

SENATE BILL NO. 46
INTRODUCED BY HALLIGAN

IN THE SENATE

DECEMBER 23, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 4, 1993	FIRST READING.
JANUARY 29, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 30, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 1, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 2, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 10, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 13, 1993	SECOND READING, CONCURRED IN.
MARCH 16, 1993	THIRD READING, CONCURRED IN. AYES, 92; NOES, 7.
MARCH 17, 1993	RETURNED TO SENATE.

IN THE SENATE

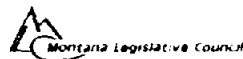
MARCH 18, 1993	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 46

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW CONCERNING PARTNERSHIPS; REVISING PROVISIONS GOVERNING PARTNERSHIP PROPERTY; REVISING THE RELATIONSHIP BETWEEN PARTNERS AND PERSONS DEALING WITH THE PARTNERSHIP; REVISING THE RELATIONSHIP OF PARTNERS TO THE PARTNERSHIP AND TO OTHER PARTNERS; REVISING THE LAW CONCERNING TRANSFEREES AND CREDITORS OF PARTNERS; PROVIDING FOR A PARTNER'S DISSOCIATION; REVISING THE LAW ON WINDING UP A PARTNERSHIP'S BUSINESS; PROVIDING FOR MERGERS AND CONSOLIDATIONS OF PARTNERSHIPS; AMENDING SECTIONS 31-2-106, 35-10-102, 35-10-103, 35-10-104, 35-10-105, 35-10-201, 35-10-202, 35-10-203, 35-10-301, 35-10-302, 35-10-303, 35-10-305, 35-10-307, 35-10-308, 35-10-309, 35-10-401, 35-10-402, 35-10-403, 35-10-405, 35-10-406, 35-10-505, 35-10-602, AND 35-10-609, MCA; AND REPEALING SECTIONS 35-10-303, 35-10-304, 35-10-306, 35-10-404, 35-10-501, 35-10-502, 35-10-503, 35-10-504, 35-10-507, 35-10-601, 35-10-603, 35-10-604, 35-10-605, 35-10-606, 35-10-607, 35-10-608, 35-10-610, 35-10-611, 35-10-612, 35-10-613, 35-10-614, AND 35-10-615, MCA."

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

**Section 1.** Section 35-10-102, MCA, is amended to read:

"35-10-102. Definitions. In this chapter, the following definitions apply:

(1) "~~Bankrupt~~"~~---includes---bankrupt---under---the---Federal Bankruptcy Act or insolvent under any state insolvency act;~~

~~{2}~~ "Business" includes every trade, occupation, or profession.

~~{3}~~"~~Conveyance~~"~~---includes---every---assignment,---lease, mortgage, or encumbrance;~~

~~{4}~~"~~Court~~"~~---includes---every---court---and---judge---having jurisdiction in the case;~~

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

(5) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the

1 expiration of a definite term or the completion of a
 2 particular undertaking.

3 (5)(6) "Person" includes--individuals,---partnerships,
 4 corporations,--and--other--associations means an individual;
 5 corporation; business trust; estate; trust; partnership;
 6 association; joint venture; government; governmental
 7 subdivision, agency, or instrumentality; or any other legal
 8 or commercial entity.

9 (6)--"Real property"--includes--land--and--any--interest--or
 10 estate--in--land;

11 (7) "Property" means all property, real, personal, or
 12 mixed, tangible or intangible, or any interest therein.

13 (8) "State" means a state of the United States, the
 14 District of Columbia, the Commonwealth of Puerto Rico, or
 15 any territory or insular possession subject to the
 16 jurisdiction of the United States.

17 (9) "Statement" means a statement of partnership
 18 authority under [section 17], a statement of denial under
 19 [section 18], a statement of dissociation under [section
 20 42], a statement of dissolution under [section 49], a
 21 statement of merger under [section 57], or an amendment or
 22 cancellation of the foregoing.

23 (10) "Transfer" includes an assignment, conveyance,
 24 lease, mortgage, deed, and encumbrance."

25 **Section 2.** Section 35-10-103, MCA, is amended to read:

1 "35-10-103. Interpretation--of--knowledge Knowledge and
 2 notice. (1) A person has--"knowledge"--of knows a fact within
 3 the--meaning--of--this--chapter--not--only--when--he if the person
 4 has actual knowledge thereof--but--also--when--he--has--knowledge
 5 of--such--other--facts--as--in--the--circumstances--show--bad--faith
 6 of it.

7 (2) A person has "notice" of a fact within--the--meaning
 8 of--this--chapter--when if the person who--claims--the--benefit--of
 9 the--notice:

10 (a) states--the--fact--to--such--person knows of it; or

11 (b) has received a notification of it; or

12 (c) has reason to know it exists from all of the facts
 13 known to that person at the time in question.

14 (3) A person notifies or gives a notification to
 15 another by taking steps reasonably required to inform the
 16 other person in the ordinary course of business, whether or
 17 not the other person learns of it.

18 (4) A person receives notification when it:

19 (a) comes to the person's attention; or

20 (b) delivers--through--the--mail--or--by--other--means--of
 21 communication--a--written--statement--of--the--fact--to--such--person
 22 or--to--a--proper--person--at--his is duly delivered at the
 23 person's place of business or residence at any other place
 24 held out by the person as a place for receiving
 25 communications.

(5) Except as provided in subsection (6), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership but is not effective as such if the partner committed or consented to a fraud on the partnership."

Section 3. Section 35-10-104, MCA, is amended to read:

"35-10-104. Rules Uniformity of application and

~~construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.~~

~~(2) The law of estoppel shall apply under this chapter.~~

~~(3) The law of agency shall apply under this chapter.~~

~~(4) This chapter shall must be so interpreted applied and construed as to effect effectuate its general purpose to make uniform the law with respect to the subject of this chapter of those among states which enact enacting it.~~

~~(5) This chapter shall not be construed so as to impair the obligations of any contract existing on July 17, 1947, or to affect any action or proceedings begun or right accrued before July 17, 1947."~~

NEW SECTION. Section 4. Effect of partnership agreement -- nonwaivable provisions. (1) Except as provided in subsection (2), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary the rights and duties under [section 6] except to eliminate the duty to provide copies of statements to all of the partners;

(b) unreasonably restrict a partner's right of access

1 to books and records under 35-10-402(2);

2 (c) eliminate the duty of loyalty under 35-10-405(3);

3 (d) unreasonably reduce the duty of care under
4 35-10-405(4);

5 (e) eliminate the obligation of good faith and fair
6 dealing under 35-10-405(5);

7 (f) vary the power to withdraw as a partner under
8 [section 36(1)], except to require the notice to be in
9 writing;

10 (g) vary the right to expulsion of a partner by a court
11 in the events specified in [section 36(5)];

12 (h) vary the requirement to wind up the partnership
13 business in cases specified in [section 44(4), (5), or (6)];

14 or

15 (i) restrict rights of third parties under this
16 chapter.

17 **Section 5.** Section 35-10-105, MCA, is amended to read:

18 "35-10-105. ~~Rules--for--cases--not-provided-for-in-this~~
19 ~~chapter~~ Supplemental principles of law. (1) In any case--not
20 provided--for--in--this--chapter Unless displaced by a
21 particular provision of this chapter, the rules principles
22 of law and equity,--including-the-law-merchant,--shall-govern
23 supplement this chapter.

24 (2) If an obligation to pay interest arises under this
25 chapter and the rate is not specified, the rate is that

1 specified in 31-1-106."

2 **NEW SECTION. Section 6. Execution, filing, and**
3 **recording of statements.** (1) A statement may be filed in the
4 office of the secretary of state. A certified copy of a
5 statement that is filed in an office in another state may be
6 filed in the office of the secretary of state. Either filing
7 has the effect provided in this chapter with respect to
8 partnership property located in or transactions that occur
9 in this state.

10 (2) A certified copy of a statement that has been filed
11 in the office of the secretary of state and recorded in the
12 office for recording transfers of real property has the
13 effect provided for recorded statements in this chapter. A
14 recorded statement that is not a certified copy of a
15 statement in the office of the secretary of state does not
16 have the effect provided for recorded statements in this
17 chapter.

18 (3) A statement filed by a partnership must be executed
19 by at least two partners. Other statements must be executed
20 by a partner or other person authorized by this chapter. The
21 statement must be in the English language. An individual who
22 executes a statement as or on behalf of a partner or other
23 person named as a partner in a statement shall state beneath
24 or opposite the person's signature the person's name and the
25 capacity in which the person signs. The execution of any

document required to be filed with the secretary of state under this chapter constitutes an affirmation under penalties of false swearing by each person executing the document that the facts stated are true.

(4) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(5) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(6) The secretary of state shall establish by rule fees for filing statements, issuing certificates, copying statements, priority handling, transmitting or filing facsimile copies, and providing computer-generated information. The fees must be reasonably related to the costs of processing the statements and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section. The secretary of state may adopt rules necessary to perform any duty required of the secretary of state by this

chapter.

NEW SECTION. **Section 7. Facsimile filing -- requirements -- liability.** (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A facsimile copy is entitled to be filed under this section if it is:

(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and

(b) legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(5) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false

document.

NEW SECTION. Section 8. Filing with secretary of state. (1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of any statement filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter and all required filing fees have been paid, the secretary of state shall:

(a) endorse on each signed original and duplicate copy the word "filed" and the date and time of acceptance for filing;

(b) retain the signed original in the secretary of state's files; and

(c) return the duplicate copy to the person who filed it or the person's representative.

(2) The secretary of state may by rule prescribe and furnish forms or computer formats for any statement to be filed with the secretary of state under this chapter. If the secretary of state requires, the use of any forms or formats is mandatory.

(3) All partnerships filing statements pursuant to this chapter shall first register the business name as an assumed business name pursuant to Title 30, chapter 13, part 2.

NEW SECTION. Section 9. Law governing internal

affairs. The law of the state in which a partnership has its chief executive office governs the partnership's internal affairs.

NEW SECTION. Section 10. Partnership subject to amendment of repeal of chapter. A partnership governed by this chapter is subject to any amendment or repeal of this chapter.

Section 11. Section 35-10-201, MCA, is amended to read:

"35-10-201. Partnership defined as entity. (1) A partnership is an ~~association of two or more persons to carry on as co-owners a business for profit~~ entity.

(2) ~~But any association formed under any other statute of this state or any statute adopted by authority other than the authority of this state is not a partnership under this chapter unless such association would have been a partnership in this state prior to the adoption of this chapter. But this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.~~"

Section 12. Section 35-10-202, MCA, is amended to read:

"35-10-202. Rules ~~for determining the existence~~ Creation of a partnership. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by ~~35-10-308~~ in subsection (2), the association of two or more persons who are not partners

~~as--to--each--other--are-not-partners-as-to-third-persons to~~
~~carry on as co-owners a business for profit creates a~~
~~partnership, whether or not the persons intend to create a~~
~~partnership.~~

(2) An association created under a statute other than
this chapter, a predecessor law, or a comparable law of
another jurisdiction is not a partnership.

(3) In determining whether a partnership is created,
the following rules apply:

{2}{a} Joint tenancy, tenancy in common, tenancy by the
entireties, joint property, common property, or part
ownership does not of by itself establish a partnership,
whether--such even if the co-owners do-or-do-not share any
profits made by the use of the property.

{3}{b} The sharing of gross returns does not of by
itself establish a partnership, whether-or-not even if the
persons sharing them have a joint or common right or
interest in any property from which the returns are derived.

{4}{c} The--receipt--by--a A person of who receives a
share of the profits of a business is prima--facie--evidence
that--such--person--is presumed to be a partner in the
business, but-no-such--inference--shall-be--drawn--if--such
unless the profits were received in payment:

{a}{i} as of a debt by installments or otherwise;

{b}{ii} as for services as an independent contractor or

of wages or other compensation of to an employee;

(iii) or of rent to-a-landlord;

{c}{iv} as of an annuity to or other retirement or
health benefit to a beneficiary, surviving--spouse--or
representative, or designee of a deceased or retired
partner;

{d}{v} as of interest or of another charge on a loan,
though even if the amount of payment varies with the profits
of the business, including a direct or indirect present or
future ownership of the collateral or rights to income,
proceeds, or increase in value derived from the collateral;
or

{e}{vi} as--the--consideration for the sale of a the
goodwill of a business or other property by installments or
otherwise.

(4) Except as provided by 35-10-308, persons who are
not partners as to each other are not partners as to other
persons.

(5) A partnership created under this chapter is a
general partnership, and the partners are general partners
of the partnership."

Section 13. Section 35-10-203, MCA, is amended to read:

"35-10-203. Partnership property. ~~{1}--All--property~~
~~originally--brought--into--the--partnership--stock--or~~
~~subsequently-acquired-by-purchase~~ Property transferred to or

1 otherwise ~~on-account-of-the~~ acquired by a partnership is
 2 partnership property of the partnership and not of the
 3 partners individually.

4 ~~{2}--Unless-the--contrary--intention--appears--property~~
 5 ~~acquired-with-partnership-funds-is-partnership-property-~~

6 ~~{3}--Any--estate-in-real-property-may-be-acquired-in-the~~
 7 ~~partnership-name--Title-so-acquired-can-be-conveyed-only--in~~
 8 ~~the-partnership-name-~~

9 ~~{4}--A--conveyance--to--a-partnership-in-the-partnership~~
 10 ~~name--though-without-words-of-inheritance--passes-the-entire~~
 11 ~~estate-of-the-grantor-unless-a-contrary-intent-appears--"~~

12 NEW SECTION. Section 14. When property is partnership
 13 property. (1) Property is partnership property if acquired
 14 in the name of:

15 (a) the partnership; or

16 (b) one or more partners with an indication in the
 17 instrument transferring title to the property of the
 18 person's capacity as a partner or of the existence of a
 19 partnership but without an indication of the name of the
 20 partnership.

21 (2) Property is acquired in the name of the partnership
 22 by a transfer to:

23 (a) the partnership in its name; or

24 (b) one or more partners in their capacity as partners
 25 in the partnership if the name of the partnership is

1 indicated in the instrument transferring title to the
 2 property.

3 (3) Property is presumed to be partnership property if
 4 purchased with partnership assets even if not acquired in
 5 the name of the partnership or of one or more partners with
 6 an indication in the instrument transferring title to the
 7 property of the person's capacity as a partner or of the
 8 existence of a partnership.

9 (4) Property acquired in the name of one or more of the
 10 partners without an indication in the instrument
 11 transferring title to the property of the person's capacity
 12 as a partner or of the existence of a partnership and
 13 without use of partnership assets is presumed to be separate
 14 property even if used for partnership purposes.

15 **Section 15.** Section 35-10-301, MCA, is amended to read:

16 "35-10-301. Partner as agent of partnership --
 17 ~~restrictions-on-partner's-authority.~~ Subject to the effect
 18 of a statement of partnership authority pursuant to [section
 19 17]]:

20 (1) Every each partner is an agent of the partnership
 21 for the purpose of its business, ~~and-the~~ An act of every a
 22 partner, including the execution of an instrument in the
 23 partnership name ~~of-any-instrument~~, for apparently carrying
 24 on in the usual way the partnership business or business of
 25 the kind carried on by the partnership ~~of-which-he-is-a~~

member binds the partnership unless the partner so--acting has in--fact no authority to act for the partnership in the particular matter and the person with whom he the partner is dealing has--knowledge-of-the-fact-that-he-has-no-such knows or has received a notification that the partner lacks authority.

(2) An an act of a partner which that is not apparently for the carrying on of--the-business-of in the usual way the partnership in--the--usual--way business or business of the kind carried on by the partnership does-not-bind binds the partnership unless only if the act was authorized by the other partners.

