

SENATE BILL NO. 161

INTRODUCED BY MAZUREK, TURNAGE

IN THE SENATE

January 16, 1981	Introduced and referred to Committee on Judiciary.
February 5, 1981	Committee recommend bill do pass as amended. Report adopted.
	Statement of intent attached.
February 6, 1981	Bill printed and placed on members' desks.
February 7, 1981	Second reading, do pass.
February 9, 1981	Correctly engrossed.
February 10, 1981	Third reading, passed. Ayes, 45; Noes, 0. Transmitted to House.

IN THE HOUSE

February 11, 1981	Introduced and referred to Committee on Judiciary.
March 12, 1981	Committee recommend bill be concurred in. Report adopted.
March 14, 1981	Second reading, concurred in.
March 17, 1981	Third reading, concurred in. Ayes, 96; Noes, 0.

IN THE SENATE

March 18, 1981	Returned from House. Concurred in. Sent to enrolling.
March 20, 1981	Correctly enrolled.

March 20, 1981 Signed by President.  
March 21, 1981 Delivered to Governor.  
March 27, 1981 Returned from Governor with recommended amendments.  
April 3, 1981 Second reading, Governor's amendments concurred in.  
April 6, 1981 Third reading, Governor's amendments concurred in. Ayes, 47; Noes, 0. Transmitted to House.

IN THE HOUSE

April 17, 1981 Second reading, Governor's amendments concurred in.  
On motion rules suspended and Governor's amendments placed on third reading this day.  
Third reading, Governor's amendments concurred in. Ayes, 83; Noes, 12.

IN THE SENATE

April 20, 1981 Returned from House. Concurred in. Sent to enrolling.  
Reported correctly enrolled.

1 *Senate* BILL NO. *161*  
 2 INTRODUCED BY *Maquish Turvey*  
 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, NCA."

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           (1) 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.

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 refusal  
20 may petition the district court to direct the amendment or  
21 cancellation. If the court finds that the amendment or  
22 cancellation is proper and that the persons so designated  
23 have failed or refused to execute the certificate, it shall  
24 order the secretary of state to record an appropriate  
25 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 incurrence 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 general partner  
12 of limited partnership. Except as otherwise approved by the  
13 specific written consent, at the time, of all partners, a  
14 person ceases to be a general partner of a limited  
15 partnership on the happening 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;

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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 [the effective date of this act].

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

-End-

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 161

## 3 Senate Judiciary Committee

4

5 A statement of intent is required for this bill because  
6 section 65 of the bill would grant the secretary of state  
7 the authority to adopt rules establishing filing fees. Rules  
8 are to be adopted under the Montana Administrative Procedure  
9 Act. The documents for which filing fees may be charged  
10 under those rules shall not be limited to the documents  
11 specifically named in section 65 of S.B. 161, but may  
12 include others required or allowed to be filed under the  
13 bill's provisions, as well as any amended documents required  
14 or allowed to be filed. The rules shall allow the filing and  
15 billing for filing fees to be accomplished by mail.

16 First adopted by the Senate Judiciary Committee on the  
17 4th day of February, 1981.

Approved by Committee  
on Judiciary

1 SENATE BILL NO. 161

2 INTRODUCED BY MAZUREK, 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.

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 refusal  
 20 may petition the district court to direct the amendment or  
 21 cancellation. If the court finds that the amendment or  
 22 cancellation is proper and that the persons so designated  
 23 have failed or refused to execute the certificate, it shall  
 24 order the secretary of state to record an appropriate  
 25 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 incurrence 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 general partner  
12 of limited partnership. Except as otherwise approved by the  
13 specific written consent, at the time, of all partners, a  
14 person ceases to be a general partner of a limited  
15 partnership on the happening 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 35. 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. [1] This act does not  
12 affect IMPAIR THE OBLIGATION OF ANY CONTRACT EXISTING ON  
13 [THE EFFECTIVE DATE OF THIS ACT] NOR AFFECT ANY rights  
14 accrued, duties incurred, or proceedings begun before [the  
15 effective date of this act].

