business enterprise and
 20 erroneously and in good faith believes that he has become a
 21 limited partner in the enterprise is not a general partner
 22 in the enterprise and is not bound by its obligations by
 23 reason of making the contribution, receiving distributions
 24 from the enterprise, or exercising any rights of a limited
 25 partner if, on ascertaining the mistake, he:

1 (a) causes an appropriate certificate of limited
2 partnership or a certificate of amendment to be executed and
3 filed; or

4 (b) withdraws from future equity participation in the
5 enterprise.

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

18 Section 24. Right to information. Each limited partner
19 has the right to:

20 (1) inspect and copy any of the partnership records
21 required by [section 8] to be maintained; and

22 (2) obtain from the general partners from time to time
23 upon reasonable demand:

24 (a) true and full information regarding the state of
25 the business and financial condition of the limited

1 partnership;

2 (b) promptly after becoming available, a copy of the
3 limited partnership's federal, state, and local income tax
4 returns for each year; and

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

7 Section 25. Admission. After the filing of a limited
8 partnership's original certificate of limited partnership,
9 new general partners may be admitted only with the specific
10 written consent of each partner.

11 Section 26. When person ceases to be limited partner.
12 Except as otherwise approved by the specific written
13 consent, at the time, of all partners, a person ceases to be
14 a general partner of a limited partnership on the happening
15 of any of the following events:

16 (1) the general partner withdraws from the limited
17 partnership as provided in [section 35];

18 (2) the general partner ceases to be a member of the
19 limited partnership as provided in [section 43];

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

22 (4) unless otherwise provided in the certificate of
23 limited partnership, the general partner:

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

25 (b) files a voluntary petition in bankruptcy;

1 (c) is adjudicated a bankrupt or insolvent;

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

3 any reorganization, arrangement, composition, readjustment,

4 liquidation, dissolution, or similar relief under any

5 statute, law, or administrative rule;

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

7 failing to contest the material allegations of a petition

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

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

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

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

12 properties;

13 (5) unless otherwise provided in the certificate of

14 limited partnership, if, within 120 days after the

15 commencement of any proceeding against the general partner

16 seeking any reorganization, arrangement, composition,

17 readjustment, liquidation, dissolution, or similar relief

18 under any statute, law, or administrative rule, the

19 proceeding has not been dismissed or if, within 90 days

20 after the appointment without his consent or acquiescence of

21 any trustee, receiver, or liquidator of the general partner

22 or of all or any substantial part of his properties, the

23 appointment is not vacated or stayed or if, within 90 days

24 after the expiration of any stay, the appointment is not

25 vacated;

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

2 person:

3 (a) his death; or

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

5 adjudicating him incompetent to manage his person or his

6 property;

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

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

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

10 a new trustee);

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

12 partnership, the dissolution and commencement of winding up

13 of the partnership;

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

15 corporation, the filing of a certificate of dissolution or

16 its equivalent for the corporation or the revocation of its

17 charter; and

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

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

20 partnership.

21 Section 27. General powers and liabilities. Except as

22 otherwise provided in [this act] and in the partnership

23 agreement, a general partner of a limited partnership has

24 all the rights and powers and is subject to all the

25 restrictions and liabilities of a partner in a partnership

1 without limited partners.

2 Section 28. Contributions by a general partner. A
3 general partner may make contributions to a limited
4 partnership and share in the profits and losses of and in
5 distributions from the limited partnership as a general
6 partner. A general partner may also make contributions to
7 and share in profits, losses, and distributions as a limited
8 partner. A person who is both a general partner and a
9 limited partner has all the rights and powers and is subject
10 to all the restrictions and liabilities of a general partner
11 and also has, except as otherwise provided in the
12 partnership agreement, all powers and is subject to the
13 restrictions of a limited partner to the extent he is
14 participating in the partnership as a limited partner.

15 Section 29. Voting. The partnership agreement may
16 grant to all or a specified group of general partners the
17 right to vote (on a per capita or any other basis),
18 separately or with all or any class of the limited partners,
19 on any matter.

20 Section 30. Form of contributions. The contribution of
21 a partner may be in cash, property, or services rendered or
22 a promissory note or other obligation to contribute cash or
23 property or to perform services.