{3}--Unless-authorized-by-the-other-partners--or--unless they--have-abandoned-the-business, one-or-more-but-less-than all-the-partners-have-no-authority-to:

{a}--assign--the--partnership--property--in--trust---for creditors--or--on-the-assignee's-promise-to-pay-the-debts-of the-partnership;

{b}--dispose-of-the-goodwill-of-the-business;

{c}--do-any-other-act-which-would-make-it-impossible--to carry-on-the-ordinary-business-of-a-partnership;

{d}--confess-a-judgment;

{e}--submit---a---partnership---claim--or--liability--to arbitration-or-reference;

{4}--No--act--of--a--partner--in--contravention--of---a

restriction--on--authority--shall--bind--the--partnership-to persons-having-knowledge-of-the-restriction;"

Section 16. Section 35-10-302, MCA, is amended to read:

"35-10-302. Conveyance-of-real Transfer of partnership property of-the-partnership. (1) Subject to the effect of a statement of partnership authority pursuant to [section 17]:

(a) Where-title-to-real partnership property is held in the name of the partnership name,--any--partner may convey title--to--such--property be transferred by a-conveyance an instrument of transfer executed by a partner in the partnership name;

(b) partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; and

(c) a ,--but-the partnership may recover such property unless--the--partner's--act--binds transferred under this subsection if it proves that execution of the instrument of transfer did not bind the partnership under the-provisions of 35-10-301{i}--or unless such the property has--been conveyed was transferred by the grantee initial transferee or a person claiming through such--grantee the initial

1 transferee to a holder-for subsequent transferee who gave
 2 value without knowledge having notice that the partner, in
 3 making the conveyance, has exceeded his person who executed
 4 the instrument of initial transfer lacked authority to bind
 5 the partnership.

6 (2) Where title to real partnership property is held in
 7 the name of one or more persons other than the partnership,
 8 a conveyance executed by a partner in his own name passes
 9 the equitable interest of the partnership, provided the act
 10 is one within the authority of the partner under the
 11 provisions of 35-10-301(i) without an indication in the
 12 instrument transferring the property to them of their
 13 capacity as partners or of the existence of a partnership
 14 may be transferred free of any claims of the partnership or
 15 the partners by the persons in whose name the property is
 16 held to a transferee who gives value without having notice
 17 that it is partnership property.

18 (3) Where title to real property is in the name of one
 19 or more but not all the partners and the record does not
 20 disclose the right of the partnership, the partners in whose
 21 name the title stands may convey title to such property, but
 22 the partnership may recover such property if the partner's
 23 act does not bind the partnership under the provisions of
 24 35-10-301(i), unless the purchaser or his assignee is a
 25 holder for value without knowledge.

1 (4) Where the title to real property is in the name of
 2 one or more or all the partners or in a third person in
 3 trust for the partnership, a conveyance executed by a
 4 partner in the partnership name or in his own name passes
 5 the equitable interest of the partnership, provided the act
 6 is one within the authority of the partner under the
 7 provisions of 35-10-301(i).

8 (5) Where the title to real property is in the names of
 9 all the partners, a conveyance executed by all the partners
 10 passes all their rights in such property; if a person holds
 11 all of the partners' interests in the partnership, all of
 12 the partnership property vests in that person. The person
 13 may execute a document in the name of the partnership to
 14 evidence vesting of the property in that person and may file
 15 or record the document."

16 **NEW SECTION. Section 17. Statement of partnership**
 17 **authority. (1) A partnership may file a statement of**
 18 **partnership authority, which:**

19 (a) must include:

20 (i) the name of the partnership;

21 (ii) the street address of its chief executive office
 22 and of one office in this state, if there is one;

23 (iii) the names and mailing addresses of all of the
 24 partners or of an agent appointed and maintained by the
 25 partnership for the purpose of subsection (2); and

1 (iv) the names of the partners authorized to execute an
2 instrument transferring real property held in the name of
3 the partnership; and

4 (b) may state the authority or limitations on the
5 authority of some or all of the partners to enter into other
6 transactions on behalf of the partnership and any other
7 matter.

8 (2) If a statement of partnership authority names an
9 agent, the agent shall maintain a list of the names and
10 mailing addresses of all the partners and make it available
11 to any person on request for good cause shown.

12 (3) If a filed statement of partnership authority is
13 executed pursuant to [section 6(5)] and states the name of
14 the partnership but does not contain all of the other
15 information required by subsection (1), the statement
16 nevertheless operates with respect to a person not a partner
17 as provided in subsections (4) and (5).

18 (4) Except as provided in subsection (7), a filed
19 statement of partnership authority supplements the authority
20 of a partner to enter into transactions on behalf of the
21 partnership as follows:

22 (a) Except for transfers of real property, a grant of
23 authority contained in a filed statement of partnership
24 authority is conclusive in favor of a person who gives value
25 without knowledge to the contrary so long as and to the

1 extent that a limitation on that authority is not contained
2 in another filed statement. A filed cancellation of a
3 limitation on authority revives the previous grant of
4 authority.

5 (b) A grant of authority to transfer real property held
6 in the name of the partnership contained in a certified copy
7 of a filed statement of partnership authority recorded in
8 the office for recording transfers of that real property is
9 conclusive in favor of a person who gives value without
10 knowledge to the contrary so long as and to the extent that
11 a certified copy of a filed statement containing a
12 limitation on that authority is not then of record in the
13 office for recording transfers of that real property. The
14 recording in the office for recording transfers of that real
15 property of a certified copy of a filed cancellation of a
16 limitation on authority revives the previous grant of
17 authority.

18 (5) A person not a partner is considered to know of a
19 limitation on the authority of a partner to transfer real
20 property held in the name of the partnership if a certified
21 copy of the filed statement containing the limitation on
22 authority is of record in the office for recording transfers
23 of that real property.

24 (6) Except as provided in [sections 42 and 49] and
25 subsection (5) of this section, a person not a partner is

1 not considered to know of a limitation on the authority of a
2 partner merely because the limitation is contained in a
3 filed statement.

4 (7) Unless canceled earlier, a filed statement of
5 partnership authority is canceled by operation of law 5
6 years after the date on which the statement or the most
7 recent amendment was filed with the secretary of state.

8 **NEW SECTION. Section 18. Statement of denial.** A
9 partner or other person named as a partner in a filed
10 statement of partnership authority or in a list maintained
11 by an agent pursuant to [section 17(2)] may file a statement
12 of denial stating the name of the partnership and the fact
13 that is being denied, which may include denial of a person's
14 authority or status as a partner. A statement of denial is a
15 limitation on authority to the extent provided in [section
16 17(4) and (5)].

17 **Section 19.** Section 35-10-305, MCA, is amended to read:

18 "35-10-305. Partnership liable for partner's wrongful
19 act actionable conduct. (1) Where, by any A partnership is
20 liable for loss or injury caused to a person, or for a
21 penalty incurred, as a result of a wrongful act or omission
22 or other actionable conduct of any a partner acting in the
23 ordinary course of the business of the partnership or with
24 the authority of his-copartners, loss-or-injury-is-caused-to
25 any--person--not--being--a-partner-in the partnership or-any

1 ~~penalty-is-incurred, the partnership is liable--therefor--to~~
2 ~~the-same-extent-as-the-partner-so-acting-or-omitting-to-act.~~

3 (2) If, in the course of its business, a partnership
4 receives money or property of a person not a partner and
5 that money or property is misapplied by a partner while it
6 is in the custody of the partnership, the partnership is
7 liable for the loss."

8 **Section 20.** Section 35-10-307, MCA, is amended to read:

9 "35-10-307. ~~Nature--of--partner's~~ Partner's liability.
10 All partners are liable:

11 ~~(1) jointly and severally for everything-chargeable--to~~
12 ~~the-partnership-under-35-10-305-and-35-10-306;~~

13 ~~(2)--jointly--for all other-debts-and obligations of the~~
14 ~~partnership, but-any--partner--may--enter--into--a--separate~~
15 ~~obligation---to---perform---a--partnership--contract unless~~
16 ~~otherwise agreed by the claimant or provided by law."~~

17 **NEW SECTION. Section 21. Action by and against**
18 **partnership and partners.** (1) A partnership may sue and be
19 sued in the name of the partnership.

20 (2) An action may be brought against the partnership
21 and any or all of the partners in the same action or in
22 separate actions.

23 (3) A judgment against a partnership is not by itself a
24 judgment against a partner. A judgment against a partnership
25 may not be satisfied from a partner's assets unless there is

also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(a) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed;

(c) the partner has agreed that the creditor need not exhaust partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution within this state are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under 35-10-308(1) or (2).

Section 22. Section 35-10-308, MCA, is amended to read:

"35-10-308. Partner--by-estoppel Purported partner. (1) When If a person, by words spoken-or-written or by conduct, represents--himself purports to be a partner or consents to being represented by another representing-him-to-anyone as a partner in an-existing a partnership or with one or more persons not actual partners, he the purported partner is liable to any-such a person to whom such the representation has--been is made if that person, who-has relying on the faith-of-such representation, given-credit-to enters into a transaction with the actual or apparent purported partnership, 7--and--if---he---has---made---such If the representation, or--consented--to--its--being either by the purported partner or by a person with the purported partner's consent, is made in a public manner, he the purported partner is liable to such a person, 7--whether--the representation--has--or-has-not-been-made-or-communicated-to such-person-so-giving-credit-by-or-with-the-knowledge-of-the apparent-partner-making-the-representation-or-consenting--to its--being--made who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. When--a If partnership

liability results, ~~he the purported partner~~ is liable as though--~~he if the purported partner were an-actual-member-of the-partnership a partner.~~ When ~~if~~ no partnership liability results, ~~he the purported partner~~ is liable jointly and severally with the ~~any other persons;--if--any;--so person~~ consenting to the ~~contract--or representation as-to-incur liability;--otherwise-separately.~~

(2) When ~~if~~ a person ~~has-been is~~ thus represented to be a partner in an existing partnership or with one or more persons not ~~actual~~ partners, ~~he the purported partner~~ is an agent of the persons consenting to ~~such the~~ representation to bind them to the same extent and in the same manner as though--~~he if the purported partner~~ were a partner ~~in--fact,~~ with respect to persons who ~~rely enter into transactions in reliance~~ upon the representation. ~~Where if all of the members partners~~ of the existing partnership consent to the representation, a partnership act or obligation results. ~~7 but--in-all-other-cases-it-is-the-joint-act-or-obligation-of the-person-acting-and-the-persons-consenting if fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.~~

(3) A person is not a partner in a partnership merely because the person is named by another in a statement of

partnership authority.

(4) A person does not continue to be a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership."

Section 23. Section 35-10-309, MCA, is amended to read:

"35-10-309. Liability of incoming partner. A person admitted as a partner into ~~an--existing a~~ partnership is liable for all the obligations of the partnership arising incurred before his ~~the person's~~ admission as though--~~he--had been if the person were a partner when such the~~ obligations were incurred, ~~except-that-this but the~~ liability ~~shall may~~ be satisfied only out of partnership property."

Section 24. Section 35-10-401, MCA, is amended to read:

"35-10-401. Rules---determining Partner's rights and duties of-partners. ~~The-rights-and-duties-of-the-partners-in relation-to-the-partnership-shall-be-determined;--subject--to any-agreement-between-them;--by-the-following-rules:~~

(1) Each A partnership shall establish an account for each partner. ~~shall-be-repaid-his-contributions--whether--by way--of-capital-or-advances~~ The partnership shall credit the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that the partner contributes to the partnership property and the partner's share ~~equally--in--the of the~~ partnership

profits, and--surplus--remaining--after--all--liabilities,
including--those--to--partners,--are--satisfied---and---must
contribute--towards--the The partnership shall charge the
account with an amount equal to the money plus the value of
any other property, net of the amount of any liabilities,
distributed by the partnership to the partner and the
partner's share of the partnership losses.

(2) A partnership shall credit each partner's account
with an equal share of the partnership profits. A
partnership shall charge each partner with a share of the
partnership losses, whether of capital or otherwise
operating, sustained-by-the-partnership-according-to-his in
proportion to the partner's share in of the profits.

(2)(3) The A partnership must shall indemnify every
each partner in-respect-of for payments reasonably made and
personal liabilities reasonably incurred by him the partner
in the ordinary and proper conduct of its the business of
the partnership or for the preservation of its business or
property.

(3)(4) A partnership shall repay a partner who, in aid
of the partnership, makes any a payment or advance beyond
the amount of capital which--he the partner agreed to
contribute shall-be-paid--interest--from--the--date--of--the
payment-or-advance.

(4)(5) A payment made by a partner shall--receive

interest--on--the-capital-contributed-by-him-only that gives
rise to a partnership obligation under subsection (3) or (4)
constitutes a loan to the partnership. Interest accrues from
the date when-repayment-should-be-made of the payment or
advance.

(5)(6) All--partners-have Each partner has equal rights
in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property
only on behalf of the partnership.

(6)(8) No A partner is not entitled to remuneration for
acting--in services performed for the partnership business,
except that--a--surviving--partner--is--entitled---to for
reasonable compensation for his services rendered in winding
up the business of the partnership affairs.

(7)(9) No A person can may become a member--of-a
partnership-without partner only with the consent of all the
partners.

(8)(10) Any A difference arising as to a matter in the
ordinary matters-connected-with-the course of business of a
partnership business may be decided by a majority of the
partners. 7--but--no An act in-contravention-of-any outside
the ordinary course of business of a partnership and an
amendment to the partnership agreement between-the-partners
may be done-rightfully--without undertaken only with the
consent of all the partners.

(11) This section does not affect the obligations of a partnership to other persons under 35-10-301."

NEW SECTION. Section 25. Distributions in kind. A partner has no right to receive and may not be required to accept a distribution in kind.

Section 26. Section 35-10-402, MCA, is amended to read:

"35-10-402. ~~Partnership--books-----inspection---rights~~ Partner's right to information. (1) ~~The partnership books A~~ partnership shall be kept, ~~subject to any agreement between~~ the partners, ~~at the principal place of business of the~~ partnership, and keep its books and records, if any, at its chief executive office.

(2) ~~A partnership every partner shall at all times have~~ provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to and may inspect and copy ~~any--of--them~~ books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished."

Section 27. Section 35-10-403, MCA, is amended to read:

"35-10-403. Duty of partners to render information. ~~Partners--shall--render~~ Each partner and the partnership, on

demand, shall furnish ~~true--and--full--information--of--all~~ things ~~affecting the partnership~~ to any a partner or and to the legal representative of any a deceased partner or of a partner under legal disability, to the extent just and reasonable, complete and accurate information concerning the partnership."

Section 28. Section 35-10-405, MCA, is amended to read:

"35-10-405. ~~Partner--accountable--as--a--fiduciary--for~~ benefit ~~derived--without--consent~~ General standards of partner's conduct. (1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section.

~~(1)(2)~~ Every ~~partner--must~~ A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) to account to the partnership ~~for any benefit~~ and hold as trustee for it any profits property, profit, or benefit derived;

(i) by him ~~without the consent of the other partners~~ from any ~~transaction connected with the formation, the~~ partner in the conduct, ~~or liquidation~~ and winding up of the partnership business; or

(ii) from any a use or appropriation by him the partner of its partnership property; or

(iii) from a use or appropriation of an opportunity

without the consent of the other partners;

(b) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership without the consent of the other partners; and

(c) to refrain from competing with the partnership in the conduct of partnership business before the dissolution of the partnership without the consent of the other partners.

(3) A partner's duty of loyalty may not be eliminated by agreement, but the partners by agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(4) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(5) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistent with the obligation of good faith and fair dealing. The obligation of good faith and fair dealing may not be eliminated by agreement, but the partners by agreement may determine the standards by which the

performance of the obligation is to be measured if the standards are not manifestly unreasonable.