16 [2] A LIMITED PARTNERSHIP FORMED UNDER ANY STATUTE OF  
17 THIS STATE BEFORE [THE EFFECTIVE DATE OF THIS ACT] MAY ELECT  
18 TO BE GOVERNED BY [THIS ACT]. THE GENERAL PARTNER OR  
19 PARTNERS MAY MAKE THE ELECTION FOR THE LIMITED PARTNERSHIP  
20 AT ANY TIME ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT] BY  
21 COMPLYING WITH [SECTION 11] OF [THIS ACT], EXCEPT THAT THE  
22 LIMITED PARTNERS SHALL NOT BE REQUIRED TO EXECUTE A NEW  
23 CERTIFICATE OF LIMITED PARTNERSHIP, NOTWITHSTANDING SUCH  
24 ELECTION BY THE GENERAL PARTNER OR PARTNERS:

25 (A) [SECTIONS 30, 31, AND 41] APPLY ONLY TO

1 CONTRIBUTIONS AND DISTRIBUTIONS MADE AFTER THE DATE OF THE  
 2 ELECTION;

3 (B) [SECTION 45] APPLIES ONLY TO ASSIGNMENTS MADE  
 4 AFTER THE DATE OF THE ELECTION; AND

5 (C) [SECTION 50] DOES NOT CHANGE THE PRIORITY OF  
 6 CREDITORS FOR TRANSACTIONS ENTERED INTO BEFORE THE DATE OF  
 7 THE ELECTION.

8 (3) A LIMITED PARTNERSHIP FORMED UNDER ANY STATUTE OF  
 9 THIS STATE BEFORE [THE EFFECTIVE DATE OF THIS ACT], UNTIL OR  
 10 UNLESS IT ELECTS TO BE GOVERNED BY [THIS ACT], SHALL BE  
 11 GOVERNED BY 35-12-101 THROUGH 35-12-403, OR OTHER APPLICABLE  
 12 PRIOR LAW.

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

15 SECTION 65. SECRETARY OF STATE AUTHORIZED AND  
 16 REQUIRED TO ESTABLISH FEES COMMENSURATE WITH COSTS. THE  
 17 SECRETARY OF STATE IS AUTHORIZED AND REQUIRED TO SET FILING  
 18 FEES REASONABLY RELATED TO THE COSTS OF PROCESSING THE  
 19 APPLICATIONS AND CERTIFICATES. THE SECRETARY OF STATE MAY  
 20 ESTABLISH FEES FOR FILING A CERTIFICATE OF LIMITED  
 21 PARTNERSHIP, CERTIFICATE OF AMENDMENT, CERTIFICATE OF  
 22 CANCELLATION, AN APPLICATION TO RESERVE A NAME, A NOTICE OF  
 23 TRANSFER OF A RESERVED NAME, AN APPLICATION FOR REGISTRATION  
 24 OF A FOREIGN LIMITED PARTNERSHIP, A CERTIFICATE OF  
 25 CANCELLATION OR CORRECTION OF A FOREIGN LIMITED PARTNERSHIP

1 OR FILING ANY OTHER STATEMENT OR REPORT OF A DOMESTIC OR  
 2 FOREIGN LIMITED PARTNERSHIP. THE SECRETARY OF STATE SHALL  
 3 MAINTAIN RECORDS SUFFICIENT TO SUPPORT THE FEE CHARGED FOR  
 4 THE FILING REQUIREMENTS.

-End-



## 1 STATEMENT OF INTENT

## 2 SENATE BILL 161

## 3 Senate Judiciary Committee

4

5 A statement of intent is required for this bill because  
6 section 65 of the bill would grant the secretary of state  
7 the authority to adopt rules establishing filing fees. Rules  
8 are to be adopted under the Montana Administrative Procedure  
9 Act. The documents for which filing fees may be charged  
10 under those rules shall not be limited to the documents  
11 specifically named in section 65 of S.B. 161, but may  
12 include others required or allowed to be filed under the  
13 bill's provisions, as well as any amended documents required  
14 or allowed to be filed. The rules shall allow the filing and  
15 billing for filing fees to be accomplished by mail.

