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INTRODUCED BY

SENATE BILL NO. 340
Cyrus Johnson

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FORMATION, REGISTRATION, AND REGULATION OF LIMITED LIABILITY PARTNERSHIPS; AND AMENDING SECTIONS 30-13-201, 30-13-202, 30-13-206, 30-13-213, 30-13-217, 35-10-102, 35-10-116, 35-10-307, 35-10-308, 35-10-312, 35-10-401, 35-10-621, 35-10-628, 35-10-629, 35-10-635, AND 35-10-636, MCA."

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

Section 1. Section 30-13-201, MCA, is amended to read:

"30-13-201. Definitions. As used in this part, the following definitions apply:

(1) "Assumed business name" means:

(a) any business name other than the full, true, and correct name of a person; or

(b) the full, true, and correct name of a limited liability partnership.

(2) "Person" means any individual, partnership, corporation, or other association."

Section 2. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name -- when prohibited. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or deceptively similar to an assumed business name already registered or to any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is other than a corporation, limited partnership, ~~or~~ limited liability company, or limited liability partnership, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of the words."

Section 3. Section 30-13-206, MCA, is amended to read:

1 **"30-13-206. Term and renewal of assumed business name registration.** (1) Registration of an
2 assumed business name is effective for a term of 5 years from the date of registration. Upon application
3 for renewal of registration on forms furnished by the secretary of state, the registration may be renewed
4 for another 5-year term.

5 (2) Not less than 90 days before the expiration date of registration of an assumed business name,
6 the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice
7 to the last-known address of ~~such~~ the applicant.

8 (3)(a) ~~¶ Subject to subsection (3)(b),~~ if the applicant or person in whose name an assumed
9 business name is registered fails to file an application for renewal with the secretary of state within a
10 90-day period prior to the expiration date of ~~such~~ the registration, the secretary of state shall cancel the
11 registration.

12 (b) If a limited liability partnership fails to file an application for renewal with the secretary of state
13 within a 90-day period prior to the expiration date of the registration, the secretary of state shall again
14 notify the limited liability partnership of the pending expiration and give the limited liability partnership an
15 additional 90 days within which to renew its registration. If the limited liability partnership fails to renew
16 its registration within the second 90-day period, the secretary of state shall cancel the registration and the
17 partnership is no longer a limited liability partnership."

18

19 **Section 4.** Section 30-13-213, MCA, is amended to read:

20 **"30-13-213. Voluntary cancellation of registration of assumed business name.** (1) When the
21 registrant of record of a registered assumed business name wishes to cancel ~~such~~ the registration, ~~he~~ the
22 registrant shall deliver to the secretary of state an executed and verified original affidavit of cancellation
23 of registration of an assumed business name, which ~~shall~~ must include but not be limited to the following
24 information:

25 (a) the complete name of the registered assumed business name to be canceled; and

26 (b) the name and address, including the street name and number, if any, of the registrant of record.

27 (2) If the secretary of state finds the affidavit complies with the provisions of this section, ~~he~~ the
28 secretary of state shall file it ~~in his office~~ and mail a letter of ~~acknowledgment~~ acknowledging cancellation
29 of ~~such~~ the filing to the registrant of record."
30

1 **Section 5.** Section 30-13-217, MCA, is amended to read:

2 **"30-13-217. Fees and charges to be established and collected by secretary of state.** (1) The
3 secretary of state shall by administrative rule establish, charge, and collect in accordance with the
4 provisions of this part and commensurate with costs:

5 (a) fees for filing documents and issuing certificates; and

6 (b) miscellaneous charges.

7 (2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous
8 charges established under this section.

9 (3) In addition to the fees and charges in subsection (1), the secretary of state shall charge and
10 collect from each limited liability partnership a license fee of:

11 (a) \$250 at the time of registration under 30-13-203; and

12 (b) \$250 at the time of each renewal of registration under 30-13-206 through 30-13-208."

13

14 **Section 6.** Section 35-10-102, MCA, is amended to read:

15 **"35-10-102. Definitions.** In this chapter, the following definitions apply:

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

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

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

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

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

23 (4) "Limited liability partnership" means a partnership registered under [section 17] and includes
24 both domestic and foreign limited liability partnerships.

25 (5)(a) "Partnership" means an association of two or more persons to carry on as co-owners a
26 business for profit formed under 35-10-202, a predecessor law, or a comparable law of another jurisdiction.

27 (b) The term includes but is not limited to a limited liability partnership for all purposes of the laws
28 of this state and all licensing laws, whether for professionals or otherwise.

29 ~~(4)(6)~~ "Partnership agreement" means an agreement, written or oral, among the partners
30 concerning the partnership.

1 ~~(6)~~(7) "Partnership at will" means a partnership in which the partners have not agreed to remain
2 partners until the expiration of a definite term or the completion of a particular undertaking.

3 ~~(6)~~(8) "Person" means:

4 (a) an individual;

5 (b) a corporation;

6 (c) a business trust;

7 (d) an estate;

8 (e) a trust;

9 (f) a partnership;

10 (g) an association;

11 (h) a joint venture;

12 (i) a government;

13 (j) a governmental subdivision, agency, or instrumentality; or

14 (k) any other legal or commercial entity.

15 ~~(7)~~(9) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest
16 therein.

17 ~~(8)~~(10) "State" means a state of the United States, the District of Columbia, the Commonwealth
18 of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

19 ~~(9)~~(11) "Statement" means a statement of partnership authority under 35-10-310, a statement of
20 denial under 35-10-311, a statement of dissociation under 35-10-622, a statement of dissolution under
21 35-10-627, a statement of merger under 35-10-643, an application for registration of assumed business
22 name or a renewal of registration under [section 17], or an amendment, ~~or~~ cancellation, ~~or~~ withdrawal of
23 the foregoing.

24 ~~(10)~~(12) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and
25 encumbrance."
26

27 **Section 7.** Section 35-10-116, MCA, is amended to read:

28 **"35-10-116. Law governing internal affairs.** ~~The~~ Except as provided in [section 20], the law of the
29 state in which a partnership has its chief executive office governs the partnership's internal affairs."
30

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

2 "**35-10-307. Partner's liability.** (1) All Except as provided in subsection (2), all partners are liable
3 jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or
4 provided by law.

5 (2) Except as provided in subsections (3) and (4), a partner of a partnership is not liable, directly
6 or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for:

7 (a) any debts, obligations, or liabilities of or chargeable to the limited liability partnership or another
8 partner, whether arising in tort, contract, or otherwise; or

9 (b) the acts or omissions of any other partner or agents, contractors, or employees of the limited
10 liability partnership if the debts, obligations, or liabilities arise or are incurred while the limited liability
11 partnership is registered under [section 17].

12 (3) Subsection (2) does not affect the liability of a partner in a limited liability partnership for the
13 partner's own negligence, wrongful act, or misconduct, including without limitation an act under
14 35-10-628(2), or that of any person under the partner's direct supervision and control.

15 (4) Subsection (2) does not affect or impair the ability of a partner to act as a guarantor or surety
16 for, provide collateral for, or otherwise agree to be primarily or contingently liable for the debts, obligations,
17 or liabilities of a partnership.

18 (5) Subsection (2) does not affect the liability of a partnership for partnership debts, obligations,
19 or liabilities to the extent of partnership assets.

20 (6) Unless the partner is personally liable under this section, a partner in a limited liability
21 partnership is not a proper party to a proceeding by or against a limited liability partnership to recover any
22 debts, obligations, or liabilities of or chargeable to the limited liability partnership."

23
24 **Section 9.** Section 35-10-308, MCA, is amended to read:

25 "**35-10-308. Purported partner.** (1) If a person, by words or conduct, purports to be a partner or
26 consents to being represented by another as a partner in a partnership or with one or more persons who
27 are not partners, the purported partner is liable to a person to whom the representation is made:

28 (a) if that person, relying on the representation, enters into a transaction with the actual or
29 purported partnership; and

30 (b) the purported partner would have been personally liable for obligations of the partnership under

1 35-10-307 or 35-10-629 if the purported partner had been a partner.

2 (2) # Subject to subsection (1), if the representation, either by the purported partner or by a person
3 with the purported partner's consent, is made in a public manner, the purported partner is liable to a person
4 who relies upon the purported partnership even if the purported partner is not aware of being held out as
5 a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported
6 partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally
7 with any other person consenting to the representation.