(6) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest. A partner may lend money to and transact other business with the partnership. The rights and obligations of a partner who lends money to or transacts business with the partnership are the same as those of a person who is not a partner, subject to other applicable law.

(7) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of a person winding up the partnership business as the personal representatives or legal representative of the last surviving partner as if the person were a partner."

NEW SECTION. Section 29. Partner's liability to partnership. A partner is liable to the partnership for a breach of the partnership agreement if there is a violation of a duty to the partnership that causes harm to the partnership.

NEW SECTION. Section 30. Remedies of partnership and partners. (1) A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership that causes harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to enforce:

(a) a right under the partnership agreement;

(b) a right under this chapter, including the partner's:

(i) rights under 35-10-401 through 35-10-403 and 35-10-405;

(ii) right on dissociation to have the partner's interest in the partnership purchased pursuant to [section 39] or enforce any other right under [sections 36 through 38] or [sections 39 through 43]; or

(iii) right to compel a dissolution and winding up of the partnership business under [section 44] or enforce any other right under [sections 44 and 45], 35-10-602, 35-10-609, and [sections 48 through 51]; or

(c) the rights and otherwise protect the interests of the partner, including rights and interests arising independent of the partnership relationship.

(3) The accrual of and any time limitation on a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 31. Section 35-10-406, MCA, is amended to read:

~~"35-10-406. Rights--and---duties---of---partners---when Continuation of partnership continues beyond fixed definite term or particular undertaking. (1) When If a partnership for a fixed definite term or particular undertaking is continued without an express agreement after the termination of-such expiration of the term or particular completion of the undertaking without--any-express-agreement, the rights and duties of the partners remain the same as they were at such--termination the expiration or completion, so far as is consistent with a partnership at will.~~

~~(2) A-continuation-of-the-business-by If the partners or such those of them as who habitually acted therein in the business during the term or undertaking continue the business without any settlement or liquidation of the partnership, affairs is--prima---facie---evidence---of---a continuation--of--the--partnership they are presumed to have agreed that the business will not be wound up."~~

NEW SECTION. Section 32. Partner's interest in partnership property not transferable. A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred either voluntarily or involuntarily.

NEW SECTION. Section 33. Partner's transferable interest in partnership. The only transferable interest of a partner in the partnership is the partner's interest in

distributions. The interest is personal property.

NEW SECTION. Section 34. Transfer of partner's transferable interest. (1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) is permissible;

(b) does not by itself cause a dissolution and winding up of the partnership business; and

(c) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning or an account of partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) to receive the net amount otherwise distributable to the transferor upon the dissolution and winding up of the partnership business; and

(c) to seek under [section 44(6)] a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to receive an accounting only from the date of the last account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(5) Until receipt of notice of a transfer, a partnership has no duty to give effect to the transferee's rights under this section.

Section 35. Section 35-10-505, MCA, is amended to read:

"35-10-505. Partner's transferable interest subject to charging order. (1) On due application to a competent court by any a judgment creditor of a partner or partner's transferee, the a court which entered the judgment, order, or decree or any other court having jurisdiction may charge the transferable interest of the debtor partner with payment of the unsatisfied amount of such or transferee to satisfy the judgment, debt with interest thereon and The court may then or later appoint a receiver of his the debtor's share of the profits and of any other money distributions due or to fail become due to him the debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries which the debtor partner might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment

debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time and upon conditions it considers appropriate. The purchaser at the foreclosure sale has the rights of a transferee.

(2)(3) The At any time before foreclosure, an interest charged may be redeemed at-any-time-before--foreclosure--or, in--case--of--a--sale--being--directed--by-the-court,--may-be purchased-without-thereby-causing-a-dissolution:

(a) by the judgment debtor;

(a)(b) with separate property other than partnership property, by any one or more of the other partners; or

(b)(c) with partnership property, by any one or more of the other partners with the consent of all the partners whose interests are not so charged or sold.

(3)(4) Nothing-in-this This chapter shall--be--held--to does not deprive a partner of his a right,--if-any, under the exemption laws as-regards-his with respect to the partner's interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership."

NEW SECTION. Section 36. Events causing partner's dissociation. A partner is dissociated from a partnership

upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(a) it is unlawful to carry on the partnership business with that partner;

(b) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest that has not been foreclosed;

(c) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

1 (d) a partnership that is a partner has been dissolved
2 and its business is being wound up;

3 (5) the partner's expulsion by judicial decree, made on
4 application by the partnership or another partner, because:

5 (a) the partner engaged in wrongful conduct that
6 adversely and materially affected the partnership business;

7 (b) the partner willfully or persistently committed a
8 material breach of the partnership agreement or of a duty
9 owed to the partnership or the other partners under
10 35-10-405; or

11 (c) the partner engaged in conduct relating to the
12 partnership business that made it not reasonably practicable
13 to carry on the business in partnership with that partner;

14 (6) the partner:

15 (a) becoming a debtor in bankruptcy;

16 (b) executing an assignment for the benefit of
17 creditors;

18 (c) seeking, consenting to, or acquiescing in the
19 appointment of a trustee, receiver, or liquidator of that
20 partner or of all or substantially all of that partner's
21 property; or

22 (d) failing within 90 days after the appointment to
23 have vacated or stayed the appointment of a trustee,
24 receiver, or liquidator of the partner or of all or
25 substantially all of the partner's property obtained without

1 the partner's consent or acquiescence or failing within 90
2 days after the expiration of a stay to have the appointment
3 vacated;

4 (7) in the case of a partner who is an individual:

5 (a) the partner's death;

6 (b) the appointment of a guardian or general
7 conservator for the partner; or

8 (c) a judicial determination that the partner has
9 otherwise become incapable of performing the partner's
10 duties under the partnership agreement;

11 (8) in the case of a partner that is a trust or is
12 acting as a partner by virtue of being a trustee of a trust,
13 distribution of the trust's entire transferable interest in
14 the partnership, but not merely by reason of the
15 substitution of a successor trustee;

16 (9) in the case of a partner that is an estate or is
17 acting as a partner by virtue of being a personal
18 representative of an estate, distribution of the estate's
19 entire transferable interest in the partnership, but not
20 merely by reason of the substitution of a successor personal
21 representative; or

22 (10) termination of a partner who is not an individual,
23 partnership, corporation, trust, or estate.

24 NEW SECTION. **Section 37. Partner's wrongful**
25 **dissociation.** (1) A partner's dissociation is wrongful only

1 if:

2 (a) it is in breach of an express provision of the
3 partnership agreement; or

4 (b) in the case of a partnership for a definite term or
5 particular undertaking, before the expiration of the term or
6 the completion of the undertaking;

7 (i) the partner withdraws by express will, unless the
8 withdrawal follows the dissociation of another partner and
9 results in a right to dissolve the partnership under
10 [section 44(2)(a)];

11 (ii) the partner is expelled by judicial decree under
12 [section 36(5)]; or

13 (iii) a partner, who is not an individual, a trust other
14 than a business trust, or an estate, is expelled or
15 otherwise dissociated because the entity willfully dissolved
16 or terminated.

17 (2) A partner who wrongfully dissociates is liable to
18 the partnership and to the other partners for damages caused
19 by the dissociation. That liability is in addition to any
20 other liability of the partner to the partnership or to the
21 other partners.

22 **NEW SECTION. Section 38. Effect of partner's**
23 **dissociation.** (1) If a partner's dissociation results in a
24 dissolution and winding up of the partnership business,
25 [sections 44 and 45], 35-10-602, 35-10-609, and [sections 48

1 through 51] apply; otherwise [sections 39 through 43] apply.

2 (2) Upon a partner's dissociation:

3 (a) the partner's right to participate in the
4 management and conduct of the partnership business
5 terminates, except as provided in 35-10-609;

6 (b) the partner's duty of loyalty under 35-10-405(2)(c)
7 terminates; and

8 (c) the partner's duty of loyalty under 35-10-405(2)(a)
9 and (2)(b) and duty of care under 35-10-405(4) continue only
10 with regard to matters arising or events occurring before
11 the dissociation.

12 **NEW SECTION. Section 39. Purchase of dissociated**
13 **partner's interest.** (1) If a partner is dissociated from a
14 partnership without resulting in a dissolution and winding
15 up of the partnership business under [section 44], the
16 partnership shall cause the dissociated partner's interest
17 in the partnership to be purchased for a buyout price
18 determined pursuant to subsection (2).

19 (2) (a) The buyout price of a dissociated partner's
20 interest is the amount that would have been distributable to
21 the dissociating partner under [section 51(2)] if on the
22 date of dissociation the assets of the partnership were sold
23 at a price equal to the greater of:

24 (i) the liquidation value; or

25 (ii) the value based on a sale of the entire business as

1 a going concern without the dissociated partner and the
2 partnership were wound up as of that date.

3 (b) In either case, the selling price of the
4 partnership assets must be determined on the basis of the
5 amount that would be paid by a willing buyer to a willing
6 seller, neither being under any compulsion to buy or sell,
7 and with knowledge of all relevant facts. Interest must be
8 paid from the date of dissociation to the date of payment.

9 (3) Damages for wrongful dissociation under [section
10 37(2)] and all other amounts owing, whether or not presently
11 due, from the dissociated partner to the partnership must be
12 offset against the buyout price. Interest must be paid from
13 the date the amount owed becomes due to the date of payment.

14 (4) A partnership shall indemnify a dissociated partner
15 against all partnership liabilities incurred before the
16 dissociation, except liabilities then unknown to the
17 partnership, and against all partnership liabilities
18 incurred after the dissociation, except liabilities incurred
19 by an act of the dissociated partner under [section 40]. For
20 purposes of this subsection, a liability not known to a
21 partner other than the dissociated partner is not known to
22 the partnership.

23 (5) If no agreement for the purchase of a dissociated
24 partner's interest is reached within 120 days after a
25 written demand for payment, the partnership shall pay or

1 cause to be paid in cash to the dissociated partner the
2 amount the partnership estimates to be the buyout price and
3 accrued interest, reduced by any offsets and accrued
4 interest under subsection (3).

5 (6) If a deferred payment is authorized under
6 subsection (8), the partnership may tender a written offer
7 to pay the amount it estimates to be the buyout price and
8 accrued interest, reduced by any offsets under subsection
9 (3), stating the time of payment, the amount and type of
10 security for payment, and the other terms and conditions of
11 the obligation.

12 (7) The payment or tender required by subsection (5) or
13 (6) must be accompanied by the following:

14 (a) a statement of partnership assets and liabilities
15 as of the date of dissociation;

16 (b) the latest available partnership balance sheet and
17 income statement, if any;

18 (c) an explanation of how the estimated amount of the
19 payment was calculated; and

20 (d) written notice that the payment is in full
21 satisfaction of the obligation to purchase unless, within
22 120 days after the written notice, the dissociated partner
23 commences an action to determine the buyout price, any
24 offsets under subsection (3), or other terms of the
25 obligation to purchase.

1 (8) A partner who wrongfully dissociates before the
 2 expiration of a definite term or the completion of a
 3 particular undertaking is not entitled to payment of any
 4 portion of the buyout price until the expiration of the term
 5 or completion of the undertaking unless the partner
 6 establishes to the satisfaction of the court that earlier
 7 payment will not cause undue hardship to the business of the
 8 partnership. A deferred payment must be adequately secured
 9 and bear interest.

10 (9) A dissociated partner may maintain an action
 11 against the partnership, pursuant to [section 30(2)(b)(ii)],
 12 to determine the buyout price of that partner's interest,
 13 any offsets under subsection (3), or other terms of the
 14 obligation to purchase. The action must be commenced within
 15 120 days after the partnership has tendered payment or an
 16 offer to pay or within 1 year after written demand for
 17 payment if no payment or offer to pay is tendered. The court
 18 shall determine the buyout price of the dissociated
 19 partner's interest, any offset due under subsection (3), and
 20 accrued interest, and enter judgment for any additional
 21 payment or refund. If deferred payment is authorized under
 22 subsection (8), the court shall also determine the security
 23 for payment and other terms of the obligation to purchase.
 24 The court may assess reasonable attorney fees and the fees
 25 and expenses of appraisers or other experts for a party to

1 the action, in amounts the court finds equitable, against a
 2 party that the court finds acted arbitrarily, vexatiously,
 3 or not in good faith. The finding may be based on the
 4 partnership's failure to tender payment or an offer to pay
 5 or to comply with the requirements of subsection (7).

6 **NEW SECTION. Section 40. Dissociated partner's power**
 7 **to bind partnership -- liability to partnership.** (1) For 2
 8 years after a partner dissociates without resulting in a
 9 dissolution and winding up of the partnership business, the
 10 partnership, including a surviving partnership under
 11 [sections 52 through 58], is bound by an act of the
 12 dissociated partner that would have bound the partnership
 13 under 35-10-301 before dissociation if the other party to
 14 the transaction:

15 (a) reasonably believed when entering the transaction
 16 that the dissociated partner was a partner at that time;

17 (b) did not have notice of the partner's dissociation;
 18 and

19 (c) is not considered to have had knowledge under
 20 [section 17(5)] or notice under [section 42].

21 (2) A dissociated partner is liable to the partnership
 22 for any loss caused to the partnership arising from an
 23 obligation incurred by the dissociated partner after
 24 dissociation and for which the partnership is liable under
 25 subsection (1).

NEW SECTION. Section 41. Dissociated partner's

liability to other persons. (1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership or a surviving partnership under [sections 52 through 58] within 2 years after the partner's dissociation only if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation; and

(c) is not considered to have had knowledge under [section 17(5)] or notice under [section 42].

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with

notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

NEW SECTION. Section 42. Statement of dissociation.

(1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of [section 17(4) and (5)].

(3) For the purposes of 35-10-301 and [sections 40 and 41(2)], a person not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

NEW SECTION. Section 43. Continued use of partnership

name. Continued use of a partnership name or a dissociated partner's name as part of the partnership by the partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

NEW SECTION. Section 44. Events causing dissolution

and winding up of partnership business. Except as provided in [section 45], a partnership is dissolved and its business must be wound up only upon:

1 (1) receipt by a partnership at will of notice from a
2 partner, other than a partner who is dissociated under
3 [section 36(2) through (10)], of that partner's express will
4 to withdraw as a partner or upon any later date specified in
5 the notice;

6 (2) in a partnership for a definite term or particular
7 undertaking:

8 (a) within 90 days after a partner's wrongful
9 dissociation under [section 37] or a partner's dissociation
10 by death or otherwise under [section 36(6) through (10)],
11 receipt by the partnership of notice from another partner of
12 that partner's express will to withdraw as a partner;

13 (b) the express will of all the partners; or

14 (c) the expiration of the term or the completion of the
15 undertaking unless all the partners agree to continue the
16 business, in which case the partnership agreement is
17 considered amended retroactively to provide that the
18 expiration or completion does not result in the dissolution
19 and winding up of the partnership business;

20 (3) an event agreed to in the partnership agreement
21 resulting in the winding up of the partnership business
22 unless all the partners agree to continue the business, in
23 which case the partnership agreement is considered amended
24 retroactively to provide that the event does not result in
25 the dissolution and winding up of the partnership business;

1 (4) an event that makes it unlawful for all or
2 substantially all of the business of the partnership to be
3 continued, but a cure of illegality within 90 days after
4 notice to the partnership of the event is effective
5 retroactively to the date of the event for purposes of this
6 section;

7 (5) a judicial decree, issued upon application by a
8 partner, that:

9 (a) the economic purpose of the partnership is likely
10 to be unreasonably frustrated;

11 (b) another partner has engaged in conduct relating to
12 the partnership business that makes it not reasonably
13 practicable to carry on the business in partnership with
14 that partner; or

15 (c) it is not otherwise reasonably practicable to carry
16 on the partnership business in conformity with the
17 partnership agreement; or

18 (6) a judicial decree, issued upon application by a
19 transferee of a partner's transferable interest, that it is
20 equitable to wind up the partnership business:

21 (a) if the partnership was for a definite term or
22 particular undertaking at the time of the transfer or entry
23 of the charging order that gave rise to the transfer, after
24 the expiration of the term or completion of the undertaking;
25 or

(b) if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time.