16 First adopted by the Senate Judiciary Committee on the  
17 4th day of February, 1981.

## 1 SENATE BILL NO. 161

2 INTRODUCED BY MAZUREK, 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.

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 refusal  
20 may petition the district court to direct the amendment or  
21 cancellation. ~~and~~ If the court finds that the amendment or  
22 cancellation is proper and that the persons so designated  
23 have failed or refused to execute the certificate, it shall  
24 order the secretary of state to record an appropriate  
25 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 incurrence 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 general partner  
12 of limited partnership. Except as otherwise approved by the  
13 specific written consent, at the time, of all partners, a  
14 person ceases to be a general partner of a limited  
15 partnership on the happening 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. (1) This act does not  
12 affect IMPAIR THE OBLIGATION OF ANY CONTRACT EXISTING ON  
13 [THE EFFECTIVE DATE OF THIS ACT] NOR AFFECT ANY rights  
14 accrued, duties incurred, or proceedings begun before [the  
15 effective date of this act].

16 (2) A LIMITED PARTNERSHIP FORMED UNDER ANY STATUTE OF  
17 THIS STATE BEFORE [THE EFFECTIVE DATE OF THIS ACT] MAY ELECT  
18 TO BE GOVERNED BY [THIS ACT]. THE GENERAL PARTNER OR  
19 PARTNERS MAY MAKE THE ELECTION FOR THE LIMITED PARTNERSHIP  
20 AT ANY TIME ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT] BY  
21 COMPLYING WITH [SECTION 11] OF [THIS ACT], EXCEPT THAT THE  
22 LIMITED PARTNERS SHALL NOT BE REQUIRED TO EXECUTE A NEW  
23 CERTIFICATE OF LIMITED PARTNERSHIP, NOTWITHSTANDING SUCH  
24 ELECTION BY THE GENERAL PARTNER OR PARTNERS;

25 (A) [SECTIONS 30, 31, AND 41] APPLY ONLY TO

1 CONTRIBUTIONS AND DISTRIBUTIONS MADE AFTER THE DATE OF THE  
 2 ELECTION;

3 (B) [SECTION 45] APPLIES ONLY TO ASSIGNMENTS MADE  
 4 AFTER THE DATE OF THE ELECTION; AND

5 (C) [SECTION 50] DOES NOT CHANGE THE PRIORITY OF  
 6 CREDITORS FOR TRANSACTIONS ENTERED INTO BEFORE THE DATE OF  
 7 THE ELECTION.

8 (3) A LIMITED PARTNERSHIP FORMED UNDER ANY STATUTE OF  
 9 THIS STATE BEFORE [THE EFFECTIVE DATE OF THIS ACT], UNTIL OR  
 10 UNLESS IT ELECTS TO BE GOVERNED BY [THIS ACT], SHALL BE  
 11 GOVERNED BY 35-12-101 THROUGH 35-12-403, OR OTHER APPLICABLE  
 12 PRIOR LAW.

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

15 SECTION 65. SECRETARY OF STATE AUTHORIZED AND  
 16 REQUIRED TO ESTABLISH FEES COMMENSURATE WITH COSTS. THE  
 17 SECRETARY OF STATE IS AUTHORIZED AND REQUIRED TO SET FILING  
 18 FEES REASONABLY RELATED TO THE COSTS OF PROCESSING THE  
 19 APPLICATIONS AND CERTIFICATES. THE SECRETARY OF STATE MAY  
 20 ESTABLISH FEES FOR FILING A CERTIFICATE OF LIMITED  
 21 PARTNERSHIP, CERTIFICATE OF AMENDMENT, CERTIFICATE OF  
 22 CANCELLATION, AN APPLICATION TO RESERVE A NAME, A NOTICE OF  
 23 TRANSFER OF A RESERVED NAME, AN APPLICATION FOR REGISTRATION  
 24 OF A FOREIGN LIMITED PARTNERSHIP, A CERTIFICATE OF  
 25 CANCELLATION OR CORRECTION OF A FOREIGN LIMITED PARTNERSHIP

1 OR FILING ANY OTHER STATEMENT OR REPORT OF A DOMESTIC OR  
 2 FOREIGN LIMITED PARTNERSHIP. THE SECRETARY OF STATE SHALL  
 3 MAINTAIN RECORDS SUFFICIENT TO SUPPORT THE FEE CHARGED FOR  
 4 THE FILING REQUIREMENTS.