8 ~~(2)(3)~~ # Subject to subsection (1), if a person is ~~thus~~ represented to be a partner in an existing
9 partnership or with one or more persons who are not partners, the purported partner is an agent of persons
10 consenting to the representation to bind them to the same extent and in the same manner as if the
11 purported partner were a partner with respect to persons who enter into transactions in reliance upon the
12 representation. If all of the partners of the existing partnership consent to the representation, a partnership
13 act or obligation results. # Subject to subsection (1), if fewer than all of the partners of the existing
14 partnership consent to the representation, the person acting and the partners consenting to the
15 representation are jointly and severally liable as if the person had actually been a partner.

16 ~~(3)(4)~~ A person is not a partner in a partnership merely because the person is named by another
17 in a statement of partnership authority.

18 ~~(4)(5)~~ A person does not continue to be a partner merely because of a failure to file a statement
19 of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from
20 the partnership."

21

22 **Section 10.** Section 35-10-312, MCA, is amended to read:

23 **"35-10-312. Action by and against partnership and partners.** (1) A partnership may sue and be
24 sued in the name of the partnership.

25 (2) An action may be brought against the partnership and any or all of the partners who are
26 personally liable for obligations of the partnership under 35-10-307 or 35-10-629 in the same action or in
27 separate actions.

28 (3) A judgment against a partnership is not by itself a judgment against a partner. A judgment
29 against a partnership may not be satisfied from a partner's assets unless there is also a judgment against
30 the partner.

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

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

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

9 (ii) Title 11 of the United States Code permits a judgment creditor of a partner to levy execution
10 against the assets of the partner to satisfy a judgment based on a claim against the partnership;

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

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

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

18 (5) This section applies to any partnership liability or obligation resulting from a representation by
19 a partner or purported partner under 35-10-308(1), ~~or (2), or (3).~~"

20
21 **Section 11.** Section 35-10-401, MCA, is amended to read:

22 **"35-10-401. Partner's rights and duties.** (1) A partnership shall establish an account for each
23 partner. The partnership shall credit the account with an amount equal to the money plus the value of any
24 other property, net of the amount of any liabilities, that the partner contributes to the partnership and the
25 partner's share of the partnership profits. The partnership shall charge the account with an amount equal
26 to the money plus the value of any other property, net of the amount of any liabilities, distributed by the
27 partnership to the partner and the partner's share of the partnership losses. However, the partner is
28 personally liable for the charges only as provided in 35-10-307 and 35-10-629.

29 (2) A partnership shall credit each partner's account with an equal share of the partnership profits.
30 A partnership shall charge each partner with a share of the partnership losses, whether capital or operating,

1 in proportion to the partner's share of the profits. However, a partner is personally liable for the
2 indemnification only to the extent that the partner would be personally liable under 35-10-307 and
3 35-10-629.

4 (3) A partnership shall indemnify each partner for payments reasonably made and liabilities
5 reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership
6 or for the preservation of its business or property. However, a partner is personally liable for the
7 indemnification only to the extent that the partner would be personally liable under 35-10-307 and
8 35-10-629.

9 (4) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance
10 beyond the amount of capital the partner agreed to contribute.

11 (5) A payment made by a partner that gives rise to a partnership obligation under subsection (3)
12 or (4) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

13 (6) Each partner has equal rights in the management and conduct of the partnership business.

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

15 (8) A partner is not entitled to remuneration for services performed for the partnership, except for
16 reasonable compensation for services rendered in winding up the business of the partnership.

17 (9) A person may become a partner only with the consent of all the partners.

18 (10) A difference arising as to a matter in the ordinary course of business of a partnership may be
19 decided by a majority of the partners. An act outside the ordinary course of business of a partnership and
20 an amendment to the partnership agreement may be undertaken only with the consent of all the partners.

21 (11) This section does not affect the obligations of a partnership to other persons under
22 35-10-301."

23

24 **Section 12.** Section 35-10-621, MCA, is amended to read:

25 **"35-10-621. Dissociated partner's liability to other persons.** (1) A partner's dissociation does not
26 of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A
27 dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided
28 in subsection (2).

29 (2) A partner who dissociates without resulting in a dissolution and winding up of the partnership
30 business is personally liable as a partner to the other party ~~in~~ as the result of a partnership obligation

1 incurred in connection with a transaction entered into by the partnership or a surviving partnership under
2 35-10-635 through 35-10-637 and 35-10-641 through 35-10-644 within 2 years after the partner's
3 dissociation only if the other party to the transaction:

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

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

7 (c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622; and

8 (d) the obligation is one for which the partner would be personally liable under 35-10-307 or
9 35-10-629 if the partner had not dissociated.

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

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

15

16 **Section 13.** Section 35-10-628, MCA, is amended to read:

17 "**35-10-628. Partner's liability to other partners after dissolution.** (1) Except as provided in
18 35-10-625(3)(b) and subsection (2) of this section, after dissolution a partner is liable to the other partners
19 for the partner's share of any partnership liability incurred under 35-10-626 for which the partner is
20 personally liable under 35-10-307 or 35-10-621.

21 (2) A partner who, with knowledge of the winding up, incurs a partnership liability under
22 35-10-626(2) by an act that is not appropriate for winding up the partnership business is liable to the
23 partnership for any loss caused to the partnership arising from the liability."

24

25 **Section 14.** Section 35-10-629, MCA, is amended to read:

26 "**35-10-629. Settlement of accounts among partners.** (1) In winding up a partnership's business,
27 the assets of the partnership must be applied to discharge its obligations to creditors, including partners
28 who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in
29 accordance with their right to distributions pursuant to subsection (2).

30 (2) Each partner is entitled to a settlement of all partnership accounts upon winding up the

1 partnership business. In settling accounts among the partners, the profits and losses that result from the
2 liquidation of the partnership assets must be credited and charged to the partners' accounts. The
3 partnership shall make a distribution to a partner in an amount equal to that partner's positive account
4 balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance
5 but only to the extent that the negative balance is attributable to debts, obligations, or liabilities for which
6 the partner is personally liable under 35-10-307.

7 (3) To the extent not taken into account in settling the accounts among partners pursuant to
8 subsection (2), each partner shall contribute, in the proportion in which the partner shares partnership
9 losses and to the extent the partner is personally liable under 35-10-307, the amount necessary to satisfy
10 partnership obligations. If a partner fails or is not obligated to contribute, the other partners shall contribute,
11 in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy
12 the partnership obligations. A partner or a partner's legal representative may recover from the other partners
13 any contributions the partner makes to the extent the amount contributed exceeds that partner's share of
14 the partnership obligations but only to the extent the contributions are made because of obligations for
15 which the other partners are personally liable under 35-10-307.

16 (4) The estate of a deceased partner is liable for the partner's obligation to contribute to the
17 partnership under subsections (2) and (3).

18 (5) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by
19 a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute
20 to the partnership under subsections (2) and (3)."

21

22 **Section 15.** Section 35-10-635, MCA, is amended to read:

23 "**35-10-635. Conversion of partnership to limited partnership.** (1) A partnership may be converted
24 to a limited partnership pursuant to this section.

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

28 (3) After the conversion is approved by the partners, the partnership shall file a certificate of limited
29 partnership that satisfies the requirements of 35-12-601 and includes:

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

1 (b) its former name; and

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

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

7 (5) A partner who becomes a limited partner as a result of the conversion remains liable as a
8 partner for an obligation, incurred by the partnership before the conversion takes effect, for which the
9 partner is personally liable under 35-10-307 and 35-10-629. If the other party to a transaction with the
10 limited partnership reasonably believes when entering the transaction that the limited partner is a general
11 partner, the partner is liable for an obligation incurred by the limited partnership within 90 days after the
12 conversion takes effect but only to the extent that the limited partner would have been personally liable for
13 the partnership under 35-10-307 or 35-10-629 immediately prior to the conversion. The partner's liability
14 for all other obligations of the limited partnership incurred after the conversion takes effect is that of a
15 limited partner as provided in Title 35, chapter 12."

16

17 **Section 16.** Section 35-10-636, MCA, is amended to read:

18 **"35-10-636. Conversion of limited partnership to partnership.** (1) A limited partnership may be
19 converted to a partnership pursuant to this section.