NEW SECTION. Section 45. Dissolution deferred ninety days. (1) Except as provided in subsection (2), a partnership of more than two persons is not dissolved until 90 days after receipt by the partnership of notice from a partner under [section 44(1) or (2)(a)], and its business may be continued until that date as if no notice were received. Before that date, the partner who gave the notice may waive the right to have the partnership business wound up. If there is no waiver before that date, the partnership is dissolved and its business must be wound up.

(2) A partnership may be dissolved at any time during the 90-day period and its business wound up, by the express will of at least half of the other partners.

(3) After receipt by the partnership of notice from a partner under [section 44(1) or (2)(a)], the partner who gave the notice:

(a) has no rights in the management and conduct of the partnership business if it is continued under subsection (1) but may participate in winding up the business under 35-10-609 if the partnership is dissolved on or before the expiration of the 90-day period pursuant to subsection (1) or (2);

(b) is liable for obligations incurred during the period only to the extent a dissociated partner would be liable under [section 40(2) or 41(2)] but is not liable for contributions for and must be indemnified by the other partners against any partnership liability incurred by another partner to the extent the liability is not appropriate for winding up the partnership business; and

(c) must be credited with the partner's share of any profit earned during the period and may be charged with the partner's share of any loss incurred during the period but only to the extent of profits credited for the period.

Section 46. Section 35-10-602, MCA, is amended to read:

"35-10-602. Partnership ~~not---terminated---by~~ continues after dissolution. ~~On-dissolution-the A~~ a partnership is-not terminated-but continues after dissolution until the winding up of ~~partnership-affairs~~ its business is completed, at which time the partnership is terminated."

Section 47. Section 35-10-609, MCA, is amended to read:

"35-10-609. Right to wind up partnership business. (1) ~~Unless-otherwise-agreed,-the-partners~~ After dissolution, a partner who have has not wrongfully ~~dissolved---the partnership---or---the---legal---representative---of---the---last surviving---partner,---not---bankrupt,---has---the---right-to-wind dissociated may participate in winding up the---partnership affairs~~ the partnership's business, but on application of-

1 However, any partner, his partner's legal representative, or
 2 his-assignee transferee, the district court, upon for good
 3 cause shown, may obtain order judicial supervision of the
 4 winding up by-the-court.

5 (2) The legal representative of the last surviving
 6 partner may wind up a partnership's business.

7 (3) A person winding up a partnership's business may
 8 preserve the partnership business or property as a going
 9 concern for a reasonable time; prosecute and defend actions
 10 and proceedings, whether civil, criminal, or administrative;
 11 settle and close the partnership's business; dispose of and
 12 transfer the partnership's property; discharge the
 13 partnership's liabilities; distribute the assets of the
 14 partnership pursuant to [section 51]; settle disputes by
 15 mediation or arbitration; and perform other necessary acts."

16 NEW SECTION. Section 48. Partner's power to bind
 17 partnership after dissolution. Subject to [section 49], a
 18 partnership is bound by a partner's act after dissolution
 19 that:

20 (1) is appropriate for winding up the partnership
 21 business; or

22 (2) would have bound the partnership under 35-10-301
 23 before dissolution if the other party to the transaction did
 24 not have notice of the dissolution.

25 NEW SECTION. Section 49. Statement of dissolution. (1)

1 After dissolution, a partner who has not wrongfully
 2 dissociated may file a statement of dissolution stating the
 3 name of the partnership and that the partnership has
 4 dissolved and is winding up its business.

5 (2) A statement of dissolution cancels a filed
 6 statement of partnership authority for the purposes of
 7 [section 17(4)] and is a limitation on authority for the
 8 purposes of [section 17(5)].

9 (3) For the purposes of 35-10-301 and [section 48], a
 10 person not a partner is considered to have notice of the
 11 dissolution and the limitation on the partners' authority as
 12 a result of the statement of dissolution 90 days after it is
 13 filed.

14 (4) After filing and, if appropriate, recording a
 15 statement of dissolution, the dissolved partnership may file
 16 and, if appropriate, record a statement of partnership
 17 authority that will operate with respect to a person not a
 18 partner as provided in [section 17(4) and (5)] in any
 19 transaction, whether or not the transaction is appropriate
 20 for winding up the partnership business.

21 NEW SECTION. Section 50. Partner's liability to other
 22 partners after dissolution. (1) Except as provided in
 23 [section 45(3)(b)] and subsection (2) of this section, after
 24 dissolution a partner is liable to the other partners for
 25 the partner's share of any partnership liability incurred

1 under [section 48].

2 (2) A partner who, with knowledge of the winding up,
3 incurs a partnership liability under [section 48(2)] by an
4 act that is not appropriate for winding up the partnership
5 business is liable to the partnership for any loss caused to
6 the partnership arising from the liability.

7 **NEW SECTION. Section 51. Settlement of accounts among**
8 **partners.** (1) In winding up a partnership's business, the
9 assets of the partnership must be applied to discharge its
10 obligations to creditors, including partners who are
11 creditors. Any surplus must be applied to pay in cash the
12 net amount distributable to partners in accordance with
13 their right to distributions pursuant to subsection (2).

14 (2) Each partner is entitled to a settlement of all
15 partnership accounts upon winding up the partnership
16 business. In settling accounts among the partners, the
17 profits and losses that result from the liquidation of the
18 partnership assets must be credited and charged to the
19 partners' accounts. The partnership shall make a
20 distribution to a partner in an amount equal to that
21 partner's positive balance. A partner shall contribute to
22 the partnership an amount equal to that partner's negative
23 balance.

24 (3) To the extent not taken into account in settling
25 the accounts among partners pursuant to subsection (2), each

1 partner shall contribute, in the proportion in which the
2 partner shares partnership losses, the amount necessary to
3 satisfy partnership obligations. If a partner fails to
4 contribute, the other partners shall contribute, in the
5 proportions in which the partners share partnership losses,
6 the additional amount necessary to satisfy the partnership
7 obligations. A partner or a partner's legal representative
8 may recover from the other partners any contributions the
9 partner makes to the extent the amount contributed exceeds
10 that partner's share of the partnership obligations.

11 (4) The estate of a deceased partner is liable for the
12 partner's obligation to contribute to the partnership.

13 (5) An assignee for the benefit of creditors of a
14 partnership or a partner, or a person appointed by a court
15 to represent creditors of a partnership or a partner, may
16 enforce a partner's obligation to contribute to the
17 partnership.

18 **NEW SECTION. Section 52. Conversion of partnership to**
19 **limited partnership.** (1) A partnership may be converted to a
20 limited partnership pursuant to this section.

21 (2) The terms and conditions of a conversion of a
22 partnership to a limited partnership must be approved by all
23 the partners or by a number or percentage specified for
24 conversion in the partnership agreement.

25 (3) After the conversion is approved by the partners,

the partnership shall file a certificate of limited partnership that satisfies the requirements of 35-12-601 and includes:

(a) a statement that the partnership was converted to a limited partnership from a partnership;

(b) its former name; and

(c) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(5) A partner who becomes a limited partner as a result of the conversion remains liable as a partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect. The partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in Title 35, chapter 12.

NEW SECTION. Section 53. Conversion of limited partnership to partnership. (1) A limited partnership may be converted to a partnership pursuant to this section.

(2) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all the partners.

(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to 35-12-603.

(4) The conversion takes effect when the certificate of limited partnership is canceled.

(5) A limited partner who becomes a partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The limited partner is liable as a partner for an obligation of the partnership incurred after the conversion takes effect.

NEW SECTION. Section 54. Effect of conversion -- entity unchanged. (1) A partnership or limited partnership that has been converted pursuant to [section 52 or 53] is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or

1 limited partnership remains vested in the converted entity;

2 (b) all obligations of the converting partnership or
3 limited partnership continue as obligations of the converted
4 entity; and

5 (c) an action or proceeding pending against the
6 converting partnership or limited partnership may be
7 continued as if the conversion had not occurred.

8 **NEW SECTION. Section 55. Merger of partnerships.** (1)

9 Pursuant to a plan of merger approved as provided in
10 subsection (3), a partnership may be merged with one or more
11 partnerships or limited partnerships.

12 (2) The plan of merger must set forth:

13 (a) the name of each partnership or limited partnership
14 that is a party to the merger;

15 (b) the name of the surviving entity into which the
16 other partnerships or limited partnerships will merge;

17 (c) whether the surviving entity is a partnership or a
18 limited partnership and the status of each partner;

19 (d) the terms and conditions of the merger;

20 (e) the manner and basis of converting the interests of
21 each party to the merger into interests or obligations of
22 the surviving entity or into money or other property in
23 whole or part; and

24 (f) the street address of the surviving entity's chief
25 executive office.

1 (3) The plan of merger must be approved:

2 (a) in the case of a partnership that is a party to the
3 merger, by all the partners or a number or percentage
4 specified for merger in the partnership agreement; and

5 (b) in the case of a limited partnership that is a
6 party to the merger, by the vote required for approval of a
7 merger by the law of the state or foreign jurisdiction in
8 which the limited partnership is organized and, in the
9 absence of such specifically applicable law, by all the
10 partners, notwithstanding a provision to the contrary in the
11 partnership agreement.

12 (4) After a plan of merger is approved and before the
13 merger takes effect, the plan may be amended or abandoned as
14 provided in the plan.

15 (5) The merger takes effect on the latest of:

16 (a) the approval of the plan of merger by all parties
17 to the merger, as provided in subsection (3);

18 (b) the filing of all documents required by law to be
19 filed as a condition to the effectiveness of the merger; or

20 (c) any effective date specified in the plan of merger.

21 **NEW SECTION. Section 56. Effect of merger.** (1) When a
22 merger takes effect:

23 (a) every partnership or limited partnership that is a
24 party to the merger other than the surviving entity ceases
25 to exist;

(b) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(c) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(d) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding.

(2) The secretary of state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(3) A partner of the surviving partnership or limited partnership is liable for:

(a) all obligations of a party to the merger for which the partner was personally liable before the merger;

(b) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of that entity; and

(c) all obligations of the surviving entity incurred after the merger takes effect.

(4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity in the manner provided in [section 51(3)] as if the merged party were dissolved.

(5) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under [section 39]. The surviving entity is bound under [section 40] by an act of a partner dissociated under this subsection, and the partner is liable under [section 41] for transactions entered into by the surviving entity after the merger takes effect.

NEW SECTION. Section 57. Statement of merger. (1)

After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(2) A statement of merger must contain:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships were merged;

(c) the street address of the surviving entity's chief executive office and of an office in this state, if any; and

(d) whether the surviving entity is a partnership or limited partnership.

(3) Except as provided in subsection (4), for the purposes of 35-10-302, property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(4) For the purposes of 35-10-302, real property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the

office for recording transfers of that real property.

(5) A filed and, if appropriate, recorded statement of merger that is executed and declared to be accurate pursuant to [section 6], that states the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger, and that states the name of the surviving entity but that does not contain all of the other information required by subsection (2) operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (3) and (4).

NEW SECTION. Section 58. Nonexclusive. [Sections 52 through 57] are not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

Section 59. Section 31-2-106, MCA, is amended to read:

"31-2-106. Exempt property -- bankruptcy proceeding. No An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, 19-21-212, Title 25, chapter 13, part 6,

33-7-522, 33-15-512 through 33-15-514, ~~35-10-502~~,
39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title
70, chapter 32, and 80-2-245;

(2) the individual's right to receive unemployment
compensation and unemployment benefits; and

(3) the individual's right to receive benefits from or
interest in a private or governmental retirement, pension,
stock bonus, profit-sharing, annuity, or similar plan or
contract on account of illness, disability, death, age, or
length of service, excluding that portion of contributions
made by the individual within 1 year before the filing of
the petition in bankruptcy which exceeds 15% of the
individual's gross income for that 1-year period, unless:

(a) the plan or contract was established by or under
the auspices of an insider that employed the individual at
the time the individual's rights under the plan or contract
arose;

(b) the benefit is paid on account of age or length of
service; and

(c) the plan or contract does not qualify under section
401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue
Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409)."

NEW SECTION. Section 60. Repealer. Sections 35-10-303,
35-10-304, 35-10-306, 35-10-404, 35-10-501, 35-10-502,
35-10-503, 35-10-504, 35-10-507, 35-10-601, 35-10-603,

35-10-604, 35-10-605, 35-10-606, 35-10-607, 35-10-608,
35-10-610, 35-10-611, 35-10-612, 35-10-613, 35-10-614, and
35-10-615, MCA, are repealed.

NEW SECTION. Section 61. Codification instruction.
[Sections 4, 6 through 10, 14, 17, 18, 21, 25, 29, 30, 32
through 34, 36 through 45, and 48 through 58] are intended
to be codified as an integral part of Title 35, chapter 10,
and the provisions of Title 35, chapter 10, apply to
[sections 4, 6 through 10, 14, 17, 18, 21, 25, 29, 30, 32
through 34, 36 through 45, and 48 through 58].

NEW SECTION. Section 62. Severability. If a part of
[this act] is invalid, all valid parts that are severable
from the invalid part remain in effect. If a part of [this
act] is invalid in one or more of its applications, the part
remains in effect in all valid applications that are
severable from the invalid applications.

**NEW SECTION. Section 63. Application to existing
relationships.** (1) Except as otherwise provided in this
section, [this act] applies to all partnerships in existence
on October 1, 1993, that were formed under Title 35, chapter
10, or any other predecessor law providing for the
formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a
contract existing on October 1, 1993, or affect an action or
proceeding begun or right accrued before October 1, 1993.

SB 0046/01

1 (3) A judgment against a partnership or a partner in an
2 action commenced before October 1, 1993, may be enforced in
3 the same manner as a judgment rendered before October 1,
4 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0046, as introduced.DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the law concerning partnerships.

ASSUMPTIONS:

1. Filings with the Secretary of State for assumed business names will increase by 25% beginning in FY94.
2. Requests for information and certified copies of partnership information from the Secretary of State will increase by 15% beginning in FY94. The associated workload increase in searching for information, copy reproduction, and preparation and certified mailing of files is estimated to equate to a full year 0.50 Grade 7 FTE. The increase in certificate, postage, and copies expenses is estimated to be \$1,650 per year.
3. Minimal computer system changes are necessary to implement the legislation.