-End-

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 161

## 3 Senate Judiciary Committee

4

5 A statement of intent is required for this bill because  
6 section 65 of the bill would grant the secretary of state  
7 the authority to adopt rules establishing filing fees. Rules  
8 are to be adopted under the Montana Administrative Procedure  
9 Act. The documents for which filing fees may be charged  
10 under those rules shall not be limited to the documents  
11 specifically named in section 65 of S.B. 161, but may  
12 include others required or allowed to be filed under the  
13 bill's provisions, as well as any amended documents required  
14 or allowed to be filed. The rules shall allow the filing and  
15 billing for filing fees to be accomplished by mail.

16 First adopted by the Senate Judiciary Committee on the  
17 4th day of February 1981.

1 SENATE BILL NO. 161

2 INTRODUCED BY MAZUREK, TURNAGE

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

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

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

Section 2. Construction and application. [This act] must be so construed and applied to effect its general purpose to make uniform the law with respect to limited partnerships among states enacting it.

Section 3. Rules for cases not provided for in [this act]. In any case not provided for in [this act], the provisions of the Uniform Partnership Act (Title 35, chapter 10) govern.

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

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

(2) "Contribution" means any cash, property, or 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.

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 refusal  
 20 may petition the district court to direct the amendment or  
 21 cancellation. If the court finds that the amendment or  
 22 cancellation is proper and that the persons so designated  
 23 have failed or refused to execute the certificate, it shall  
 24 order the secretary of state to record an appropriate  
 25 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 incurrence 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 general partner  
12 of limited partnership. Except as otherwise approved by the  
13 specific written consent, at the time, of all partners, a  
14 person ceases to be a general partner of a limited  
15 partnership on the happening 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. [1] This act does not  
12 affect IMPAIR THE OBLIGATION OF ANY CONTRACT EXISTING ON  
13 [THE EFFECTIVE DATE OF THIS ACT] NOR AFFECT ANY rights  
14 accrued, duties incurred, or proceedings begun before [the  
15 effective date of this act].

16 [2] A LIMITED PARTNERSHIP FORMED UNDER ANY STATUTE OF  
17 THIS STATE BEFORE [THE EFFECTIVE DATE OF THIS ACT] MAY ELECT  
18 TO BE GOVERNED BY [THIS ACT]. THE GENERAL PARTNER OR  
19 PARTNERS MAY MAKE THE ELECTION FOR THE LIMITED PARTNERSHIP  
20 AT ANY TIME ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT] BY  
21 COMPLYING WITH [SECTION 11] OF [THIS ACT], EXCEPT THAT THE  
22 LIMITED PARTNERS SHALL NOT BE REQUIRED TO EXECUTE A NEW  
23 CERTIFICATE OF LIMITED PARTNERSHIP. NOTWITHSTANDING SUCH  
24 ELECTION BY THE GENERAL PARTNER OR PARTNERS:

25 [A] [SECTIONS 30, 31, AND 41] APPLY ONLY TO

1 CONTRIBUTIONS AND DISTRIBUTIONS MADE AFTER THE DATE OF THE  
 2 ELECTION;

3 (B) [SECTION 45] APPLIES ONLY TO ASSIGNMENTS MADE  
 4 AFTER THE DATE OF THE ELECTION; AND

5 (C) [SECTION 50] DOES NOT CHANGE THE PRIORITY OF  
 6 CREDITORS FOR TRANSACTIONS ENTERED INTO BEFORE THE DATE OF  
 7 THE ELECTION.

8 (3) A LIMITED PARTNERSHIP FORMED UNDER ANY STATUTE OF  
 9 THIS STATE BEFORE [THE EFFECTIVE DATE OF THIS ACT], UNIL OR  
 10 UNLESS IT ELECTS TO BE GOVERNED BY [THIS ACT], SHALL BE  
 11 GOVERNED BY 35-12-101 THROUGH 35-12-403, OR OTHER APPLICABLE  
 12 PRIOR LAW.