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

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

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

25 (5) A limited partner who becomes a partner as a result of the conversion remains liable only as
26 a limited partner for an obligation incurred by the limited partnership before the conversion takes effect.
27 The limited partner is liable as a partner for an obligation of the partnership for which the partner is
28 personally liable under 35-10-307 or 35-10-629 and which arises or is incurred after the conversion takes
29 effect."

30

1 **NEW SECTION. Section 17. Registration of limited liability partnerships.** (1) To become a limited
2 liability partnership, a partnership shall file with the secretary of state an application for registration of an
3 assumed business name, on a form furnished by the secretary of state, that indicates an intention to
4 register as a limited liability partnership under this section. The registration of a limited liability partnership
5 under this section is subject to all of the terms and conditions otherwise applicable to the registration of
6 an assumed business name pursuant to Title 30, chapter 13, part 2.

7 (2) The application for registration of an assumed business name must be executed by one or more
8 partners authorized to execute the application and registration.

9 (3) The secretary of state shall register as a limited liability partnership any partnership that
10 substantially complies with Title 30, chapter 13, part 2, and this section.

11 (4) A partnership's registration under this section is effective when the secretary of state files the
12 partnership's application for registration of an assumed business name under subsection (1) and remains
13 in effect until it is canceled by the secretary of state pursuant to Title 30, chapter 13, part 2.

14 (5) The fact that an application for registration of an assumed business name under this section
15 or any renewals of the assumed business name is on file with the office of the secretary of state is notice
16 that the partnership is a limited liability partnership and is notice of all other facts set forth in the
17 application.

18 (6) The secretary of state shall provide necessary forms for the registration of a limited liability
19 partnership under subsection (1) or any renewals of registration.

20

21 **NEW SECTION. Section 18. Effect of registration -- entity unchanged.** (1) A partnership that has
22 registered under [section 17] is for all purposes of the laws of this state, including but not limited to all
23 licensing laws, whether for professionals or otherwise, the same entity that existed before the registration.

24 (2) When registration of a partnership under [section 17] takes effect:

25 (a) all tangible and intangible property, whether real or personal, owned by the partnership remains
26 vested in the partnership;

27 (b) all debts, obligations, or liabilities of and chargeable to the partnership continue as debts,
28 obligations, or liabilities of the partnership; and

29 (c) any actions or proceedings pending by or against the partnership may be continued as if the
30 registration under [section 17] had not occurred.

1 (3) If a partnership dissolves and its business continues without liquidation of the partnership
2 affairs, the registration of the limited liability partnership must continue to be applicable to the partnership
3 continuing the business. The partnership continuing the business is considered to have filed any documents
4 required or permitted under this section that were filed by the dissolved partnership. The partnership
5 continuing the business shall renew its registration at the time the dissolved partnership would have been
6 required to file an application for renewal pursuant to Title 30, chapter 13, part 2.

7 (4) If a partnership dissolves, winds up its affairs, and liquidates, the registration of the limited
8 liability partnership must remain in effect as to the partnership and the partners during the period of
9 dissolution, winding up, and liquidation and as to the partners subsequent to dissolution, winding up, and
10 liquidation as to debts, obligations, or liabilities for which a partner was not personally liable under
11 35-10-307 or 35-10-629.

12
13 **NEW SECTION. Section 19. Name of limited liability partnerships.** The name of a limited liability
14 partnership must contain the words "limited liability partnership" or, in the case of professionals subject
15 to licensing laws of this state or other states, "professional limited liability partnership" or the abbreviation
16 "l.l.p.", "llp", "p.l.l.p.", or "pllp" as the last words or letters of its name.

17
18 **NEW SECTION. Section 20. Applicability to foreign or interstate commerce.** (1) A partnership
19 formed pursuant to an agreement governed by this chapter may conduct its business, carry on its
20 operations, and have and exercise the powers granted by this chapter in any state, territory, district, or
21 possession of the United States or in any foreign country.

22 (2) It is the intent of the legislature that the legal existence of partnerships formed pursuant to an
23 agreement governed by this chapter must be recognized outside the boundaries of this state and that the
24 laws of this state governing a partnership transacting business outside this state be granted the protection
25 of full faith and credit under the United States constitution.

26 (3) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an
27 agreement governed by this chapter, including the personal liability of partners for debts, obligations, and
28 liabilities of or chargeable to the partnership or another partner, are subject to and governed by the laws
29 of this state.

30 (4) Before transacting business in this state as a limited liability partnership, a partnership formed

1 pursuant to an agreement governed by the laws of any state or jurisdiction other than this state shall:

2 (a) comply with any statutory or administrative registration or filing requirements governing the
3 specific type of business in which the partnership is engaged; and

4 (b) register under [section 17]. If registered, the partnership appoints the secretary of state as its
5 agent for service of process with respect to causes of action arising out of the transaction of business in
6 this state.

7 (5) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an
8 agreement governed by the laws of any state or jurisdiction other than this state, including the liability of
9 partners for debts, obligations, and liabilities of or chargeable to the partnership or another partner, are
10 subject to and governed by the laws of the jurisdiction in which the partnership is formed.

11

12 NEW SECTION. **Section 21. Codification instruction.** [Sections 17 through 20] are intended to
13 be codified as an integral part of Title 35, chapter 10, and the provisions of Title 35, chapter 10, apply to
14 [sections 17 through 20].

15

-END-

1 SENATE BILL NO. 340

2 INTRODUCED BY CRIPPEN, R. JOHNSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FORMATION, REGISTRATION, AND
5 REGULATION OF LIMITED LIABILITY PARTNERSHIPS; AND AMENDING SECTIONS 30-13-201, 30-13-202,
6 30-13-206, 30-13-213, 30-13-217, 35-10-102, 35-10-116, 35-10-307, 35-10-308, 35-10-312,
7 35-10-401, 35-10-621, 35-10-628, 35-10-629, 35-10-635, AND 35-10-636, MCA."

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

10
11 **Section 1.** Section 30-13-201, MCA, is amended to read:

12 **"30-13-201. Definitions.** As used in this part, the following definitions apply:

13 (1) "Assumed business name" means:

14 (a) any business name other than the full, true, and correct name of a person; or

15 (b) the full, true, and correct name of a limited liability partnership.

16 (2) "Person" means any individual, partnership, corporation, or other association."

17
18 **Section 2.** Section 30-13-202, MCA, is amended to read:

19 **"30-13-202. Registration of assumed business name -- when prohibited.** (1) When an application
20 for registration or amendment to the registration of an assumed business name contains an assumed
21 business name which is the same as or ~~deceptively similar to~~ NOT DISTINGUISHABLE ON THE RECORD
22 FROM an assumed business name already registered or ~~to~~ FROM any corporate name, limited partnership
23 name, limited liability company name, limited liability partnership name, trademark, or service mark
24 registered or reserved with the secretary of state, the secretary of state may not register the assumed
25 business name for which application is made.

26 (2) When the applicant is other than a corporation, limited partnership, ~~or~~ limited liability company,
27 or limited liability partnership, the secretary of state may not register the assumed business name for which
28 application is made if the name applied for contains or there is added at the end of the name the word
29 "corporation", "company", "incorporated", or "limited" or an abbreviation of one of the words."

1 **Section 3.** Section 30-13-206, MCA, is amended to read:

2 **"30-13-206. Term and renewal of assumed business name registration.** (1) Registration of an
3 assumed business name is effective for a term of 5 years from the date of registration. Upon application
4 for renewal of registration on forms furnished by the secretary of state, the registration may be renewed
5 for another 5-year term.

6 (2) Not less than 90 days before the expiration date of registration of an assumed business name,
7 the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice
8 to the last-known address of ~~such~~ the applicant.

9 (3) ~~(a) If~~ Subject to subsection (3)(b), if the applicant or person in whose name an assumed
10 business name is registered fails to file an application for renewal with the secretary of state within a
11 90-day period prior to the expiration date of ~~such~~ the registration, the secretary of state shall cancel the
12 registration.