FISCAL IMPACT:Expenditures:

Secretary of State, Business and Government Services Program:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	21.25	21.75	.50	21.25	21.75	.50
Personal Services	552,725	561,677	8,952	554,103	563,055	8,952
Operating Expenses	366,117	367,767	1,650	419,394	421,044	1,650
Equipment	<u>13,770</u>	<u>13,770</u>	<u>0</u>	<u>7,057</u>	<u>7,057</u>	<u>0</u>
Total	932,612	943,214	10,602	980,554	991,156	10,602

Funding:

General Fund	932,612	943,214	10,602	980,554	991,156	10,602
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Revenues:

General Fund (Assumed Business Names)	34,620	43,275	8,655	34,620	43,275	8,655
General Fund (Requests for Info)	<u>30,000</u>	<u>34,500</u>	<u>4,500</u>	<u>30,000</u>	<u>34,500</u>	<u>4,500</u>
Total	64,620	77,775	13,155	64,620	77,775	13,155

Net Impact on General Fund 2,553

2,553

David Lewis 1-20-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Mike Halligan 1/21/93
 MIKE HALLIGAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0046, as introduced

SB46

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 46

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW CONCERNING PARTNERSHIPS; REVISING PROVISIONS GOVERNING PARTNERSHIP PROPERTY; REVISING THE RELATIONSHIP BETWEEN PARTNERS AND PERSONS DEALING WITH THE PARTNERSHIP; REVISING THE RELATIONSHIP OF PARTNERS TO THE PARTNERSHIP AND TO OTHER PARTNERS; REVISING THE LAW CONCERNING TRANSFEREES AND CREDITORS OF PARTNERS; PROVIDING FOR A PARTNER'S DISSOCIATION; REVISING THE LAW ON WINDING UP A PARTNERSHIP'S BUSINESS; PROVIDING FOR MERGERS AND CONSOLIDATIONS OF PARTNERSHIPS; AMENDING SECTIONS 31-2-106, 35-10-102, 35-10-103, 35-10-104, 35-10-105, 35-10-201, 35-10-202, 35-10-203, 35-10-301, 35-10-302, 35-10-303, 35-10-305, 35-10-307, 35-10-308, 35-10-309, 35-10-401, 35-10-402, 35-10-403, 35-10-405, 35-10-406, 35-10-505, 35-10-602, AND 35-10-609, MCA; AND REPEALING SECTIONS 35-10-303, 35-10-304, 35-10-306, 35-10-404, 35-10-501, 35-10-502, 35-10-503, 35-10-504, 35-10-507, 35-10-601, 35-10-603, 35-10-604, 35-10-605, 35-10-606, 35-10-607, 35-10-608, 35-10-610, 35-10-611, 35-10-612, 35-10-613, 35-10-614, AND 35-10-615, MCA."

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

Section 1. Section 35-10-102, MCA, is amended to read:

"35-10-102. Definitions. In this chapter, the following definitions apply:

(1) ~~"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvency act;~~

(2) "Business" includes every trade, occupation, or profession.

(3) ~~"Conveyance" includes every assignment, lease, mortgage, or encumbrance;~~

(4) ~~"Court" includes every court and judge having jurisdiction in the case;~~

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

(5) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the

expiration of a definite term or the completion of a particular undertaking.

{5}{6} "Person" includes--individuals;--partnerships; corporations;--and--other--associations means an individual; corporation; business trust; estate; trust; partnership; association; joint venture; government; governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

{6}--"Real-property"--includes-land-and-any--interest--or estate-in-land-

{7} "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

{8} "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

{9} "Statement" means a statement of partnership authority under [section 17], a statement of denial under [section 18], a statement of dissociation under [section 42], a statement of dissolution under [section 49], a statement of merger under [section 57], or an amendment or cancellation of the foregoing.

{10} "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance."

Section 2. Section 35-10-103, MCA, is amended to read:

"35-10-103. Interpretation--of--knowledge Knowledge and notice. (1) A person has--"knowledge"--of knows a fact within the--meaning--of-this-chapter-not-only-when-he if the person has actual knowledge thereof-but-also-when-he-has--knowledge of--such--other-facts-as-in-the-circumstances-show-bad-faith of it.

(2) A person has "notice" of a fact within-the--meaning of-this-chapter-when if the person who-claims-the-benefit-of the-notice:

(a) states-the-fact-to-such-person knows of it; or

(b) has received a notification of it; or

(c) has reason to know it exists from all of the facts known to that person at the time in question.

(3) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in the ordinary course of business, whether or not the other person learns of it.

(4) A person receives notification when it:

(a) comes to the person's attention; or

(b) delivers-through-the-mail--or--by--other--means--of communication-a-written-statement-of-the-fact-to-such-person or--to--a--proper--person--at--his is duly delivered at the person's place of business or residence at any other place held out by the person as a place for receiving communications.

(5) Except as provided in subsection (6), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership but is not effective as such if the partner committed or consented to a fraud on the partnership."

Section 3. Section 35-10-104, MCA, is amended to read:

***35-10-104. Rules Uniformity of application and**

~~construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.~~

~~(2) The law of estoppel shall apply under this chapter.~~

~~(3) The law of agency shall apply under this chapter.~~

(4) This chapter shall must be so interpreted applied and construed as to effect effectuate its general purpose to make uniform the law with respect to the subject of this chapter of those among states which enact enacting it.

~~(5) This chapter shall not be construed so as to impair the obligations of any contract existing on July 17, 1947, or to affect any action or proceedings begun or right accrued before July 17, 1947."~~

NEW SECTION. Section 4. Effect of partnership agreement -- nonwaivable provisions. (1) Except as provided in subsection (2), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary the rights and duties under [section 6] except to eliminate the duty to provide copies of statements to all of the partners;

(b) unreasonably restrict a partner's right of access

to books and records under 35-10-402(2);

(c) eliminate the duty of loyalty under 35-10-405(3);

(d) unreasonably reduce the duty of care under 35-10-405(4);

(e) eliminate the obligation of good faith and fair dealing under 35-10-405(5);

(f) vary the power to withdraw as a partner under [section 36(1)], except to require the notice to be in writing;

(g) vary the right to expulsion of a partner by a court in the events specified in [section 36(5)];

(h) vary the requirement to wind up the partnership business in cases specified in [section 44(4), (5), or (6)]; or

(i) restrict rights of third parties under this chapter.

Section 5. Section 35-10-105, MCA, is amended to read:

"35-10-105. Rules---for---cases---not-provided-for-in-this chapter Supplemental principles of law. (1) in-any-case---not provided---for---in---this---chapter Unless displaced by a particular provision of this chapter, the rules principles of law and equity,--including-the-law-merchant,--shall-govern supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that

specified in 31-1-106."

NEW SECTION. Section 6. Execution, filing, and recording of statements. (1) A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(2) A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement in the office of the secretary of state does not have the effect provided for recorded statements in this chapter.

(3) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. The statement must be in the English language. An individual who executes a statement as or on behalf of a partner or other person named as a partner in a statement shall state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The execution of any

document required to be filed with the secretary of state under this chapter constitutes an affirmation under penalties of false swearing by each person executing the document that the facts stated are true.

(4) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(5) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(6) The secretary of state shall establish by rule fees for filing statements, issuing certificates, copying statements, priority handling, transmitting or filing facsimile copies, and providing computer-generated information. The fees must be reasonably related to the costs of processing the statements and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section. The secretary of state may adopt rules necessary to perform any duty required of the secretary of state by this

chapter.

NEW SECTION. Section 7. Facsimile filing -- requirements -- liability. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A facsimile copy is entitled to be filed under this section if it is:

(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and

(b) legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(5) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false

1 document.

2 NEW SECTION. Section 8. Filing with secretary of
 3 state. (1) The original signed copy, together with a
 4 duplicate copy that may be either a signed, photocopied, or
 5 confirmed copy, of any statement filed pursuant to this
 6 chapter must be delivered to the secretary of state. If the
 7 secretary of state determines that the documents conform to
 8 the filing provisions of this chapter and all required
 9 filing fees have been paid, the secretary of state shall:

10 (a) endorse on each signed original and duplicate copy
 11 the word "filed" and the date and time of acceptance for
 12 filing;

13 (b) retain the signed original in the secretary of
 14 state's files; and

15 (c) return the duplicate copy to the person who filed
 16 it or the person's representative.

17 (2) The secretary of state may by rule prescribe and
 18 furnish forms or computer formats for any statement to be
 19 filed with the secretary of state under this chapter. If the
 20 secretary of state requires, the use of any forms or formats
 21 is mandatory.

22 (3) All partnerships filing statements pursuant to this
 23 chapter shall first register the business name as an assumed
 24 business name pursuant to Title 30, chapter 13, part 2.

25 NEW SECTION. Section 9. Law governing internal

1 affairs. The law of the state in which a partnership has its
 2 chief executive office governs the partnership's internal
 3 affairs.

4 NEW SECTION. Section 10. Partnership subject to
 5 amendment of repeal of chapter. A partnership governed by
 6 this chapter is subject to any amendment or repeal of this
 7 chapter.

8 **Section 11.** Section 35-10-201, MCA, is amended to read:
 9 "35-10-201. Partnership defined as entity. (1) A
 10 partnership is an association-of--two--or--more--persons--to
 11 carry-on-as-co-owners-a-business-for-profit entity.

12 (2)--But--any-association-formed-under-any-other-statute
 13 of-this-state-or-any-statute-adopted-by-authority-other-than
 14 the-authority-of-this-state-is-not-a-partnership-under--this
 15 chapter---unless---such---association---would--have--been--a
 16 partnership-in-this-state-prior--to--the--adoption--of--this
 17 chapter,---But---this---chapter---shall---apply--to--limited
 18 partnerships-except-insofar-as-the-statutes-relating-to-such
 19 partnerships-are-inconsistent-herewith;"

20 **Section 12.** Section 35-10-202, MCA, is amended to read:
 21 "35-10-202. Rules---for---determining---the---existence
 22 Creation of a partnership. in--determining---whether---a
 23 partnership-exists,--these-rules-shall-apply:

24 (1) Except as provided by 35-10-300 in subsection (2),
 25 the association of two or more persons who are not--partners

as--to--each--other--are-not-partners-as-to-third-persons to carry on as co-owners a business for profit creates a partnership, whether or not the persons intend to create a partnership.

(2) An association created under a statute other than this chapter, a predecessor law, or a comparable law of another jurisdiction is not a partnership.

(3) In determining whether a partnership is created, the following rules apply:

(2)(a) Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not of by itself establish a partnership, whether--such even if the co-owners do-or-do-not share any profits made by the use of the property.

(3)(b) The sharing of gross returns does not of by itself establish a partnership, whether-or-not even if the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4)(c) The--receipt--by--a A person of who receives a share of the profits of a business is prima--facie--evidence that--such--person--is presumed to be a partner in the business, but-no-such--inference--shall--be--drawn--if--such unless the profits were received in payment:

(a)(i) as of a debt by installments or otherwise;

(b)(ii) as for services as an independent contractor or

of wages or other compensation of to an employee;

(iii) or of rent to-a-landlord;

(c)(iv) as of an annuity to or other retirement or health benefit to a beneficiary, surviving--spouse--or representative, or designee of a deceased or retired partner;

(d)(v) as of interest or of another charge on a loan, though even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral or rights to income, proceeds, or increase in value derived from the collateral; or

(e)(vi) as--the--consideration for the sale of a the goodwill of a business or other property by installments or otherwise.

(4) Except as provided by 35-10-308, persons who are not partners as to each other are not partners as to other persons.

(5) A partnership created under this chapter is a general partnership, and the partners are general partners of the partnership."

Section 13. Section 35-10-203, MCA, is amended to read:

"35-10-203. Partnership property. ~~(1)--All--property originally--brought--into--the--partnership--stock--or subsequently-acquired-by-purchase~~ Property transferred to or

1 otherwise on-account-of-the acquired by a partnership is
 2 partnership property of the partnership and not of the
 3 partners individually.

4 {2}--Unless-the--contrary--intention--appears,--property
 5 acquired-with-partnership-funds-is-partnership-property;

6 {3}--Any--estate-in-real-property-may-be-acquired-in-the
 7 partnership-name; Title-so-acquired-can-be-conveyed-only--in
 8 the-partnership-name;

9 {4}--A--conveyance--to--a-partnership-in-the-partnership
 10 name, though-without-words-of-inheritance, passes-the-entire
 11 estate-of-the-grantor-unless-a-contrary-intent-appears."

12 NEW SECTION. Section 14. When property is partnership
 13 property. (1) Property is partnership property if acquired
 14 in the name of:

15 (a) the partnership; or

16 (b) one or more partners with an indication in the
 17 instrument transferring title to the property of the
 18 person's capacity as a partner or of the existence of a
 19 partnership but without an indication of the name of the
 20 partnership.

21 (2) Property is acquired in the name of the partnership
 22 by a transfer to:

23 (a) the partnership in its name; or

24 (b) one or more partners in their capacity as partners
 25 in the partnership if the name of the partnership is

1 indicated in the instrument transferring title to the
 2 property.

3 (3) Property is presumed to be partnership property if
 4 purchased with partnership assets even if not acquired in
 5 the name of the partnership or of one or more partners with
 6 an indication in the instrument transferring title to the
 7 property of the person's capacity as a partner or of the
 8 existence of a partnership.

9 (4) Property acquired in the name of one or more of the
 10 partners without an indication in the instrument
 11 transferring title to the property of the person's capacity
 12 as a partner or of the existence of a partnership and
 13 without use of partnership assets is presumed to be separate
 14 property even if used for partnership purposes.

15 **Section 15.** Section 35-10-301, MCA, is amended to read:

16 "35-10-301. Partner as agent of partnership --
 17 restrictions-on-partner's-authority. Subject to the effect
 18 of a statement of partnership authority pursuant to [section
 19 17]:

20 (1) Every each partner is an agent of the partnership
 21 for the purpose of its business, and-the An act of every a
 22 partner, including the execution of an instrument in the
 23 partnership name of-any-instrument, for apparently carrying
 24 on in the usual--way ORDINARY COURSE OF the partnership
 25 business or business of the kind carried on by the

1 partnership of which he is a member binds the partnership
 2 unless the partner so acting has in fact no authority to act
 3 for the partnership in the particular matter and the person
 4 with whom he the partner is dealing has knowledge of the
 5 fact that he has no such knowledge or has received a
 6 notification that the partner lacks authority.

7 (2) An act of a partner which that is not apparently
 8 for the carrying on of the business of in the usual way
 9 ORDINARY COURSE OF the partnership in the usual way business
 10 or business of the kind carried on by the partnership does
 11 not bind binds the partnership unless only if the act was
 12 authorized by the other partners.

13 {3} Unless authorized by the other partners or unless
 14 they have abandoned the business, one or more but less than
 15 all the partners have no authority to:

16 {a} assign the partnership property in trust for
 17 creditors or on the assignee's promise to pay the debts of
 18 the partnership;

19 {b} dispose of the goodwill of the business;

20 {c} do any other act which would make it impossible to
 21 carry on the ordinary business of a partnership;

22 {d} confess a judgment;

23 {e} submit a partnership claim or liability to
 24 arbitration or reference;

25 {4} No act of a partner in contravention of a

1 restriction on authority shall bind the partnership to
 2 persons having knowledge of the restriction."

3 Section 16. Section 35-10-302, MCA, is amended to read:

4 "35-10-302. Conveyance of real Transfer of partnership
 5 property of the partnership. (1) Subject to the effect of a
 6 statement of partnership authority pursuant to [section 17]:

7 (a) Where title to real partnership property is held in
 8 the name of the partnership name, any partner may convey
 9 title to such property be transferred by a conveyance an
 10 instrument of transfer executed by a partner in the
 11 partnership name;

12 (b) partnership property held in the name of one or
 13 more partners with an indication in the instrument
 14 transferring the property to them of their capacity as
 15 partners or of the existence of a partnership, but without
 16 an indication of the name of the partnership, may be
 17 transferred by an instrument of transfer executed by the
 18 persons in whose name the property is held; and

19 (c) a partner but the partnership may recover such property
 20 unless the partner's act binds transferred under this
 21 subsection if it proves that execution of the instrument of
 22 transfer did not bind the partnership under the provisions
 23 of 35-10-301(i) or unless such the property has been
 24 conveyed was transferred by the grantee initial transferee
 25 or a person claiming through such grantee the initial

transferee to a holder-for subsequent transferee who gave value without knowledge having notice that the partner, in making the conveyance, has exceeded his person who executed the instrument of initial transfer lacked authority to bind the partnership.

(2) Where title to real partnership property is held in the name of one or more persons other than the partnership, a conveyance executed by a partner in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(i) without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership may be transferred free of any claims of the partnership or the partners by the persons in whose name the property is held to a transferee who gives value without having notice that it is partnership property.

(3) Where title to real property is in the name of one or more but not all the partners and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partner's act does not bind the partnership under the provisions of 35-10-301(i), unless the purchaser or his assignee is a holder-for-value-without-knowledge.