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

15 SECTION 65. SECRETARY OF STATE AUTHORIZED AND  
 16 REQUIRED TO ESTABLISH FEES COMMENSURATE WITH COSTS. THE  
 17 SECRETARY OF STATE IS AUTHORIZED AND REQUIRED TO SET FILING  
 18 FEES REASONABLY RELATED TO THE COSTS OF PROCESSING THE  
 19 APPLICATIONS AND CERTIFICATES. THE SECRETARY OF STATE MAY  
 20 ESTABLISH FEES FOR FILING A CERTIFICATE OF LIMITED  
 21 PARTNERSHIP, CERTIFICATE OF AMENDMENT, CERTIFICATE OF  
 22 CANCELLATION, AN APPLICATION TO RESERVE A NAME, A NOTICE OF  
 23 TRANSFER OF A RESERVED NAME, AN APPLICATION FOR REGISTRATION  
 24 OF A FOREIGN LIMITED PARTNERSHIP, A CERTIFICATE OF  
 25 CANCELLATION OR CORRECTION OF A FOREIGN LIMITED PARTNERSHIP

1 OR FILING ANY OTHER STATEMENT OR REPORT OF A DOMESTIC OR  
 2 FOREIGN LIMITED PARTNERSHIP. THE SECRETARY OF STATE SHALL  
 3 MAINTAIN RECORDS SUFFICIENT TO SUPPORT THE FEE CHARGED FOR  
 4 THE FILING REQUIREMENTS.

-End-



1 SENATE BILL NO. 161  
2 INTRODUCED BY MAZUREK, 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  
12 473] 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.

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 refusal  
 20 may petition the district court to direct the amendment or  
 21 cancellation. If the court finds that the amendment or  
 22 cancellation is proper and that the persons so designated  
 23 have failed or refused to execute the certificate, it shall  
 24 order the secretary of state to record an appropriate  
 25 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 incurrence 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 SECTIONS 5(?) (a)  
 14 AND 5(2)(B)], is liable to creditors who extend credit to  
 15 the limited partnership without actual knowledge that the  
 16 limited 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 general partner  
12 of limited partnership. Except as otherwise approved by the  
13 specific written consent, at the time, of all partners, a  
14 person ceases to be a general partner of a limited  
15 partnership on the happening 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)~~ 41(3)], 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. [1] This act does not  
12 affect IMPAIR THE OBLIGATION OF ANY CONTRACT EXISTING ON  
13 [THE EFFECTIVE DATE OF THIS ACT] NOR AFFECT ANY rights  
14 accrued, duties incurred, or proceedings begun before [the  
15 effective date of this act].

16 [2] A LIMITED PARTNERSHIP FORMED UNDER ANY STATUTE OF  
17 THIS STATE BEFORE [THE EFFECTIVE DATE OF THIS ACT] MAY ELECT  
18 TO BE GOVERNED BY [THIS ACT]. THE GENERAL PARTNER OR  
19 PARTNERS MAY MAKE THE ELECTION FOR THE LIMITED PARTNERSHIP  
20 AT ANY TIME ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT] BY  
21 COMPLYING WITH [SECTION 11] OF [THIS ACT], EXCEPT THAT THE  
22 LIMITED PARTNERS SHALL NOT BE REQUIRED TO EXECUTE A NEW  
23 CERTIFICATE OF LIMITED PARTNERSHIP, NOTWITHSTANDING SUCH  
24 ELECTION BY THE GENERAL PARTNER OR PARTNERS:

25 (A) [SECTIONS 30, 31, AND 41] APPLY ONLY TO

1 CONTRIBUTIONS AND DISTRIBUTIONS MADE AFTER THE DATE OF THE  
 2 ELECTION;

3 (B) [SECTION 45] APPLIES ONLY TO ASSIGNMENTS MADE  
 4 AFTER THE DATE OF THE ELECTION; AND

5 (C) [SECTION 50] DOES NOT CHANGE THE PRIORITY OF  
 6 CREDITORS FOR TRANSACTIONS ENTERED INTO BEFORE THE DATE OF  
 7 THE ELECTION.