24 Section 31. Liability for contributions. (1) Except as
25 otherwise provided in the certificate of limited

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

11 (2) Unless otherwise provided in the partnership
12 agreement, the obligation of a partner to make a
13 contribution or return money or other property paid or
14 distributed in violation of [this act] may be compromised
15 only by consent of all of the partners. Notwithstanding a
16 compromise so authorized, a creditor of a limited
17 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
20 obligation and before the amendment or cancellation thereof
21 to reflect the compromise may enforce the precompromise
22 obligation.

23 Section 32. Allocation of profits and losses. The
24 profits and losses of a limited partnership must be
25 allocated among the partners and among classes of partners

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

7 Section 33. Allocation of distributions. Distributions
8 of cash or other assets of a limited partnership must be
9 allocated among the partners and among classes of partners
10 in the manner provided in the partnership agreement. If the
11 partnership agreement does not so provide, distributions
12 must be made on the basis of the value (as stated in the
13 certificate of limited partnership) of the contributions
14 actually made by each partner to the extent they have not
15 been returned.

16 Section 34. Interim distributions. Except as otherwise
17 provided in [sections 34 through 41], a partner is entitled
18 to receive distributions from a limited partnership before
19 his withdrawal from the limited partnership and before the
20 dissolution and winding up thereof:

21 (1) to the extent and at the times or on the happening
22 of the events specified in the partnership agreement; and

23 (2) if any distribution constitutes a return of any
24 part of his contribution under [section 41(2)], to the
25 extent and at the time or on the happening of the events

1 specified in the certificate of limited partnership.

2 Section 35. Withdrawal of general partner. A general
3 partner may withdraw from a limited partnership at any time
4 by giving written notice to the other partners, but if the
5 withdrawal violates the partnership agreement, the limited
6 partnership may recover from the withdrawing general partner
7 damages for breach of the partnership agreement and offset
8 the damages against the amount otherwise distributable to
9 him.

10 Section 36. Withdrawal of limited partner. A limited
11 partner may withdraw from a limited partnership at the time
12 or on the happening of the events specified in the
13 certificate of limited partnership and in accordance with
14 any procedures provided in the partnership agreement. If the
15 certificate of limited partnership does not specify the time
16 or the events on the happening of which a limited partner
17 may withdraw from the limited partnership or a definite time
18 for the dissolution and winding up of the limited
19 partnership, a limited partner may withdraw from the limited
20 partnership upon not less than 6 months' prior written
21 notice to each general partner at his address on the books
22 of the limited partnership at its office in this state.

23 Section 37. Distributions upon withdrawal. Except as
24 provided in [sections 34 through 41], upon withdrawal any
25 withdrawing partner is entitled to receive any distributions

1 to which he is entitled under the partnership agreement and,
 2 if not provided, he is entitled to receive, within a
 3 reasonable time after withdrawal, the fair value of his
 4 interest in the limited partnership as of the date of
 5 withdrawal, based upon his right to share in distributions
 6 from the limited partnership.

7 Section 38. Distributions in kind. Except as provided
 8 in the certificate of limited partnership, a partner,
 9 regardless of the nature of his contribution, has no right
 10 to demand and receive any distribution from a limited
 11 partnership in any form other than cash. Except as provided
 12 in the partnership agreement, a partner may not be compelled
 13 to accept a distribution of any asset in kind from a limited
 14 partnership to the extent that the percentage of the asset
 15 distributed to him exceeds a percentage of that asset which
 16 is equal to the percentage in which he shares in
 17 distributions from the limited partnership.

18 Section 39. Right to distributions. At the time a
 19 partner becomes entitled to receive a distribution, he has
 20 the status of and is entitled to all of the remedies
 21 available to a creditor of the limited partnership with
 22 respect to the distribution.

23 Section 40. Limitations on distributions. A partner
 24 may not receive a distribution from a limited partnership to
 25 the extent that, after giving effect to the distribution,

1 all liabilities of the limited partnership other than
 2 liabilities to partners on account of their partnership
 3 interests exceed the fair value of the partnership's assets.

4 Section 41. Liability upon return of contributions.

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

13 (2) If a partner has received the return of any part
 14 of his contribution in violation of the partnership
 15 agreement or [this act], for a period of 6 years thereafter
 16 he is liable to the limited partnership for the amount of
 17 the contribution wrongfully returned.

18 (3) A partner has received a return of his
 19 contribution to the extent that a distribution to him
 20 reduces his share of the fair value of the net assets of the
 21 limited partnership below the value (as set forth in the
 22 certificate of limited partnership) of his contributions
 23 which have not theretofore been distributed to him.