(4) Where the title to real property is in the name of one or more or all the partners or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name or in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(i).

(5) Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property; if a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document."

NEW SECTION. Section 17. Statement of partnership authority. (1) A partnership may file a statement of partnership authority, which:

(a) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this state, if there is one;

(iii) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (2); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(b) may state the authority or limitations on the authority of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all the partners and make it available to any person on request for good cause shown.

(3) If a filed statement of partnership authority is executed pursuant to [section 6(5)] and states the name of the partnership but does not contain all of the other information required by subsection (1), the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5).

(4) Except as provided in subsection (7), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary so long as and to the

extent that a limitation on that authority is not contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(5) A person not a partner is considered to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(6) Except as provided in [sections 42 and 49] and subsection (5) of this section, a person not a partner is

1 not considered to know of a limitation on the authority of a
2 partner merely because the limitation is contained in a
3 filed statement.

4 (7) Unless canceled earlier, a filed statement of
5 partnership authority is canceled by operation of law 5
6 years after the date on which the statement or the most
7 recent amendment was filed with the secretary of state.

8 NEW SECTION. Section 18. Statement of denial. A
9 partner or other person named as a partner in a filed
10 statement of partnership authority or in a list maintained
11 by an agent pursuant to [section 17(2)] may file a statement
12 of denial stating the name of the partnership and the fact
13 that is being denied, which may include denial of a person's
14 authority or status as a partner. A statement of denial is a
15 limitation on authority to the extent provided in [section
16 17(4) and (5)].

17 **Section 19.** Section 35-10-305, MCA, is amended to read:

18 "35-10-305. Partnership liable for partner's wrongful
19 act actionable conduct. (1) Where, by any A partnership is
20 liable for loss or injury caused to a person, or for a
21 penalty incurred, as a result of a wrongful act or omission
22 or other actionable conduct of any a partner acting in the
23 ordinary course of the business of the partnership or with
24 the authority of his copartners, loss or injury is caused to
25 any person not being a partner in the partnership or any

1 penalty--is--incurred, the partnership is liable therefor to
2 the same extent as the partner so acting or omitting to act.

3 (2) If, in the course of its business, a partnership
4 receives money or property of a person not a partner and
5 that money or property is misapplied by a partner while it
6 is in the custody of the partnership, the partnership is
7 liable for the loss."

8 **Section 20.** Section 35-10-307, MCA, is amended to read:

9 "35-10-307. Nature of--partner's Partner's liability.
10 All partners are liable:

11 (1) jointly and severally for everything chargeable to
12 the partnership under 35-10-305 and 35-10-306;

13 (2) jointly for all other debts and obligations of the
14 partnership, but any partner may enter into a separate
15 obligation to perform a partnership contract unless
16 otherwise agreed by the claimant or provided by law."

17 NEW SECTION. Section 21. Action by and against
18 partnership and partners. (1) A partnership may sue and be
19 sued in the name of the partnership.

20 (2) An action may be brought against the partnership
21 and any or all of the partners in the same action or in
22 separate actions.

23 (3) A judgment against a partnership is not by itself a
24 judgment against a partner. A judgment against a partnership
25 may not be satisfied from a partner's assets unless there is

also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(a) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) (I) an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed; AND

(II) TITLE 11 OF THE UNITED STATES CODE PERMITS A JUDGMENT CREDITOR OF A PARTNER TO LEVY EXECUTION AGAINST THE ASSETS OF THE PARTNER TO SATISFY A JUDGMENT BASED ON A CLAIM AGAINST THE PARTNERSHIP;

(c) the partner has agreed that the creditor need not exhaust partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution within this state are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively

burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under 35-10-308(1) or (2).

Section 22. Section 35-10-308, MCA, is amended to read:

"35-10-308. Partner--by-estoppel Purported partner. (1)
When If a person, by words spoken-or-written or by conduct,
represents--himself purports to be a partner or consents to
being represented by another representing-him-to-anyone as a
partner in an-existing a partnership or with one or more
persons not actual partners, he the purported partner is
liable to any-such a person to whom such the representation
has--been is made if that person, who-has relying on the
faith-of-such representation, given-credit-to enters into a
transaction with the actual or apparent purported
partnership, r--and--if---he---has---made---such If the
representation, or--consented--to--its--being either by the
purported partner or by a person with the purported
partner's consent, is made in a public manner, he the
purported partner is liable to such a person,--whether--the
representation--has--or-has-not-been-made-or-communicated-to
such-person-so-giving-credit-by-or-with-the-knowledge-of-the

1 ~~apparent-partner-making-the-representation-or-consenting--to~~
 2 ~~its--being--made~~ who relies upon the purported partnership
 3 even if the purported partner is not aware of being held out
 4 as a partner to the claimant. When--a If partnership
 5 liability results, he the purported partner is liable as
 6 ~~though--he if the purported partner were an-actual-member-of~~
 7 ~~the-partnership a partner. When If~~ no partnership liability
 8 results, he the purported partner is liable jointly and
 9 severally with the any other persons,--if-any,--so person
 10 consenting to the contract--or representation as-to-incur
 11 liability,--otherwise-separately.

12 (2) When If a person has-been is thus represented to be
 13 a partner in an existing partnership or with one or more
 14 persons not actual partners, he the purported partner is an
 15 agent of the persons consenting to such the representation
 16 to bind them to the same extent and in the same manner as
 17 ~~though-he if the purported partner were a partner in--fact,~~
 18 with respect to persons who rely enter into transactions in
 19 reliance upon the representation. Where If all of the
 20 members partners of the existing partnership consent to the
 21 representation, a partnership act or obligation results. ~~7~~
 22 ~~but--in-all-other-cases-it-is-the-joint-act-or-obligation-of~~
 23 ~~the-person-acting-and-the-persons-consenting If fewer than~~
 24 all of the partners of the existing partnership consent to
 25 the representation, the person acting and the partners

1 consenting to the representation are jointly and severally
 2 liable.

3 (3) A person is not a partner in a partnership merely
 4 because the person is named by another in a statement of
 5 partnership authority.

6 (4) A person does not continue to be a partner merely
 7 because of a failure to file a statement of dissociation or
 8 to amend a statement of partnership authority to indicate
 9 the partner's dissociation from the partnership."

10 **Section 23.** Section 35-10-309, MCA, is amended to read:

11 "35-10-309. Liability of incoming partner. A person
 12 admitted as a partner into ~~an--existing a~~ partnership is
 13 liable for all the obligations of the partnership arising
 14 incurred before his the person's admission as ~~though-he--had~~
 15 been if the person were a partner when such the obligations
 16 were incurred, ~~except-that-this but the~~ liability ~~shall~~ may
 17 be satisfied only out of partnership property."

18 **Section 24.** Section 35-10-401, MCA, is amended to read:

19 "35-10-401. ~~Rules---~~determining Partner's rights and
 20 duties of-partners. The-rights-and-duties-of-the-partners-in
 21 relation-to-the-partnership-shall-be-determined,--subject--to
 22 any-agreement-between-them,--by-the-following-rules:

23 (1) Each A partnership shall establish an account for
 24 each partner. shall-be-repaid-his-contributions--whether--by
 25 way--of-capital-or-advances The partnership shall credit the

1 account with an amount equal to the money plus the value of
 2 any other property, net of the amount of any liabilities,
 3 that the partner contributes to the partnership property and
 4 the partner's share equally in the of the partnership
 5 profits, and surplus remaining after all liabilities,
 6 including those to partners, are satisfied and must
 7 contribute towards the The partnership shall charge the
 8 account with an amount equal to the money plus the value of
 9 any other property, net of the amount of any liabilities,
 10 distributed by the partnership to the partner and the
 11 partner's share of the partnership losses.

12 (2) A partnership shall credit each partner's account
 13 with an equal share of the partnership profits. A
 14 partnership shall charge each partner with a share of the
 15 partnership losses, whether of capital or otherwise
 16 operating, sustained by the partnership according to his in
 17 proportion to the partner's share in of the profits.

18 (2)(3) The A partnership must shall indemnify every
 19 each partner in respect of for payments reasonably made and
 20 personal liabilities reasonably incurred by him the partner
 21 in the ordinary and proper conduct of its the business of
 22 the partnership or for the preservation of its business or
 23 property.

24 (3)(4) A partnership shall repay a partner who, in aid
 25 of the partnership, makes any a payment or advance beyond

1 the amount of capital which--he the partner agreed to
 2 contribute shall be paid--interest--from--the--date--of--the
 3 payment or advance.

4 (4)(5) A payment made by a partner shall--receive
 5 interest--on--the capital contributed by him only that gives
 6 rise to a partnership obligation under subsection (3) or (4)
 7 constitutes a loan to the partnership. Interest accrues from
 8 the date when repayment should be made of the payment or
 9 advance.

10 (5)(6) All--partners have Each partner has equal rights
 11 in the management and conduct of the partnership business.

12 (7) A partner may use or possess partnership property
 13 only on behalf of the partnership.

14 (6)(8) No A partner is not entitled to remuneration for
 15 acting--in services performed for the partnership business,
 16 except that--a--surviving--partner--is--entitled--to for
 17 reasonable compensation for his services rendered in winding
 18 up the business of the partnership affairs.

19 (7)(9) No A person can may become a member--of-a
 20 partnership without partner only with the consent of all the
 21 partners.

22 (8)(10) Any A difference arising as to a matter in the
 23 ordinary matters connected with the course of business of a
 24 partnership business may be decided by a majority of the
 25 partners, --but--no An act in contravention of any outside

the ordinary course of business of a partnership and an amendment to the partnership agreement between the partners may be done rightfully without undertaken only with the consent of all the partners.

(11) This section does not affect the obligations of a partnership to other persons under 35-10-301."

NEW SECTION. Section 25. Distributions in kind. A partner has no right to receive and may not be required to accept a distribution in kind.

Section 26. Section 35-10-402, MCA, is amended to read:

"35-10-402. ~~Partnership--books-----inspection---rights~~ Partner's right to information. (1) ~~The partnership books A~~ partnership shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and keep its books and records, if any, at its chief executive office.

(2) A partnership every partner shall at all times have provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to and may inspect and copy any of them books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material,

for copies of documents furnished."

Section 27. Section 35-10-403, MCA, is amended to read:

"35-10-403. Duty of partners to render information. Partners--shall--render Each partner and the partnership, on demand, shall furnish true--and--full--information--of--all things--affecting--the--partnership to any a partner or and to the legal representative of any a deceased partner or of a partner under legal disability, to the extent just and reasonable, complete and accurate information concerning the partnership."

Section 28. Section 35-10-405, MCA, is amended to read:

"35-10-405. Partner--accountable--as--a--fiduciary--for benefit--derived--without--consent General standards of partner's conduct. (1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section.

(2) Every--partner--must A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) to account to the partnership for any benefit and hold as trustee for it any profits property, profit, or benefit derived:

(i) by him--without--the--consent--of--the--other--partners from any--transaction--connected--with--the--formation; the partner in the conduct, or liquidation and winding up of the

1 partnership business; or

2 (ii) from any a use or appropriation by him the partner
3 of its partnership property; or

4 (iii) from a use or appropriation of an opportunity
5 without the consent of the other partners;

6 (b) to refrain from dealing with the partnership in the
7 conduct or winding up of the partnership business as or on
8 behalf of a party having an interest adverse to the
9 partnership without the consent of the other partners; and

10 (c) to refrain from competing with the partnership in
11 the conduct of partnership business before the dissolution
12 of the partnership without the consent of the other
13 partners.

14 (3) A partner's duty of loyalty may not be eliminated
15 by agreement, but the partners by agreement may identify
16 specific types or categories of activities that do not
17 violate the duty of loyalty, if not manifestly unreasonable.

18 (4) A partner's duty of care to the partnership and the
19 other partners in the conduct and winding up of the
20 partnership business is limited to refraining from engaging
21 in grossly negligent or reckless conduct, intentional
22 misconduct, or a knowing violation of law.

23 (5) A partner shall discharge the duties to the
24 partnership and the other partners under this chapter or
25 under the partnership agreement and exercise any rights

1 consistent with the obligation of good faith and fair
2 dealing. The obligation of good faith and fair dealing may
3 not be eliminated by agreement, but the partners by
4 agreement may determine the standards by which the
5 performance of the obligation is to be measured if the
6 standards are not manifestly unreasonable.

7 (6) A partner does not violate a duty or obligation
8 under this chapter or under the partnership agreement merely
9 because the partner's conduct furthers the partner's own
10 interest. A partner may lend money to and transact other
11 business with the partnership. The rights and obligations of
12 a partner who lends money to or transacts business with the
13 partnership are the same as those of a person who is not a
14 partner, subject to other applicable law.

15 {2}{7} This section applies also to the-representatives
16 of--a--deceased--partner--engaged--in-the-liquidation-of-the
17 affairs-of a person winding up the partnership business as
18 the personal representatives or legal representative of the
19 last surviving partner as if the person were a partner."

20 **NEW SECTION. Section 29.** Partner's liability to
21 partnership. A partner is liable to the partnership for a
22 breach of the partnership agreement if there is a violation
23 of a duty to the partnership that causes harm to the
24 partnership.

25 **NEW SECTION. Section 30.** Remedies of partnership and

partners. (1) A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership that causes harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to enforce:

(a) a right under the partnership agreement;

(b) a right under this chapter, including the partner's:

(i) rights under 35-10-401 through 35-10-403 and 35-10-405;

(ii) right on dissociation to have the partner's interest in the partnership purchased pursuant to [section 39] or enforce any other right under [sections 36 through 38] or [sections 39 through 43]; or

(iii) right to compel a dissolution and winding up of the partnership business under [section 44] or enforce any other right under [sections 44 and 45], 35-10-602, 35-10-609, and [sections 48 through 51]; or

(c) the rights and otherwise protect the interests of the partner, including rights and interests arising independent of the partnership relationship.

(3) The accrual of and any time limitation on a right

of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 31. Section 35-10-406, MCA, is amended to read:

~~"35-10-406. Rights--and---duties---of---partners---when Continuation of partnership continues beyond fixed definite term or particular undertaking. (1) When If~~ a partnership for a fixed definite term or particular undertaking is continued without an express agreement after the termination of-such expiration of the term or particular completion of the undertaking ~~without--any-express-agreement~~, the rights and duties of the partners remain the same as they were at ~~such--termination the expiration or completion~~, so far as is consistent with a partnership at will.

(2) ~~A-continuation-of-the-business-by~~ If the partners or ~~such those~~ of them as who habitually acted therein in the business during the term or undertaking continue the business without any settlement or liquidation of the partnership, affairs is--prima---facie---evidence---of---a continuation--of--the--partnership they are presumed to have agreed that the business will not be wound up."

NEW SECTION. Section 32. Partner's interest in partnership property not transferable. A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred either

voluntarily or involuntarily.

NEW SECTION. Section 33. Partner's transferable interest in partnership. The only transferable interest of a partner in the partnership is the partner's interest in distributions. The interest is personal property.

NEW SECTION. Section 34. Transfer of partner's transferable interest. (1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) is permissible;

(b) does not by itself cause a dissolution and winding up of the partnership business; and

(c) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning or an account of partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) to receive the net amount otherwise distributable to the transferor upon the dissolution and winding up of the

partnership business; and

(c) to seek under [section 44(6)] a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to receive an accounting only from the date of the last account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(5) Until receipt of notice of a transfer, a partnership has no duty to give effect to the transferee's rights under this section.