13 (b) If a limited liability partnership fails to file an application for renewal with the secretary of state
14 within a 90-day period prior to the expiration date of the registration, the secretary of state shall again
15 notify the limited liability partnership of the pending expiration and give the limited liability partnership an
16 additional 90 days within which to renew its registration. If the limited liability partnership fails to renew
17 its registration within the second 90-day period, the secretary of state shall cancel the registration and the
18 partnership is no longer a limited liability partnership."

19

20 **Section 4.** Section 30-13-213, MCA, is amended to read:

21 **"30-13-213. Voluntary cancellation of registration of assumed business name.** (1) When the
22 registrant of record of a registered assumed business name wishes to cancel ~~such~~ the registration, ~~he~~ the
23 registrant shall deliver to the secretary of state an executed and verified original affidavit of cancellation
24 of registration of an assumed business name, which ~~shall~~ must include but not be limited to the following
25 information:

26 (a) the complete name of the registered assumed business name to be canceled; and

27 (b) the name and address, including the street name and number, if any, of the registrant of record.

28 (2) If the secretary of state finds the affidavit complies with the provisions of this section, ~~he~~ the
29 secretary of state shall file it ~~in his office~~ and mail a letter ~~of acknowledgment~~ acknowledging cancellation
30 of ~~such~~ the filing to the registrant of record."

1 **Section 5.** Section 30-13-217, MCA, is amended to read:

2 **"30-13-217. Fees and charges to be established and collected by secretary of state.** (1) The
3 secretary of state shall by administrative rule establish, charge, and collect in accordance with the
4 provisions of this part and commensurate with costs:

5 (a) fees for filing documents and issuing certificates; and

6 (b) miscellaneous charges.

7 (2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous
8 charges established under this section.

9 (3) In addition to the fees and charges in subsection (1), the secretary of state shall charge and
10 collect from each limited liability partnership a license fee of:

11 (a) ~~250~~ \$50 at the time of registration under 30-13-203; and

12 (b) ~~250~~ \$50 at the time of each renewal of registration under 30-13-206 through 30-13-208."

13
14 **Section 6.** Section 35-10-102, MCA, is amended to read:

15 **"35-10-102. Definitions.** In this chapter, the following definitions apply:

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

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

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

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

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

23 (4) "Limited liability partnership" means a partnership registered under [section 17] and includes
24 both domestic and foreign limited liability partnerships.

25 (5) (a) "Partnership" means an association of two or more persons to carry on as co-owners a
26 business for profit formed under 35-10-202, a predecessor law, or a comparable law of another jurisdiction.

27 (b) The term includes but is not limited to a limited liability partnership for all purposes of the laws
28 of this state and all licensing laws, whether for professionals or otherwise.

29 ~~(4)(6)~~ "Partnership agreement" means an agreement, written or oral, among the partners
30 concerning the partnership.

1 ~~(5)~~(7) "Partnership at will" means a partnership in which the partners have not agreed to remain
2 partners until the expiration of a definite term or the completion of a particular undertaking.

3 ~~(6)~~(8) "Person" means:

4 (a) an individual;

5 (b) a corporation;

6 (c) a business trust;

7 (d) an estate;

8 (e) a trust;

9 (f) a partnership;

10 (g) an association;

11 (h) a joint venture;

12 (i) a government;

13 (j) a governmental subdivision, agency, or instrumentality; or

14 (k) any other legal or commercial entity.

15 ~~(7)~~(9) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest
16 therein.

17 ~~(8)~~(10) "State" means a state of the United States, the District of Columbia, the Commonwealth
18 of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

19 ~~(9)~~(11) "Statement" means a statement of partnership authority under 35-10-310, a statement of
20 denial under 35-10-311, a statement of dissociation under 35-10-622, a statement of dissolution under
21 35-10-627, a statement of merger under 35-10-643, an application for registration of assumed business
22 name or a renewal of registration under [section 17], or an amendment, or cancellation, or withdrawal of
23 the foregoing.

24 ~~(10)~~(12) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and
25 encumbrance."

26
27 **Section 7.** Section 35-10-116, MCA, is amended to read:

28 **"35-10-116. Law governing internal affairs.** ~~The~~ Except as provided in [section 20], the law of the
29 state in which a partnership has its chief executive office governs the partnership's internal affairs."
30

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

2 "**35-10-307. Partner's liability.** (1) All Except as provided in subsection (2), all partners are liable
3 jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or
4 provided by law.

5 (2) Except as provided in subsections (3) and (4), a partner of a partnership is not liable, directly
6 or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for:

7 (a) any debts, obligations, or liabilities of or chargeable to the limited liability partnership or another
8 partner, whether arising in tort, contract, or otherwise; or

9 (b) the acts or omissions of any other partner or agents, contractors, or employees of the limited
10 liability partnership if the debts, obligations, or liabilities arise or are incurred while the limited liability
11 partnership is registered under [section 17].

12 (3) Subsection (2) does not affect the liability of a partner in a limited liability partnership for the
13 partner's own negligence, wrongful act, or misconduct, including without limitation an act under
14 35-10-628(2), or that of any person under the partner's direct supervision and control.

15 (4) Subsection (2) does not affect or impair the ability of a partner to act as a guarantor or surety
16 for, provide collateral for, or otherwise agree to be primarily or contingently liable for the debts, obligations,
17 or liabilities of a partnership.

18 (5) Subsection (2) does not affect the liability of a partnership for partnership debts, obligations,
19 or liabilities to the extent of partnership assets.

20 (6) Unless the partner is personally liable under this section, a partner in a limited liability
21 partnership is not a proper party to a proceeding by or against a limited liability partnership to recover any
22 debts, obligations, or liabilities of or chargeable to the limited liability partnership."

23

24 **Section 9.** Section 35-10-308, MCA, is amended to read:

25 "**35-10-308. Purported partner.** (1) If a person, by words or conduct, purports to be a partner or
26 consents to being represented by another as a partner in a partnership or with one or more persons who
27 are not partners, the purported partner is liable to a person to whom the representation is made;

28 (a) if that person, relying on the representation, enters into a transaction with the actual or
29 purported partnership; and

30 (b) the purported partner would have been personally liable for obligations of the partnership under

1 35-10-307 or 35-10-629 if the purported partner had been a partner.

2 (2) If Subject to subsection (1), if the representation, either by the purported partner or by a person
3 with the purported partner's consent, is made in a public manner, the purported partner is liable to a person
4 who relies upon the purported partnership even if the purported partner is not aware of being held out as
5 a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported
6 partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally
7 with any other person consenting to the representation.

8 ~~(2)~~(3) If Subject to subsection (1), if a person is ~~thus~~ represented to be a partner in an existing
9 partnership or with one or more persons who are not partners, the purported partner is an agent of persons
10 consenting to the representation to bind them to the same extent and in the same manner as if the
11 purported partner were a partner with respect to persons who enter into transactions in reliance upon the
12 representation. If all of the partners of the existing partnership consent to the representation, a partnership
13 act or obligation results. If Subject to subsection (1), if fewer than all of the partners of the existing
14 partnership consent to the representation, the person acting and the partners consenting to the
15 representation are jointly and severally liable as if the person had actually been a partner.

16 ~~(3)~~(4) A person is not a partner in a partnership merely because the person is named by another
17 in a statement of partnership authority.

18 ~~(4)~~(5) A person does not continue to be a partner merely because of a failure to file a statement
19 of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from
20 the partnership."
21

22 **Section 10.** Section 35-10-312, MCA, is amended to read:

23 **"35-10-312. Action by and against partnership and partners.** (1) A partnership may sue and be
24 sued in the name of the partnership.

25 (2) An action may be brought against the partnership and any or all of the partners who are
26 personally liable for obligations of the partnership under 35-10-307 or 35-10-629 in the same action or in
27 separate actions.

28 (3) A judgment against a partnership is not by itself a judgment against a partner. A judgment
29 against a partnership may not be satisfied from a partner's assets unless there is also a judgment against
30 the partner.