24 Section 42. Nature of partnership interest. A
 25 partnership interest is a partner's share of the profits and

1 losses of a limited partnership and the right to receive
2 distributions of partnership assets. A partnership interest
3 is personal property.

4 Section 43. Assignment of partnership interest. Except
5 as otherwise provided in the partnership agreement, a
6 partnership interest is assignable in whole or in part. An
7 assignment of a partnership interest does not dissolve a
8 limited partnership or entitle the assignee to become a
9 partner or to exercise any of the rights thereof. An
10 assignment only entitles the assignee to receive, to the
11 extent assigned, any distributions to which the assignor
12 would be entitled. Except as otherwise provided in the
13 partnership agreement, a partner ceases to be a partner upon
14 assignment of all his partnership interest.

15 Section 44. Rights of creditors. On due application to
16 a court of competent jurisdiction by any judgment creditor
17 of a partner, the court may charge the partnership interest
18 of the partner with payment of the unsatisfied amount of the
19 judgment debt, with interest thereon. To the extent so
20 charged, the judgment creditor has only the rights of an
21 assignee of the partnership interest. [This act] does not
22 deprive any partner of the benefit of any exemption laws
23 applicable to his partnership interest.

24 Section 45. Right of assignee to become limited
25 partner. (1) An assignee of a partnership interest,

1 including an assignee of a general partner, may become a
2 limited partner if and to the extent that:

3 (a) the assignor gives the assignee that right in
4 accordance with authority described in the certificate of
5 limited partnership; or

6 (b) in the absence of that authority, all other
7 partners consent.

8 (2) An assignee who has become a limited partner has,
9 to the extent assigned, all the rights and powers and is
10 subject to all the restrictions and liabilities of a limited
11 partner under the partnership agreement and [this act]. An
12 assignee who becomes a limited partner is also liable for
13 the obligations of his assignor to make and return
14 contributions as provided in [sections 34 through 41], but
15 the assignee is not obligated for liabilities unknown to the
16 assignee at the time he became a limited partner and which
17 could not be ascertained from the certificate of limited
18 partnership.

19 (3) If an assignee of a partnership interest becomes a
20 limited partner, the assignor is not released from the
21 liability to the limited partnership under [sections 17 and
22 31].

23 Section 46. Power of estate of deceased or incompetent
24 partner. If a partner who is a natural person dies or a
25 court of competent jurisdiction adjudges him to be

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

11 Section 47. Nonjudicial dissolution. A limited
 12 partnership is dissolved and its affairs must be wound up on
 13 the occurrence of the first of the following:

14 (1) at the time or on the happening of the events
 15 specified in the certificate of limited partnership;

16 (2) on the unanimous written consent of all partners;

17 (3) on the happening of an event of withdrawal of a
 18 general partner unless at the time there is at least one
 19 other general partner and the certificate of limited
 20 partnership permits the business of the limited partnership
 21 to be carried on by the remaining general partner and he
 22 does so, but the limited partnership may not be dissolved or
 23 wound up by reason of any event of withdrawal if, within 90
 24 days after the withdrawal, all partners agree in writing to
 25 continue the business of the limited partnership and to the

1 appointment of one or more new general partners if necessary
 2 or desired; or

3 (4) on entry of a decree of judicial dissolution in
 4 accordance with [section 48].

5 Section 48. Dissolution by decree of court. On
 6 application by or for a partner, the district court may
 7 decree a dissolution of a limited partnership whenever it is
 8 not reasonably practicable to carry on the business in
 9 conformity with the partnership agreement.

10 Section 49. Winding up. Unless otherwise provided in
 11 the partnership agreement, the general partners who have not
 12 wrongfully dissolved the limited partnership or, if none,
 13 the limited partners may wind up the limited partnership's
 14 affairs; but any partner, his legal representative, or his
 15 assignee, upon cause shown, may obtain winding up by the
 16 district court.

17 Section 50. Distribution of assets. Upon the winding
 18 up of a limited partnership, the assets shall be distributed
 19 as follows:

20 (1) to creditors, including partners who are creditors
 21 (to the extent otherwise permitted by law), in satisfaction
 22 of liabilities of the limited partnership other than
 23 liabilities for distributions to partners pursuant to
 24 [section 34 or 37];

25 (2) except as otherwise provided in the partnership

1 agreement, to partners and ex-partners in satisfaction of
 2 liabilities for distributions pursuant to [section 34 or
 3 37]; and

4 (3) except as otherwise provided in the partnership
 5 agreement, to partners first for the return of their
 6 contributions and second respecting their partnership
 7 interests, in the proportions in which the partners share in
 8 distributions.