Section 35. Section 35-10-505, MCA, is amended to read:

"35-10-505. Partner's transferable interest subject to charging order. (1) On due application to a competent court by any a judgment creditor of a partner or partner's transferee, the a court which entered the judgment or order, or decree or any other court having jurisdiction may charge the transferable interest of the debtor partner with payment of the unsatisfied amount of such or transferee to satisfy the judgment, debt with interest thereon and The court may then or later appoint a receiver of his the debtor's share of the profits and of any other money distributions due or to fall become due to him the debtor in respect of the

partnership and make all other orders, directions, accounts, and inquiries which the debtor partner might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time and upon conditions it considers appropriate. The purchaser at the foreclosure sale has the rights of a transferee.

~~(2)(3) The~~ At any time before foreclosure, an interest charged may be redeemed ~~at any time before--foreclosure--or, in--case--of--a--sale--being--directed--by--the--court,--may--be purchased--without--thereby--causing--a--dissolution:~~

(a) by the judgment debtor;

~~(a)(b)~~ with separate property other than partnership property, by any one or more of the other partners; or

~~(b)(c)~~ with partnership property, by any one or more of the other partners with the consent of all the partners whose interests are not so charged ~~or sold~~.

~~(3)(4) Nothing-in-this~~ This chapter shall--be--held--to does not deprive a partner of his a right,--if--any, under the exemption laws as--regards--his with respect to the partner's interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may

satisfy a judgment out of the judgment debtor's transferable interest in the partnership."

NEW SECTION. Section 36. Events causing partner's dissociation. A partner is dissociated from a partnership upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(a) it is unlawful to carry on the partnership business with that partner;

(b) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest that has not been foreclosed;

(c) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business

1 has been suspended by the jurisdiction of its incorporation,
 2 there is no revocation of the certificate of dissolution or
 3 no reinstatement of its charter or its right to conduct
 4 business; or

5 (d) a partnership that is a partner has been dissolved
 6 and its business is being wound up;

7 (5) the partner's expulsion by judicial decree, made on
 8 application by the partnership or another partner, because:

9 (a) the partner engaged in wrongful conduct that
 10 adversely and materially affected the partnership business;

11 (b) the partner willfully or persistently committed a
 12 material breach of the partnership agreement or of a duty
 13 owed to the partnership or the other partners under
 14 35-10-405; or

15 (c) the partner engaged in conduct relating to the
 16 partnership business that made it not reasonably practicable
 17 to carry on the business in partnership with that partner;

18 (6) the partner:

19 (a) becoming a debtor in bankruptcy;

20 (b) executing an assignment for the benefit of
 21 creditors;

22 (c) seeking, consenting to, or acquiescing in the
 23 appointment of a trustee, receiver, or liquidator of that
 24 partner or of all or substantially all of that partner's
 25 property; or

1 (d) failing within 90 days after the appointment to
 2 have vacated or stayed the appointment of a trustee,
 3 receiver, or liquidator of the partner or of all or
 4 substantially all of the partner's property obtained without
 5 the partner's consent or acquiescence or failing within 90
 6 days after the expiration of a stay to have the appointment
 7 vacated;

8 (7) in the case of a partner who is an individual:

9 (a) the partner's death;

10 (b) the appointment of a guardian or general
 11 conservator for the partner; or

12 (c) a judicial determination that the partner has
 13 otherwise become incapable of performing the partner's
 14 duties under the partnership agreement;

15 (8) in the case of a partner that is a trust or is
 16 acting as a partner by virtue of being a trustee of a trust,
 17 distribution of the trust's entire transferable interest in
 18 the partnership, but not merely by reason of the
 19 substitution of a successor trustee;

20 (9) in the case of a partner that is an estate or is
 21 acting as a partner by virtue of being a personal
 22 representative of an estate, distribution of the estate's
 23 entire transferable interest in the partnership, but not
 24 merely by reason of the substitution of a successor personal
 25 representative; or

(10) termination of a partner who is not an individual, partnership, corporation, trust, or estate.

NEW SECTION. Section 37. Partner's wrongful dissociation. (1) A partner's dissociation is wrongful only if:

(a) it is in breach of an express provision of the partnership agreement; or

(b) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows the dissociation of another partner and results in a right to dissolve the partnership under [section 44(2)(a)];

(ii) the partner is expelled by judicial decree under [section 36(5)]; or

(iii) a partner, who is not an individual, a trust other than a business trust, or an estate, is expelled or otherwise dissociated because the entity willfully dissolved or terminated.

(2) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. That liability is in addition to any other liability of the partner to the partnership or to the other partners.

NEW SECTION. Section 38. Effect of partner's dissociation. (1) If a partner's dissociation results in a dissolution and winding up of the partnership business, [sections 44 and 45], 35-10-602, 35-10-609, and [sections 48 through 51] apply; otherwise [sections 39 through 43] apply.

(2) Upon a partner's dissociation:

(a) the partner's right to participate in the management and conduct of the partnership business terminates, except as provided in 35-10-609;

(b) the partner's duty of loyalty under 35-10-405(2)(c) terminates; and

(c) the partner's duty of loyalty under 35-10-405(2)(a) and (2)(b) and duty of care under 35-10-405(4) continue only with regard to matters arising or events occurring before the dissociation.

NEW SECTION. Section 39. Purchase of dissociated partner's interest. (1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under [section 44], the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2).

(2) (a) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under [section 51(2)] if on the

1 date of dissociation the assets of the partnership were sold
2 at a price equal to the greater of:

3 (i) the liquidation value; or

4 (ii) the value based on a sale of the entire business as
5 a going concern without the dissociated partner and the
6 partnership were wound up as of that date.

7 (b) In either case, the selling price of the
8 partnership assets must be determined on the basis of the
9 amount that would be paid by a willing buyer to a willing
10 seller, neither being under any compulsion to buy or sell,
11 and with knowledge of all relevant facts. Interest must be
12 paid from the date of dissociation to the date of payment.

13 (3) Damages for wrongful dissociation under [section
14 37(2)] and all other amounts owing, whether or not presently
15 due, from the dissociated partner to the partnership must be
16 offset against the buyout price. Interest must be paid from
17 the date the amount owed becomes due to the date of payment.

18 (4) A partnership shall indemnify a dissociated partner
19 against all partnership liabilities incurred before the
20 dissociation, except liabilities then unknown to the
21 partnership, and against all partnership liabilities
22 incurred after the dissociation, except liabilities incurred
23 by an act of the dissociated partner under [section 40]. For
24 purposes of this subsection, a liability not known to a
25 partner other than the dissociated partner is not known to

1 the partnership.

2 (5) If no agreement for the purchase of a dissociated
3 partner's interest is reached within 120 days after a
4 written demand for payment, the partnership shall pay or
5 cause to be paid in cash to the dissociated partner the
6 amount the partnership estimates to be the buyout price and
7 accrued interest, reduced by any offsets and accrued
8 interest under subsection (3).

9 (6) If a deferred payment is authorized under
10 subsection (8), the partnership may tender a written offer
11 to pay the amount it estimates to be the buyout price and
12 accrued interest, reduced by any offsets under subsection
13 (3), stating the time of payment, the amount and type of
14 security for payment, and the other terms and conditions of
15 the obligation.

16 (7) The payment or tender required by subsection (5) or
17 (6) must be accompanied by the following:

18 (a) a statement of partnership assets and liabilities
19 as of the date of dissociation;

20 (b) the latest available partnership balance sheet and
21 income statement, if any;

22 (c) an explanation of how the estimated amount of the
23 payment was calculated; and

24 (d) written notice that the payment is in full
25 satisfaction of the obligation to purchase unless, within

1 120 days after the written notice, the dissociated partner
2 commences an action to determine the buyout price, any
3 offsets under subsection (3), or other terms of the
4 obligation to purchase.

5 (8) A partner who wrongfully dissociates before the
6 expiration of a definite term or the completion of a
7 particular undertaking is not entitled to payment of any
8 portion of the buyout price until the expiration of the term
9 or completion of the undertaking unless the partner
10 establishes to the satisfaction of the court that earlier
11 payment will not cause undue hardship to the business of the
12 partnership. A deferred payment must be adequately secured
13 and bear interest.

14 (9) A dissociated partner may maintain an action
15 against the partnership, pursuant to [section 30(2)(b)(ii)],
16 to determine the buyout price of that partner's interest,
17 any offsets under subsection (3), or other terms of the
18 obligation to purchase. The action must be commenced within
19 120 days after the partnership has tendered payment or an
20 offer to pay or within 1 year after written demand for
21 payment if no payment or offer to pay is tendered. The court
22 shall determine the buyout price of the dissociated
23 partner's interest, any offset due under subsection (3), and
24 accrued interest, and enter judgment for any additional
25 payment or refund. If deferred payment is authorized under

1 subsection (8), the court shall also determine the security
2 for payment and other terms of the obligation to purchase.
3 The court may assess reasonable attorney fees and the fees
4 and expenses of appraisers or other experts for a party to
5 the action, in amounts the court finds equitable, against a
6 party that the court finds acted arbitrarily, vexatiously,
7 or not in good faith. The finding may be based on the
8 partnership's failure to tender payment or an offer to pay
9 or to comply with the requirements of subsection (7).

10 NEW SECTION. Section 40. Dissociated partner's power
11 to bind partnership -- liability to partnership. (1) For 2
12 years after a partner dissociates without resulting in a
13 dissolution and winding up of the partnership business, the
14 partnership, including a surviving partnership under
15 [sections 52 through 58], is bound by an act of the
16 dissociated partner that would have bound the partnership
17 under 35-10-301 before dissociation if the other party to
18 the transaction:

19 (a) reasonably believed when entering the transaction
20 that the dissociated partner was a partner at that time;

21 (b) did not have notice of the partner's dissociation;
22 and

23 (c) is not considered to have had knowledge under
24 [section 17(5)] or notice under [section 42].

25 (2) A dissociated partner is liable to the partnership

for any loss caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation and for which the partnership is liable under subsection (1).

NEW SECTION. Section 41. Dissociated partner's liability to other persons. (1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership or a surviving partnership under [sections 52 through 58] within 2 years after the partner's dissociation only if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation; and

(c) is not considered to have had knowledge under [section 17(5)] or notice under [section 42].

(3) By agreement with the partnership creditor and the

partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

NEW SECTION. Section 42. Statement of dissociation.

(1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of [section 17(4) and (5)].

(3) For the purposes of 35-10-301 and [sections 40 and 41(2)], a person not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

NEW SECTION. Section 43. Continued use of partnership name. Continued use of a partnership name or a dissociated partner's name as part of the partnership by the partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

NEW SECTION. Section 44. Events causing dissolution and winding up of partnership business. Except as provided in [section 45], a partnership is dissolved and its business must be wound up only upon:

(1) receipt by a partnership at will of notice from a partner, other than a partner who is dissociated under [section 36(2) through (10)], of that partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) in a partnership for a definite term or particular undertaking:

(a) within 90 days after a partner's wrongful dissociation under [section 37] or a partner's dissociation by death or otherwise under [section 36(6) through (10)], receipt by the partnership of notice from another partner of that partner's express will to withdraw as a partner;

(b) the express will of all the partners; or

(c) the expiration of the term or the completion of the undertaking unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the expiration or completion does not result in the dissolution and winding up of the partnership business;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business

unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the event does not result in the dissolution and winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) a judicial decree, issued upon application by a partner, that:

(a) the economic purpose of the partnership is likely to be unreasonably frustrated;

(b) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(c) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) a judicial decree, issued upon application by a transferee of a partner's transferable interest, that it is equitable to wind up the partnership business:

(a) if the partnership was for a definite term or

1 particular undertaking at the time of the transfer or entry
2 of the charging order that gave rise to the transfer, after
3 the expiration of the term or completion of the undertaking;
4 or

5 (b) if the partnership was a partnership at will at the
6 time of the transfer or entry of the charging order that
7 gave rise to the transfer, at any time.

8 **NEW SECTION. Section 45. Dissolution deferred ninety**
9 **days.** (1) Except as provided in subsection (2), a
10 partnership of more than two persons is not dissolved until
11 90 days after receipt by the partnership of notice from a
12 partner under [section 44(1) or (2)(a)], and its business
13 may be continued until that date as if no notice were
14 received. Before that date, the partner who gave the notice
15 may waive the right to have the partnership business wound
16 up. If there is no waiver before that date, the partnership
17 is dissolved and its business must be wound up.

18 (2) A partnership may be dissolved at any time during
19 the 90-day period and its business wound up, by the express
20 will of at least half of the other partners.

21 (3) After receipt by the partnership of notice from a
22 partner under [section 44(1) or (2)(a)], the partner who
23 gave the notice:

24 (a) has no rights in the management and conduct of the
25 partnership business if it is continued under subsection (1)

1 but may participate in winding up the business under
2 35-10-609 if the partnership is dissolved on or before the
3 expiration of the 90-day period pursuant to subsection (1)
4 or (2);

5 (b) is liable for obligations incurred during the
6 period only to the extent a dissociated partner would be
7 liable under [section 40(2) or 41(2)] but is not liable for
8 contributions for and must be indemnified by the other
9 partners against any partnership liability incurred by
10 another partner to the extent the liability is not
11 appropriate for winding up the partnership business; and

12 (c) must be credited with the partner's share of any
13 profit earned during the period and may be charged with the
14 partner's share of any loss incurred during the period but
15 only to the extent of profits credited for the period.

16 **Section 46.** Section 35-10-602, MCA, is amended to read:

17 **"35-10-602. Partnership not--terminated--by continues**
18 **after dissolution. On-dissolution-the A partnership is-not**
19 **terminated-but continues after dissolution until the winding**
20 **up of partnership-affairs its business is completed, at**
21 **which time the partnership is terminated."**

22 **Section 47.** Section 35-10-609, MCA, is amended to read:

23 **"35-10-609. Right to wind up partnership business. (1)**
24 **Unless otherwise agreed, the-partners After dissolution, a**
25 **partner who have has not wrongfully dissolved--the**

partnership--or--the--legal--representative--of---the---last
surviving--partner,--not--bankrupt,--has--the--right--to--wind
dissociated may participate in winding up the--partnership
affairs the partnership's business, but on application of--
However, any partner, his partner's legal representative, or
his--assignee transferee, the district court, upon for good
cause shown, may obtain order judicial supervision of the
winding up by the court.

(2) The legal representative of the last surviving
partner may wind up a partnership's business.

(3) A person winding up a partnership's business may
preserve the partnership business or property as a going
concern for a reasonable time; prosecute and defend actions
and proceedings, whether civil, criminal, or administrative;
settle and close the partnership's business; dispose of and
transfer the partnership's property; discharge the
partnership's liabilities; distribute the assets of the
partnership pursuant to [section 51]; settle disputes by
mediation or arbitration; and perform other necessary acts."

NEW SECTION. Section 48. Partner's power to bind
partnership after dissolution. Subject to [section 49], a
partnership is bound by a partner's act after dissolution
that:

(1) is appropriate for winding up the partnership
business; or

(2) would have bound the partnership under 35-10-301
before dissolution if the other party to the transaction did
not have notice of the dissolution.

NEW SECTION. Section 49. Statement of dissolution. (1)
After dissolution, a partner who has not wrongfully
dissociated may file a statement of dissolution stating the
name of the partnership and that the partnership has
dissolved and is winding up its business.

(2) A statement of dissolution cancels a filed
statement of partnership authority for the purposes of
[section 17(4)] and is a limitation on authority for the
purposes of [section 17(5)].

(3) For the purposes of 35-10-301 and [section 48], a
person not a partner is considered to have notice of the
dissolution and the limitation on the partners' authority as
a result of the statement of dissolution 90 days after it is
filed.

(4) After filing and, if appropriate, recording a
statement of dissolution, the dissolved partnership may file
and, if appropriate, record a statement of partnership
authority that will operate with respect to a person not a
partner as provided in [section 17(4) and (5)] in any
transaction, whether or not the transaction is appropriate
for winding up the partnership business.