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

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

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

9 (ii) Title 11 of the United States Code permits a judgment creditor of a partner to levy execution
10 against the assets of the partner to satisfy a judgment based on a claim against the partnership;

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

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

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

18 (5) This section applies to any partnership liability or obligation resulting from a representation by
19 a partner or purported partner under 35-10-308(1), ~~or (2), or (3).~~"

20
21 **Section 11.** Section 35-10-401, MCA, is amended to read:

22 "**35-10-401. Partner's rights and duties.** (1) A partnership shall establish an account for each
23 partner. The partnership shall credit the account with an amount equal to the money plus the value of any
24 other property, net of the amount of any liabilities, that the partner contributes to the partnership and the
25 partner's share of the partnership profits. The partnership shall charge the account with an amount equal
26 to the money plus the value of any other property, net of the amount of any liabilities, distributed by the
27 partnership to the partner and the partner's share of the partnership losses. However, the partner is
28 personally liable for the charges only as provided in 35-10-307 and 35-10-629.

29 (2) A partnership shall credit each partner's account with an equal share of the partnership profits.
30 A partnership shall charge each partner with a share of the partnership losses, whether capital or operating,

1 in proportion to the partner's share of the profits. However, a partner is personally liable for the
2 indemnification only to the extent that the partner would be personally liable under 35-10-307 and
3 35-10-629.

4 (3) A partnership shall indemnify each partner for payments reasonably made and liabilities
5 reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership
6 or for the preservation of its business or property. However, a partner is personally liable for the
7 indemnification only to the extent that the partner would be personally liable under 35-10-307 and
8 35-10-629.

9 (4) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance
10 beyond the amount of capital the partner agreed to contribute.

11 (5) A payment made by a partner that gives rise to a partnership obligation under subsection (3)
12 or (4) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

13 (6) Each partner has equal rights in the management and conduct of the partnership business.

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

15 (8) A partner is not entitled to remuneration for services performed for the partnership, except for
16 reasonable compensation for services rendered in winding up the business of the partnership.

17 (9) A person may become a partner only with the consent of all the partners.

18 (10) A difference arising as to a matter in the ordinary course of business of a partnership may be
19 decided by a majority of the partners. An act outside the ordinary course of business of a partnership and
20 an amendment to the partnership agreement may be undertaken only with the consent of all the partners.

21 (11) This section does not affect the obligations of a partnership to other persons under
22 35-10-301."

23
24 **Section 12.** Section 35-10-621, MCA, is amended to read:

25 **"35-10-621. Dissociated partner's liability to other persons.** (1) A partner's dissociation does not
26 of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A
27 dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided
28 in subsection (2).

29 (2) A partner who dissociates without resulting in a dissolution and winding up of the partnership
30 business is personally liable as a partner to the other party ~~in~~ as the result of a partnership obligation

1 incurred in connection with a transaction entered into by the partnership or a surviving partnership under
 2 35-10-635 through 35-10-637 and 35-10-641 through 35-10-644 within 2 years after the partner's
 3 dissociation only if the other party to the transaction:

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

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

7 (c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622; and

8 (d) the obligation is one for which the partner would be personally liable under 35-10-307 or
 9 35-10-629 if the partner had not dissociated.

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

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

15
 16 **Section 13.** Section 35-10-628, MCA, is amended to read:

17 **"35-10-628. Partner's liability to other partners after dissolution.** (1) Except as provided in
 18 35-10-625(3)(b) and subsection (2) of this section, after dissolution a partner is liable to the other partners
 19 for the partner's share of any partnership liability incurred under 35-10-626 for which the partner is
 20 personally liable under 35-10-307 or 35-10-621.

21 (2) A partner who, with knowledge of the winding up, incurs a partnership liability under
 22 35-10-626(2) by an act that is not appropriate for winding up the partnership business is liable to the
 23 partnership for any loss caused to the partnership arising from the liability."

24
 25 **Section 14.** Section 35-10-629, MCA, is amended to read:

26 **"35-10-629. Settlement of accounts among partners.** (1) In winding up a partnership's business,
 27 the assets of the partnership must be applied to discharge its obligations to creditors, including partners
 28 who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in
 29 accordance with their right to distributions pursuant to subsection (2).

30 (2) Each partner is entitled to a settlement of all partnership accounts upon winding up the

1 partnership business. In settling accounts among the partners, the profits and losses that result from the
2 liquidation of the partnership assets must be credited and charged to the partners' accounts. The
3 partnership shall make a distribution to a partner in an amount equal to that partner's positive account
4 balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance
5 but only to the extent that the negative balance is attributable to debts, obligations, or liabilities for which
6 the partner is personally liable under 35-10-307.

7 (3) To the extent not taken into account in settling the accounts among partners pursuant to
8 subsection (2), each partner shall contribute, in the proportion in which the partner shares partnership
9 losses and to the extent the partner is personally liable under 35-10-307, the amount necessary to satisfy
10 partnership obligations. If a partner fails or is not obligated to contribute, the other partners shall
11 contribute, in the proportions in which the partners share partnership losses, the additional amount
12 necessary to satisfy the partnership obligations. A partner or a partner's legal representative may recover
13 from the other partners any contributions the partner makes to the extent the amount contributed exceeds
14 that partner's share of the partnership obligations but only to the extent the contributions are made because
15 of obligations for which the other partners are personally liable under 35-10-307.

16 (4) The estate of a deceased partner is liable for the partner's obligation to contribute to the
17 partnership under subsections (2) and (3).

18 (5) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by
19 a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute
20 to the partnership under subsections (2) and (3)."

21

22 **Section 15.** Section 35-10-635, MCA, is amended to read:

23 **"35-10-635. Conversion of partnership to limited partnership.** (1) A partnership may be converted
24 to a limited partnership pursuant to this section.

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

28 (3) After the conversion is approved by the partners, the partnership shall file a certificate of limited
29 partnership that satisfies the requirements of 35-12-601 and includes:

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

1 (b) its former name; and

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

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

7 (5) A partner who becomes a limited partner as a result of the conversion remains liable as a
8 partner for an obligation, incurred by the partnership before the conversion takes effect, for which the
9 partner is personally liable under 35-10-307 and 35-10-629. If the other party to a transaction with the
10 limited partnership reasonably believes when entering the transaction that the limited partner is a general
11 partner, the partner is liable for an obligation incurred by the limited partnership within 90 days after the
12 conversion takes effect but only to the extent that the limited partner would have been personally liable for
13 the partnership under 35-10-307 or 35-10-629 immediately prior to the conversion. The partner's liability
14 for all other obligations of the limited partnership incurred after the conversion takes effect is that of a
15 limited partner as provided in Title 35, chapter 12."

16
17 **Section 16.** Section 35-10-636, MCA, is amended to read:

18 **"35-10-636. Conversion of limited partnership to partnership.** (1) A limited partnership may be
19 converted to a partnership pursuant to this section.

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

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

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

25 (5) A limited partner who becomes a partner as a result of the conversion remains liable only as
26 a limited partner for an obligation incurred by the limited partnership before the conversion takes effect.
27 The limited partner is liable as a partner for an obligation of the partnership for which the partner is
28 personally liable under 35-10-307 or 35-10-629 and which arises or is incurred after the conversion takes
29 effect."

1 **NEW SECTION. Section 17. Registration of limited liability partnerships.** (1) To become a limited
2 liability partnership, a partnership shall file with the secretary of state an application for registration of an
3 assumed business name, on a form furnished by the secretary of state, that indicates an intention to
4 register as a limited liability partnership under this section. The registration of a limited liability partnership
5 under this section is subject to all of the terms and conditions otherwise applicable to the registration of
6 an assumed business name pursuant to Title 30, chapter 13, part 2.

7 (2) The application for registration of an assumed business name must be executed by one or more
8 partners authorized to execute the application and registration.

9 (3) The secretary of state shall register as a limited liability partnership any partnership that
10 substantially complies with Title 30, chapter 13, part 2, and this section.

11 (4) A partnership's registration under this section is effective when the secretary of state files the
12 partnership's application for registration of an assumed business name under subsection (1) and remains
13 in effect until it is canceled by the secretary of state pursuant to Title 30, chapter 13, part 2.

14 (5) The fact that an application for registration of an assumed business name under this section
15 or any renewals of the assumed business name is on file with the office of the secretary of state is notice
16 that the partnership is a limited liability partnership and is notice of all other facts set forth in the
17 application.

18 (6) The secretary of state shall provide necessary forms for the registration of a limited liability
19 partnership under subsection (1) or any renewals of registration.