9 Section 51. Law governing. Subject to the constitution
 10 and public policy of this state, the laws of the state under
 11 which a foreign limited partnership is organized govern its
 12 organization and internal affairs and the liability of its
 13 limited partners, and a foreign limited partnership may not
 14 be denied registration by reason of any difference between
 15 those laws and the laws of this state.

16 Section 52. Registration. Before transacting business
 17 in this state, a foreign limited partnership must register
 18 with the secretary of state. In order to register, a foreign
 19 limited partnership shall submit to the secretary of state
 20 in duplicate an application for registration as a foreign
 21 limited partnership, signed and sworn to by a general
 22 partner and setting forth:

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

1 (2) the state in which it was formed and date of its
 2 formation;

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

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

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

18 (6) the address of the office required to be
 19 maintained in the state of its organization by the laws of
 20 that state or, if not so required, of the principal office
 21 of the foreign limited partnership; and

22 (7) if the certificate of limited partnership filed in
 23 the foreign limited partnership's state of organization is
 24 not required to include the names and business addresses of
 25 the partners, a list of the names and addresses.

1 Section 53. Issuance of registration. (1) If the
2 secretary of state finds that an application for
3 registration conforms to law and all requisite fees have
4 been paid, he shall:

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

7 (b) file in his office one of the duplicate originals
8 of the application; and

9 (c) issue a certificate of registration to transact
10 business in this state.

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

14 Section 54. Name. A foreign limited partnership may
15 register with the secretary of state under any name (whether
16 or not it is the name under which it is registered in its
17 state of organization) that includes the words "limited
18 partnership" and that could be registered by a domestic
19 limited partnership.

20 Section 55. Changes and amendments. If any statement
21 in a foreign limited partnership's application for
22 registration was false when made or any arrangements or
23 other facts described have changed, making the application
24 inaccurate in any respect, the foreign limited partnership
25 shall promptly file in the office of the secretary of state

1 a certificate, signed and sworn to by a general partner,
2 correcting the statement.

3 Section 56. Cancellation of registration. A foreign
4 limited partnership may cancel its registration by filing
5 with the secretary of state a certificate of cancellation,
6 signed and sworn to by a general partner. A cancellation
7 does not terminate the authority of the secretary of state
8 to accept service of process on the foreign limited
9 partnership with respect to claims for relief arising out of
10 the transaction of business in this state.

11 Section 57. Transaction of business without
12 registration. (1) A foreign limited partnership transacting
13 business in this state without registration may not maintain
14 any action, suit, or proceeding in any court of this state
15 until it has registered.

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

21 (3) A limited partner of a foreign limited partnership
22 is not liable as a general partner of the foreign limited
23 partnership solely by reason of the foreign limited
24 partnership's transacting business in this state without
25 registration.

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

6 Section 58. Action by attorney general. The attorney
7 general may bring an action to restrain a foreign limited
8 partnership from transacting business in this state in
9 violation of [sections 51 through 58].

10 Section 59. Right of action. A limited partner may
11 bring a derivative action in the right of a limited
12 partnership to recover a judgment in its favor if the
13 general partners having authority to do so have refused to
14 bring the action or an effort to cause those general
15 partners to bring the action is not likely to succeed.

16 Section 60. Proper plaintiff. In a derivative action,
17 the plaintiff must be a partner at the time of bringing the
18 action and at the time of the transaction of which he
19 complains or his status as a partner must have devolved upon
20 him by operation of law or pursuant to the terms of the
21 partnership agreement from a person who was a partner at the
22 time of the transaction.

23 Section 61. Pleading. In any derivative action, the
24 complaint shall set forth with particularity the effort of
25 the plaintiff to secure initiation of the action by a

1 general partner having authority to do so or the reasons for
2 not making the effort.

3 Section 62. Expenses. If a derivative action is
4 successful, in whole or in part, or anything is received by
5 the plaintiff as a result of a judgment, compromise, or
6 settlement of an action or claim, the court may award the
7 plaintiff reasonable expenses, including reasonable
8 attorney's fees, and shall direct him to account to the
9 limited partnership for the remainder of the proceeds so
10 received by him.

11 Section 63. Saving clause. This act does not affect
12 rights accrued, duties incurred, or proceedings begun before
13 July 1, 1979.

14 Section 64. Repealer. Sections 35-12-101 through
15 35-12-403, MCA, are repealed.

-End-