NEW SECTION. Section 50. Partner's liability to other

partners after dissolution. (1) Except as provided in [section 45(3)(b)] and subsection (2) of this section, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under [section 48].

(2) A partner who, with knowledge of the winding up, incurs a partnership liability under [section 48(2)] by an act that is not appropriate for winding up the partnership business is liable to the partnership for any loss caused to the partnership arising from the liability.

NEW SECTION. Section 51. Settlement of accounts among partners. (1) In winding up a partnership's business, the assets of the partnership must be applied to discharge its obligations to creditors, including partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions pursuant to subsection (2).

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive ACCOUNT balance. A partner shall

contribute to the partnership an amount equal to that partner's negative balance.

(3) To the extent not taken into account in settling the accounts among partners pursuant to subsection (2), each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations. If a partner fails to contribute, the other partners shall contribute, in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or a partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations.

(4) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(5) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

NEW SECTION. Section 52. Conversion of partnership to limited partnership. (1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a

1 partnership to a limited partnership must be approved by all
2 the partners or by a number or percentage specified for
3 conversion in the partnership agreement.

4 (3) After the conversion is approved by the partners,
5 the partnership shall file a certificate of limited
6 partnership that satisfies the requirements of 35-12-601 and
7 includes:

8 (a) a statement that the partnership was converted to a
9 limited partnership from a partnership;

10 (b) its former name; and

11 (c) a statement of the number of votes cast by the
12 partners for and against the conversion and, if the vote is
13 less than unanimous, the number or percentage required to
14 approve the conversion under the partnership agreement.

15 (4) The conversion takes effect when the certificate of
16 limited partnership is filed or at any later date specified
17 in the certificate.

18 (5) A partner who becomes a limited partner as a result
19 of the conversion remains liable as a partner for an
20 obligation incurred by the partnership before the conversion
21 takes effect. If the other party to a transaction with the
22 limited partnership reasonably believes when entering the
23 transaction that the limited partner is a general partner,
24 the partner is liable for an obligation incurred by the
25 limited partnership within 90 days after the conversion

1 takes effect. The partner's liability for all other
2 obligations of the limited partnership incurred after the
3 conversion takes effect is that of a limited partner as
4 provided in Title 35, chapter 12.

5 NEW SECTION. **Section 53.** Conversion of limited
6 partnership to partnership. (1) A limited partnership may be
7 converted to a partnership pursuant to this section.

8 (2) Notwithstanding a provision to the contrary in a
9 limited partnership agreement, the terms and conditions of a
10 conversion of a limited partnership to a partnership must be
11 approved by all the partners.

12 (3) After the conversion is approved by the partners,
13 the limited partnership shall cancel its certificate of
14 limited partnership pursuant to 35-12-603.

15 (4) The conversion takes effect when the certificate of
16 limited partnership is canceled.

17 (5) A limited partner who becomes a partner as a result
18 of the conversion remains liable only as a limited partner
19 for an obligation incurred by the limited partnership before
20 the conversion takes effect. The limited partner is liable
21 as a partner for an obligation of the partnership incurred
22 after the conversion takes effect.

23 NEW SECTION. **Section 54.** Effect of conversion --
24 entity unchanged. (1) A partnership or limited partnership
25 that has been converted pursuant to [section 52 or 53] is

1 for all purposes the same entity that existed before the
2 conversion.

3 (2) When a conversion takes effect:

4 (a) all property owned by the converting partnership or
5 limited partnership remains vested in the converted entity;

6 (b) all obligations of the converting partnership or
7 limited partnership continue as obligations of the converted
8 entity; and

9 (c) an action or proceeding pending against the
10 converting partnership or limited partnership may be
11 continued as if the conversion had not occurred.

12 **NEW SECTION. Section 55. Merger of partnerships.** (1)

13 Pursuant to a plan of merger approved as provided in
14 subsection (3), a partnership may be merged with one or more
15 partnerships or limited partnerships.

16 (2) The plan of merger must set forth:

17 (a) the name of each partnership or limited partnership
18 that is a party to the merger;

19 (b) the name of the surviving entity into which the
20 other partnerships or limited partnerships will merge;

21 (c) whether the surviving entity is a partnership or a
22 limited partnership and the status of each partner;

23 (d) the terms and conditions of the merger;

24 (e) the manner and basis of converting the interests of
25 each party to the merger into interests or obligations of

1 the surviving entity or into money or other property in
2 whole or part; and

3 (f) the street address of the surviving entity's chief
4 executive office.

5 (3) The plan of merger must be approved:

6 (a) in the case of a partnership that is a party to the
7 merger, by all the partners or a number or percentage
8 specified for merger in the partnership agreement; and

9 (b) in the case of a limited partnership that is a
10 party to the merger, by the vote required for approval of a
11 merger by the law of the state or foreign jurisdiction in
12 which the limited partnership is organized and, in the
13 absence of such specifically applicable law, by all the
14 partners, notwithstanding a provision to the contrary in the
15 partnership agreement.

16 (4) After a plan of merger is approved and before the
17 merger takes effect, the plan may be amended or abandoned as
18 provided in the plan.

19 (5) The merger takes effect on the latest of:

20 (a) the approval of the plan of merger by all parties
21 to the merger, as provided in subsection (3);

22 (b) the filing of all documents required by law to be
23 filed as a condition to the effectiveness of the merger; or

24 (c) any effective date specified in the plan of merger.

25 **NEW SECTION. Section 56. Effect of merger.** (1) When a

1 merger takes effect:

2 (a) every partnership or limited partnership that is a
3 party to the merger other than the surviving entity ceases
4 to exist;

5 (b) all property owned by each of the merged
6 partnerships or limited partnerships vests in the surviving
7 entity;

8 (c) all obligations of every partnership or limited
9 partnership that is a party to the merger become the
10 obligations of the surviving entity; and

11 (d) an action or proceeding pending against a
12 partnership or limited partnership that is a party to the
13 merger may be continued as if the merger had not occurred or
14 the surviving entity may be substituted as a party to the
15 action or proceeding.

16 (2) The secretary of state is the agent for service of
17 process in an action or proceeding against a surviving
18 foreign partnership or limited partnership to enforce an
19 obligation of a domestic partnership or limited partnership
20 that is a party to a merger. The surviving entity shall
21 promptly notify the secretary of state of the mailing
22 address of its chief executive office and of any change of
23 address. Upon receipt of process, the secretary of state
24 shall mail a copy of the process to the surviving foreign
25 partnership or limited partnership.

1 (3) A partner of the surviving partnership or limited
2 partnership is liable for:

3 (a) all obligations of a party to the merger for which
4 the partner was personally liable before the merger;

5 (b) all other obligations of the surviving entity
6 incurred before the merger by a party to the merger, but
7 those obligations may be satisfied only out of property of
8 that entity; and

9 (c) all obligations of the surviving entity incurred
10 after the merger takes effect.

11 (4) If the obligations incurred before the merger by a
12 party to the merger are not satisfied out of the property of
13 the surviving partnership or limited partnership, the
14 partners of that party immediately before the effective date
15 of the merger shall contribute the amount necessary to
16 satisfy that party's obligations to the surviving entity in
17 the manner provided in [section 51(3)] as if the merged
18 party were dissolved.

19 (5) A partner of a party to a merger who does not
20 become a partner of the surviving partnership or limited
21 partnership is dissociated from the entity, of which that
22 partner was a partner, as of the date the merger takes
23 effect. The surviving entity shall cause the partner's
24 interest in the entity to be purchased under [section 39].
25 The surviving entity is bound under [section 40] by an act

1 of a partner dissociated under this subsection, and the
2 partner is liable under [section 41] for transactions
3 entered into by the surviving entity after the merger takes
4 effect.

5 NEW SECTION. **Section 57. Statement of merger.** (1)

6 After a merger, the surviving partnership or limited
7 partnership may file a statement that one or more
8 partnerships or limited partnerships have merged into the
9 surviving entity.

10 (2) A statement of merger must contain:

11 (a) the name of each partnership or limited partnership
12 that is a party to the merger;

13 (b) the name of the surviving entity into which the
14 other partnerships or limited partnerships were merged;

15 (c) the street address of the surviving entity's chief
16 executive office and of an office in this state, if any; and

17 (d) whether the surviving entity is a partnership or
18 limited partnership.

19 (3) Except as provided in subsection (4), for the
20 purposes of 35-10-302, property of the surviving partnership
21 or limited partnership that before the merger was held in
22 the name of another party to the merger is property held in
23 the name of the surviving entity upon filing a statement of
24 merger.

25 (4) For the purposes of 35-10-302, real property of the

1 surviving partnership or limited partnership that before the
2 merger was held in the name of another party to the merger
3 is property held in the name of the surviving entity upon
4 recording a certified copy of the statement of merger in the
5 office for recording transfers of that real property.

6 (5) A filed and, if appropriate, recorded statement of
7 merger that is executed and declared to be accurate pursuant
8 to [section 6], that states the name of a partnership or
9 limited partnership that is a party to the merger in whose
10 name property was held before the merger, and that states
11 the name of the surviving entity but that does not contain
12 all of the other information required by subsection (2)
13 operates with respect to the partnerships or limited
14 partnerships named to the extent provided in subsections (3)
15 and (4).

16 NEW SECTION. **Section 58. Nonexclusive.** [Sections 52
17 through 57] are not exclusive. Partnerships or limited
18 partnerships may be converted or merged in any other manner
19 provided by law.

20 **Section 59.** Section 31-2-106, MCA, is amended to read:

21 "31-2-106. **Exempt property -- bankruptcy proceeding.** No
22 An individual may not exempt from the property of the estate
23 in any bankruptcy proceeding the property specified in 11
24 U.S.C. 522(d). An individual may exempt from the property of
25 the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, 19-21-212, Title 25, chapter 13, part 6, 33-7-522, 33-15-512 through 33-15-514, ~~35-10-502~~, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

(2) the individual's right to receive unemployment compensation and unemployment benefits; and

(3) the individual's right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy which exceeds 15% of the individual's gross income for that 1-year period, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;

(b) the benefit is paid on account of age or length of service; and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue

Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409)."

NEW SECTION. Section 60. Repealer. Sections 35-10-303, 35-10-304, 35-10-306, 35-10-404, 35-10-501, 35-10-502, 35-10-503, 35-10-504, 35-10-507, 35-10-601, 35-10-603, 35-10-604, 35-10-605, 35-10-606, 35-10-607, 35-10-608, 35-10-610, 35-10-611, 35-10-612, 35-10-613, 35-10-614, and 35-10-615, MCA, are repealed.

NEW SECTION. Section 61. Codification instruction. [Sections 4, 6 through 10, 14, 17, 18, 21, 25, 29, 30, 32 through 34, 36 through 45, and 48 through 58] are intended to be codified as an integral part of Title 35, chapter 10, and the provisions of Title 35, chapter 10, apply to [sections 4, 6 through 10, 14, 17, 18, 21, 25, 29, 30, 32 through 34, 36 through 45, and 48 through 58].

NEW SECTION. Section 62. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 63. Application to existing relationships. (1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the

1 formation, operation, and liquidation of partnerships.

2 (2) [This act] does not impair the obligations of a
3 contract existing on October 1, 1993, or affect an action or
4 proceeding begun or right accrued before October 1, 1993.

5 (3) A judgment against a partnership or a partner in an
6 action commenced before October 1, 1993, may be enforced in
7 the same manner as a judgment rendered before October 1,
8 1993.

-End-

SENATE BILL NO. 46

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW CONCERNING PARTNERSHIPS; REVISING PROVISIONS GOVERNING PARTNERSHIP PROPERTY; REVISING THE RELATIONSHIP BETWEEN PARTNERS AND PERSONS DEALING WITH THE PARTNERSHIP; REVISING THE RELATIONSHIP OF PARTNERS TO THE PARTNERSHIP AND TO OTHER PARTNERS; REVISING THE LAW CONCERNING TRANSFEREES AND CREDITORS OF PARTNERS; PROVIDING FOR A PARTNER'S DISSOCIATION; REVISING THE LAW ON WINDING UP A PARTNERSHIP'S BUSINESS; PROVIDING FOR MERGERS AND CONSOLIDATIONS OF PARTNERSHIPS; AMENDING SECTIONS 31-2-106, 35-10-102, 35-10-103, 35-10-104, 35-10-105, 35-10-201, 35-10-202, 35-10-203, 35-10-301, 35-10-302, 35-10-303, 35-10-305, 35-10-307, 35-10-308, 35-10-309, 35-10-401, 35-10-402, 35-10-403, 35-10-405, 35-10-406, 35-10-505, 35-10-602, AND 35-10-609, MCA; AND REPEALING SECTIONS 35-10-303, 35-10-304, 35-10-306, 35-10-404, 35-10-501, 35-10-502, 35-10-503, 35-10-504, 35-10-507, 35-10-601, 35-10-603, 35-10-604, 35-10-605, 35-10-606, 35-10-607, 35-10-608, 35-10-610, 35-10-611, 35-10-612, 35-10-613, 35-10-614, AND 35-10-615, MCA."

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

PLEASE RETAIN THIS COPY. IF THERE ARE NO CHANGES IT WILL NOT BE REPRINTED.



Section 1. Section 35-10-102, MCA, is amended to read:

"35-10-102. Definitions. In this chapter, the following definitions apply:

(1) "~~Bankrupt~~"~~---includes---bankrupt---under---the---Federal Bankruptcy-Act-or-insolvent-under-any-state-insolvency-act---~~

(2) "Business" includes every trade, occupation, or profession.

(3) "~~Conveyance~~"~~---includes---every---assignment,---lease, mortgage, or encumbrance---~~

(4) "~~Court~~"~~---includes---every---court---and---judge---having jurisdiction-in-the-case---~~

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

(3) "Distribution" means a transfer of money or other

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SENATE BILL NO. 46

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW CONCERNING PARTNERSHIPS; REVISING PROVISIONS GOVERNING PARTNERSHIP PROPERTY; REVISING THE RELATIONSHIP BETWEEN PARTNERS AND PERSONS DEALING WITH THE PARTNERSHIP; REVISING THE RELATIONSHIP OF PARTNERS TO THE PARTNERSHIP AND TO OTHER PARTNERS; REVISING THE LAW CONCERNING TRANSFEREES AND CREDITORS OF PARTNERS; PROVIDING FOR A PARTNER'S DISSOCIATION; REVISING THE LAW ON WINDING UP A PARTNERSHIP'S BUSINESS; PROVIDING FOR MERGERS AND CONSOLIDATIONS OF PARTNERSHIPS; AMENDING SECTIONS 31-2-106, 35-10-102, 35-10-103, 35-10-104, 35-10-105, 35-10-201, 35-10-202, 35-10-203, 35-10-301, 35-10-302, 35-10-303, 35-10-305, 35-10-307, 35-10-308, 35-10-309, 35-10-401, 35-10-402, 35-10-403, 35-10-405, 35-10-406, 35-10-505, 35-10-602, AND 35-10-609, MCA; AND REPEALING SECTIONS 35-10-303, 35-10-304, 35-10-306, 35-10-404, 35-10-501, 35-10-502, 35-10-503, 35-10-504, 35-10-507, 35-10-601, 35-10-603, 35-10-604, 35-10-605, 35-10-606, 35-10-607, 35-10-608, 35-10-610, 35-10-611, 35-10-612, 35-10-613, 35-10-614, AND 35-10-615, MCA."

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Section 1. Section 35-10-102, MCA, is amended to read:

"35-10-102. Definitions. In this chapter, the following definitions apply:

(1) ~~"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvency act;~~

(2) "Business" includes every trade, occupation, or profession.

(3) ~~"Conveyance" includes every assignment, lease, mortgage or encumbrance;~~

(4) ~~"Court" includes every court and judge having jurisdiction in the case;~~

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

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