20
21 **NEW SECTION. Section 18. Effect of registration -- entity unchanged.** (1) A partnership that has
22 registered under [section 17] is for all purposes of the laws of this state, including but not limited to all
23 licensing laws, whether for professionals or otherwise, the same entity that existed before the registration.

24 (2) When registration of a partnership under [section 17] takes effect:

25 (a) all tangible and intangible property, whether real or personal, owned by the partnership remains
26 vested in the partnership;

27 (b) all debts, obligations, or liabilities of and chargeable to the partnership continue as debts,
28 obligations, or liabilities of the partnership; and

29 (c) any actions or proceedings pending by or against the partnership may be continued as if the
30 registration under [section 17] had not occurred.

1 (3) If a partnership dissolves and its business continues without liquidation of the partnership
2 affairs, the registration of the limited liability partnership must continue to be applicable to the partnership
3 continuing the business. The partnership continuing the business is considered to have filed any documents
4 required or permitted under this section that were filed by the dissolved partnership. The partnership
5 continuing the business shall renew its registration at the time the dissolved partnership would have been
6 required to file an application for renewal pursuant to Title 30, chapter 13, part 2.

7 (4) If a partnership dissolves, winds up its affairs, and liquidates, the registration of the limited
8 liability partnership must remain in effect as to the partnership and the partners during the period of
9 dissolution, winding up, and liquidation and as to the partners subsequent to dissolution, winding up, and
10 liquidation as to debts, obligations, or liabilities for which a partner was not personally liable under
11 35-10-307 or 35-10-629.

12
13 **NEW SECTION. Section 19. Name of limited liability partnerships.** The name of a limited liability
14 partnership must contain the words "limited liability partnership" or, in the case of professionals subject
15 to licensing laws of this state or other states, "professional limited liability partnership" or the abbreviation
16 "l.l.p.", "llp", "p.l.l.p.", or "pllp" as the last words or letters of its name.

17
18 **NEW SECTION. Section 20. Applicability to foreign or interstate commerce.** (1) A partnership
19 formed pursuant to an agreement governed by this chapter may conduct its business, carry on its
20 operations, and have and exercise the powers granted by this chapter in any state, territory, district, or
21 possession of the United States or in any foreign country.

22 (2) It is the intent of the legislature that the legal existence of partnerships formed pursuant to an
23 agreement governed by this chapter must be recognized outside the boundaries of this state and that the
24 laws of this state governing a partnership transacting business outside this state be granted the protection
25 of full faith and credit under the United States constitution.

26 (3) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an
27 agreement governed by this chapter, including the personal liability of partners for debts, obligations, and
28 liabilities of or chargeable to the partnership or another partner, are subject to and governed by the laws
29 of this state.

30 (4) Before transacting business in this state as a limited liability partnership, a partnership formed

1 pursuant to an agreement governed by the laws of any state or jurisdiction other than this state shall:

2 (a) comply with any statutory or administrative registration or filing requirements governing the
3 specific type of business in which the partnership is engaged; and

4 (b) register under [section 17]. If registered, the partnership appoints the secretary of state as its
5 agent for service of process with respect to causes of action arising out of the transaction of business in
6 this state.

7 (5) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an
8 agreement governed by the laws of any state or jurisdiction other than this state, including the liability of
9 partners for debts, obligations, and liabilities of or chargeable to the partnership or another partner, are
10 subject to and governed by the laws of the jurisdiction in which the partnership is formed.

11

12 NEW SECTION. **Section 21. Codification instruction.** [Sections 17 through 20] are intended to
13 be codified as an integral part of Title 35, chapter 10, and the provisions of Title 35, chapter 10, apply to
14 [sections 17 through 20].

15

-END-

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SENATE BILL NO. 340

INTRODUCED BY CRIPPEN, R. JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FORMATION, REGISTRATION, AND REGULATION OF LIMITED LIABILITY PARTNERSHIPS; AND AMENDING SECTIONS 30-13-201, 30-13-202, 30-13-206, 30-13-213, 30-13-217, 35-10-102, 35-10-116, 35-10-307, 35-10-308, 35-10-312, 35-10-401, 35-10-621, 35-10-628, 35-10-629, 35-10-635, AND 35-10-636, MCA."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.



HOUSE STANDING COMMITTEE REPORT

March 14, 1995

Page 1 of 4

Mr. Speaker: We, the committee on Judiciary report that **Senate Bill 340** (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Royal Johnson

And, that such amendments read:

1. Title, line 6.

Following: "30-13-206,"

Insert: "30-13-209,"

2. Page 2, line 19.

Insert: "**Section 4.** Section 30-13-209, MCA, is amended to read:

"30-13-209. **Amendment.** An amendment to registration of an assumed business name ~~shall~~ must be filed with the secretary of state within ~~60 days~~ 1 year after any one of the following events occurs:

(1) there is a change in the name or identity of the person or persons transacting or having interest in the business for which the name is registered;

(2) there is a change in the identity of the county or counties in which the name is or is intended to be used;

(3) a person having an interest in the business with a registered assumed business name withdraws from the business or dies; or

(4) the registrant wishes to change the name of a registered assumed business name."

3. Page 3, line 23.

Strike: "17"

Insert: "18"

SB 340

Committee Vote:

Yes 19, No 0.

HOUSE

4. Page 4, line 22.

Strike: "17"

Insert: "18"

5. Page 4, line 28.

Strike: "20"

Insert: "21"

6. Page 5, line 5.

Following: "of a"

Insert: "limited liability"

7. Page 5, line 8.

Following: "partner"

Insert: "of the limited liability partnership"

8. Page 5, line 11.

Strike: "17"

Insert: "18"

9. Page 5, line 15.

Following: "partner"

Insert: "of a limited liability partnership"

10. Page 5, lines 17 and 18.

Following: "of a"

Insert: "limited liability"

11. Page 7.

Following: line 2

Insert: "(a) the partner is personally liable for the liability
of the partnership under 35-10-307 or 35-10-629; and

(b) one of the following conditions is satisfied:"

12. Page 7, line 3.

Strike: "(a)"

Insert: "(i)"

Re-number: subsequent subsections

13. Page 7, line 5.

Strike: "(b)(i)"

Insert: "(ii)(A)"

Re-number: subsequent subsections

14. Page 8, line 2.

Strike: "indemnification only to the extent that the partner
would be personally liable under"

Insert: "charges as provided in"

15. Page 8, line 6.

Following: "is"

Insert: "not"

16. Page 8, line 7.

Following: "indemnification"

Strike: "only"

Insert: "obligation of the partnership, except"

Strike: "and"

Insert: "or"

17. Page 8, line 8.

Following: "35-10-629"

Insert: "for the liabilities incurred by the indemnified partner"

18. Page 12, lines 22, 24, and 30.

Strike: "17"

Insert: "18"

19. Page 13, line 2.

Following: "must"

Insert: "be considered continued and must"

20. Page 13, line 8.

Following: "must"

Insert: "be considered continued and must"

21. Page 13, lines 14 and 15.

Following: "partnership" on line 14

Strike: remainder of line 14 through "partnership" or" on line 15

Insert: ", "

22. Page 13, line 16.

Following: "'l.l.p.'"

Strike: ", "

Insert: "or"

Following: "'llp',"

Insert: "or other words or abbreviations that may be required or authorized by the laws of the state in which the partnership is formed, including without limitation "professional limited liability partnership" or the abbreviation"

Following: "'p.l.l.p.'"

Strike: ", "

Following: "'pllp"

Strike: "as the last words or letters of its name"

23. Page 14, line 4.

Strike: "17"

Insert: "18"

24. Page 14, lines 12 and 14.

Strike: "17 through 20"

Insert: "18 through 21"

-END-

1 SENATE BILL NO. 340

2 INTRODUCED BY CRIPPEN, R. JOHNSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FORMATION, REGISTRATION, AND
5 REGULATION OF LIMITED LIABILITY PARTNERSHIPS; AND AMENDING SECTIONS 30-13-201, 30-13-202,
6 30-13-206, 30-13-209, 30-13-213, 30-13-217, 35-10-102, 35-10-116, 35-10-307, 35-10-308,
7 35-10-312, 35-10-401, 35-10-621, 35-10-628, 35-10-629, 35-10-635, AND 35-10-636, MCA."