8 (3) A LIMITED PARTNERSHIP FORMED UNDER ANY STATUTE OF  
 9 THIS STATE BEFORE [THE EFFECTIVE DATE OF THIS ACT], UNTIL OR  
 10 UNLESS IT ELECTS TO BE GOVERNED BY [THIS ACT], SHALL BE  
 11 GOVERNED BY 35-12-101 THROUGH 35-12-403, OR OTHER APPLICABLE  
 12 PRIOR LAW.

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

15 SECTION 65. SECRETARY OF STATE AUTHORIZED AND  
 16 REQUIRED TO ESTABLISH FEES COMMENSURATE WITH COSTS. THE  
 17 SECRETARY OF STATE IS AUTHORIZED AND REQUIRED TO SET FILING  
 18 FEES REASONABLY RELATED TO THE COSTS OF PROCESSING THE  
 19 APPLICATIONS AND CERTIFICATES. THE SECRETARY OF STATE MAY  
 20 ESTABLISH FEES FOR FILING A CERTIFICATE OF LIMITED  
 21 PARTNERSHIP, CERTIFICATE OF AMENDMENT, CERTIFICATE OF  
 22 CANCELLATION, AN APPLICATION TO RESERVE A NAME, A NOTICE OF  
 23 TRANSFER OF A RESERVED NAME, AN APPLICATION FOR REGISTRATION  
 24 OF A FOREIGN LIMITED PARTNERSHIP, A CERTIFICATE OF  
 25 CANCELLATION OR CORRECTION OF A FOREIGN LIMITED PARTNERSHIP

1 OR FILING ANY OTHER STATEMENT OR REPORT OF A DOMESTIC OR  
 2 FOREIGN LIMITED PARTNERSHIP. THE SECRETARY OF STATE SHALL  
 3 MAINTAIN RECORDS SUFFICIENT TO SUPPORT THE FEE CHARGED FOR  
 4 THE FILING REQUIREMENTS.

-End-

..... March 12, ..... 19...81....

STATEMENT OF INTENT

SENATE BILL 161

A statement of intent is required for this bill because section 65 of the bill would grant the Secretary of State the authority to adopt rules establishing filing fees. Rules are to be adopted under the Montana Administrative Procedure Act. The documents for which filing fees may be charged under those rules shall not be limited to the documents specifically named in section 65 of Senate Bill 161, but may include others required or allowed to be filed under the bill's provisions, as well as any amended documents required or allowed to be filed. The rules shall allow the filing and billing for filing fees to be accomplished by mail.

March 26, 1981

PROPOSED GOVERNOR'S AMENDMENTS TO SENATE BILL No. 161;  
REFERENCE COPY, AS FOLLOWS:

1. Page 9, lines 11 and 12  
Following: "under" on line 11,  
Delete: section 47  
Insert: section 47(3)
2. Page 16, line 13  
Following: "by"  
Delete: section 5(2)(a)  
Insert: sections 5(2)(a) and 5(2)(b)
3. Page 23, line 24  
Following "under"  
Delete: section 41(2)  
Insert: section 41(3)

State of Montana  
Office of the Governor  
Helena 59620

TED SCHWINDEN  
GOVERNOR

March 26, 1981

The Honorable Jean A. Turnage  
President of the Senate  
State Capitol  
Helena, Montana 59620

The Honorable Robert L. Marks  
Speaker of the House  
State Capitol  
Helena, Montana 59620

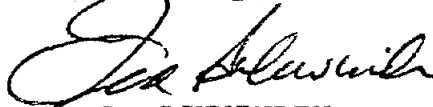
Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return Senate Bill No. 161, "AN ACT TO ADOPT THE REVISED UNIFORM LIMITED PARTNERSHIP ACT: REPEALING SECTIONS 35-12-101 THROUGH 35-12-403, MCA," without my signature and recommend the attached amendments.

I am proposing amendments to SB 161 solely for the purpose of correcting internal cross-references.

I urge your concurrence in these amendments.

Sincerely,



TED SCHWINDEN  
Governor