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

10
11 **Section 1.** Section 30-13-201, MCA, is amended to read:

12 "**30-13-201. Definitions.** As used in this part, the following definitions apply:

13 (1) "Assumed business name" means:

14 (a) any business name other than the full, true, and correct name of a person; or

15 (b) the full, true, and correct name of a limited liability partnership.

16 (2) "Person" means any individual, partnership, corporation, or other association."

17
18 **Section 2.** Section 30-13-202, MCA, is amended to read:

19 "**30-13-202. Registration of assumed business name -- when prohibited.** (1) When an application
20 for registration or amendment to the registration of an assumed business name contains an assumed
21 business name which is the same as or ~~deceptively similar to~~ NOT DISTINGUISHABLE ON THE RECORD
22 FROM an assumed business name already registered or ~~to~~ FROM any corporate name, limited partnership
23 name, limited liability company name, limited liability partnership name, trademark, or service mark
24 registered or reserved with the secretary of state, the secretary of state may not register the assumed
25 business name for which application is made.

26 (2) When the applicant is other than a corporation, limited partnership, ~~or~~ limited liability company,
27 or limited liability partnership, the secretary of state may not register the assumed business name for which
28 application is made if the name applied for contains or there is added at the end of the name the word
29 "corporation", "company", "incorporated", or "limited" or an abbreviation of one of the words."

1 **Section 3.** Section 30-13-206, MCA, is amended to read:

2 **"30-13-206. Term and renewal of assumed business name registration.** (1) Registration of an
3 assumed business name is effective for a term of 5 years from the date of registration. Upon application
4 for renewal of registration on forms furnished by the secretary of state, the registration may be renewed
5 for another 5-year term.

6 (2) Not less than 90 days before the expiration date of registration of an assumed business name,
7 the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice
8 to the last-known address of ~~such~~ the applicant.

9 (3) ~~(a) If Subject to subsection (3)(b),~~ if the applicant or person in whose name an assumed
10 business name is registered fails to file an application for renewal with the secretary of state within a
11 90-day period prior to the expiration date of ~~such~~ the registration, the secretary of state shall cancel the
12 registration.

13 **(b) If a limited liability partnership fails to file an application for renewal with the secretary of state**
14 **within a 90-day period prior to the expiration date of the registration, the secretary of state shall again**
15 **notify the limited liability partnership of the pending expiration and give the limited liability partnership an**
16 **additional 90 days within which to renew its registration. If the limited liability partnership fails to renew**
17 **its registration within the second 90-day period, the secretary of state shall cancel the registration and the**
18 **partnership is no longer a limited liability partnership."**

19

20 **SECTION 4. SECTION 30-13-209, MCA, IS AMENDED TO READ:**

21 **"30-13-209. Amendment.** An amendment to registration of an assumed business name ~~shall~~ must
22 be filed with the secretary of state within ~~60 days~~ 1 year after any one of the following events occurs:

23 (1) there is a change in the name or identity of the person or persons transacting or having interest
24 in the business for which the name is registered;

25 (2) there is a change in the identity of the county or counties in which the name is or is intended
26 to be used;

27 (3) a person having an interest in the business with a registered assumed business name withdraws
28 from the business or dies; or

29 (4) the registrant wishes to change the name of a registered assumed business name."
30

1 **Section 5.** Section 30-13-213, MCA, is amended to read:

2 **"30-13-213. Voluntary cancellation of registration of assumed business name.** (1) When the
3 registrant of record of a registered assumed business name wishes to cancel ~~such~~ the registration, ~~he~~ the
4 registrant shall deliver to the secretary of state an executed and verified original affidavit of cancellation
5 of registration of an assumed business name, which ~~shall~~ must include but not be limited to the following
6 information:

- 7 (a) the complete name of the registered assumed business name to be canceled; and
8 (b) the name and address, including the street name and number, if any, of the registrant of record.

9 (2) If the secretary of state finds the affidavit complies with the provisions of this section, ~~he~~ the
10 secretary of state shall file it ~~in his office~~ and mail a letter ~~of acknowledgment~~ acknowledging cancellation
11 of ~~such~~ the filing to the registrant of record."

12

13 **Section 6.** Section 30-13-217, MCA, is amended to read:

14 **"30-13-217. Fees and charges to be established and collected by secretary of state.** (1) The
15 secretary of state shall by administrative rule establish, charge, and collect in accordance with the
16 provisions of this part and commensurate with costs:

- 17 (a) fees for filing documents and issuing certificates; and
18 (b) miscellaneous charges.

19 (2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous
20 charges established under this section.

21 (3) In addition to the fees and charges in subsection (1), the secretary of state shall charge and
22 collect from each limited liability partnership a license fee of:

- 23 (a) ~~\$250~~ \$50 at the time of registration under 30-13-203; and
24 (b) ~~\$250~~ \$50 at the time of each renewal of registration under 30-13-206 through 30-13-208."

25

26 **Section 7.** Section 35-10-102, MCA, is amended to read:

27 **"35-10-102. Definitions.** In this chapter, the following definitions apply:

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

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

30 (a) an order for relief under Title 11 of the United States Code or a comparable order under a

1 successor statute of general application; or

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

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

5 (4) "Limited liability partnership" means a partnership registered under [section 47 18] and includes
6 both domestic and foreign limited liability partnerships.

7 (5) (a) "Partnership" means an association of two or more persons to carry on as co-owners a
8 business for profit formed under 35-10-202, a predecessor law, or a comparable law of another jurisdiction.

9 (b) The term includes but is not limited to a limited liability partnership for all purposes of the laws
10 of this state and all licensing laws, whether for professionals or otherwise.

11 ~~(4)(6)~~ "Partnership agreement" means an agreement, written or oral, among the partners
12 concerning the partnership.

13 ~~(5)(7)~~ "Partnership at will" means a partnership in which the partners have not agreed to remain
14 partners until the expiration of a definite term or the completion of a particular undertaking.

15 ~~(6)(8)~~ "Person" means:

16 (a) an individual;

17 (b) a corporation;

18 (c) a business trust;

19 (d) an estate;

20 (e) a trust;

21 (f) a partnership;

22 (g) an association;

23 (h) a joint venture;

24 (i) a government;

25 (j) a governmental subdivision, agency, or instrumentality; or

26 (k) any other legal or commercial entity.

27 ~~(7)(9)~~ "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest
28 therein.

29 ~~(8)(10)~~ "State" means a state of the United States, the District of Columbia, the Commonwealth
30 of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

1 ~~(9)~~(11) "Statement" means a statement of partnership authority under 35-10-310, a statement of
 2 denial under 35-10-311, a statement of dissociation under 35-10-622, a statement of dissolution under
 3 35-10-627, a statement of merger under 35-10-643, an application for registration of assumed business
 4 name or a renewal of registration under [section ~~17~~ 18], or an amendment, ~~or~~ cancellation, or withdrawal
 5 of the foregoing.

6 ~~(10)~~(12) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and
 7 encumbrance."
 8

9 **Section 8.** Section 35-10-116, MCA, is amended to read:

10 **"35-10-116. Law governing internal affairs.** ~~The~~ Except as provided in [section ~~20~~ 21], the law
 11 of the state in which a partnership has its chief executive office governs the partnership's internal affairs."
 12

13 **Section 9.** Section 35-10-307, MCA, is amended to read:

14 **"35-10-307. Partner's liability.** (1) ~~All~~ Except as provided in subsection (2), all partners are liable
 15 jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or
 16 provided by law.

17 (2) Except as provided in subsections (3) and (4), a partner of a LIMITED LIABILITY partnership is
 18 not liable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise,
 19 for:

20 (a) any debts, obligations, or liabilities of or chargeable to the limited liability partnership or another
 21 partner OF THE LIMITED LIABILITY PARTNERSHIP, whether arising in tort, contract, or otherwise; or

22 (b) the acts or omissions of any other partner or agents, contractors, or employees of the limited
 23 liability partnership if the debts, obligations, or liabilities arise or are incurred while the limited liability
 24 partnership is registered under [section ~~17~~ 18].

25 (3) Subsection (2) does not affect the liability of a partner in a limited liability partnership for the
 26 partner's own negligence, wrongful act, or misconduct, including without limitation an act under
 27 35-10-628(2), or that of any person under the partner's direct supervision and control.

28 (4) Subsection (2) does not affect or impair the ability of a partner OF A LIMITED LIABILITY
 29 PARTNERSHIP to act as a guarantor or surety for, provide collateral for, or otherwise agree to be primarily
 30 or contingently liable for the debts, obligations, or liabilities of a LIMITED LIABILITY partnership.

1 (5) Subsection (2) does not affect the liability of a LIMITED LIABILITY partnership for partnership
 2 debts, obligations, or liabilities to the extent of partnership assets.

3 (6) Unless the partner is personally liable under this section, a partner in a limited liability
 4 partnership is not a proper party to a proceeding by or against a limited liability partnership to recover any
 5 debts, obligations, or liabilities of or chargeable to the limited liability partnership."

6
 7 **Section 10.** Section 35-10-308, MCA, is amended to read:

8 "**35-10-308. Purported partner.** (1) If a person, by words or conduct, purports to be a partner or
 9 consents to being represented by another as a partner in a partnership or with one or more persons who
 10 are not partners, the purported partner is liable to a person to whom the representation is made:

11 (a) if that person, relying on the representation, enters into a transaction with the actual or
 12 purported partnership; and

13 (b) the purported partner would have been personally liable for obligations of the partnership under
 14 35-10-307 or 35-10-629 if the purported partner had been a partner.

15 (2) ~~if~~ Subject to subsection (1), if the representation, either by the purported partner or by a person
 16 with the purported partner's consent, is made in a public manner, the purported partner is liable to a person
 17 who relies upon the purported partnership even if the purported partner is not aware of being held out as
 18 a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported
 19 partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally
 20 with any other person consenting to the representation.

21 ~~(2)~~(3) ~~if~~ Subject to subsection (1), if a person is ~~thus~~ represented to be a partner in an existing
 22 partnership or with one or more persons who are not partners, the purported partner is an agent of persons
 23 consenting to the representation to bind them to the same extent and in the same manner as if the
 24 purported partner were a partner with respect to persons who enter into transactions in reliance upon the
 25 representation. If all of the partners of the existing partnership consent to the representation, a partnership
 26 act or obligation results. ~~if~~ Subject to subsection (1), if fewer than all of the partners of the existing
 27 partnership consent to the representation, the person acting and the partners consenting to the
 28 representation are jointly and severally liable as if the person had actually been a partner.

29 ~~(3)~~(4) A person is not a partner in a partnership merely because the person is named by another
 30 in a statement of partnership authority.

1 ~~(4)~~⁽⁵⁾ A person does not continue to be a partner merely because of a failure to file a statement
2 of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from
3 the partnership."

4

5 **Section 11.** Section 35-10-312, MCA, is amended to read:

6 "**35-10-312. Action by and against partnership and partners.** (1) A partnership may sue and be
7 sued in the name of the partnership.

8 (2) An action may be brought against the partnership and any or all of the partners who are
9 personally liable for obligations of the partnership under 35-10-307 or 35-10-629 in the same action or in
10 separate actions.

11 (3) A judgment against a partnership is not by itself a judgment against a partner. A judgment
12 against a partnership may not be satisfied from a partner's assets unless there is also a judgment against
13 the partner.

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

16 (A) THE PARTNER IS PERSONALLY LIABLE FOR THE LIABILITY OF THE PARTNERSHIP UNDER
17 35-10-307 OR 35-10-629; AND

18 (B) ONE OF THE FOLLOWING CONDITIONS IS SATISFIED:

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

21 ~~(b)~~⁽ⁱⁱ⁾ ~~(i)~~ (ii) (A) an involuntary case under Title 11 of the United States Code has been commenced
22 against the partnership and has not been dismissed within 60 days after commencement or the partnership
23 has commenced a voluntary case under Title 11 of the United States Code and the case has not been
24 dismissed; and

25 ~~(iii)~~^(B) Title 11 of the United States Code permits a judgment creditor of a partner to levy execution
26 against the assets of the partner to satisfy a judgment based on a claim against the partnership;

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

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

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

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

4 (5) This section applies to any partnership liability or obligation resulting from a representation by
5 a partner or purported partner under 35-10-308(1), ~~or (2), or (3).~~"

6

7 **Section 12.** Section 35-10-401, MCA, is amended to read:

8 **"35-10-401. Partner's rights and duties.** (1) A partnership shall establish an account for each
9 partner. The partnership shall credit the account with an amount equal to the money plus the value of any
10 other property, net of the amount of any liabilities, that the partner contributes to the partnership and the
11 partner's share of the partnership profits. The partnership shall charge the account with an amount equal
12 to the money plus the value of any other property, net of the amount of any liabilities, distributed by the
13 partnership to the partner and the partner's share of the partnership losses. However, the partner is
14 personally liable for the charges only as provided in 35-10-307 and 35-10-629.

15 (2) A partnership shall credit each partner's account with an equal share of the partnership profits.
16 A partnership shall charge each partner with a share of the partnership losses, whether capital or operating,
17 in proportion to the partner's share of the profits. However, a partner is personally liable for the
18 indemnification only to the extent that the partner would be personally liable under CHARGES AS
19 PROVIDED IN 35-10-307 and 35-10-629.

20 (3) A partnership shall indemnify each partner for payments reasonably made and liabilities
21 reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership
22 or for the preservation of its business or property. However, a partner is NOT personally liable for the
23 indemnification only OBLIGATION OF THE PARTNERSHIP, EXCEPT to the extent that the partner would be
24 personally liable under 35-10-307 and OR 35-10-629 FOR THE LIABILITIES INCURRED BY THE
25 INDEMNIFIED PARTNER.

26 (4) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance
27 beyond the amount of capital the partner agreed to contribute.

28 (5) A payment made by a partner that gives rise to a partnership obligation under subsection (3)
29 or (4) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

30 (6) Each partner has equal rights in the management and conduct of the partnership business.

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

2 (8) A partner is not entitled to remuneration for services performed for the partnership, except for
3 reasonable compensation for services rendered in winding up the business of the partnership.

4 (9) A person may become a partner only with the consent of all the partners.

5 (10) A difference arising as to a matter in the ordinary course of business of a partnership may be
6 decided by a majority of the partners. An act outside the ordinary course of business of a partnership and
7 an amendment to the partnership agreement may be undertaken only with the consent of all the partners.

8 (11) This section does not affect the obligations of a partnership to other persons under
9 35-10-301."

10

11 **Section 13.** Section 35-10-621, MCA, is amended to read:

12 **"35-10-621. Dissociated partner's liability to other persons.** (1) A partner's dissociation does not
13 of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A
14 dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided
15 in subsection (2).

16 (2) A partner who dissociates without resulting in a dissolution and winding up of the partnership
17 business is personally liable as a partner to the other party ~~in~~ as the result of a partnership obligation
18 incurred in connection with a transaction entered into by the partnership or a surviving partnership under
19 35-10-635 through 35-10-637 and 35-10-641 through 35-10-644 within 2 years after the partner's
20 dissociation only if the other party to the transaction:

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

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

24 (c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622; and

25 (d) the obligation is one for which the partner would be personally liable under 35-10-307 or
26 35-10-629 if the partner had not dissociated.

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

29 (4) A dissociated partner is released from liability for a partnership obligation if a partnership
30 creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material

1 alteration in the nature or time of payment of a partnership obligation."

2

3 **Section 14.** Section 35-10-628, MCA, is amended to read:

4 **"35-10-628. Partner's liability to other partners after dissolution.** (1) Except as provided in
5 35-10-625(3)(b) and subsection (2) of this section, after dissolution a partner is liable to the other partners
6 for the partner's share of any partnership liability incurred under 35-10-626 for which the partner is
7 personally liable under 35-10-307 or 35-10-621.

8 (2) A partner who, with knowledge of the winding up, incurs a partnership liability under
9 35-10-626(2) by an act that is not appropriate for winding up the partnership business is liable to the
10 partnership for any loss caused to the partnership arising from the liability."

11

12 **Section 15.** Section 35-10-629, MCA, is amended to read:

13 **"35-10-629. Settlement of accounts among partners.** (1) In winding up a partnership's business,
14 the assets of the partnership must be applied to discharge its obligations to creditors, including partners
15 who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in
16 accordance with their right to distributions pursuant to subsection (2).

17 (2) Each partner is entitled to a settlement of all partnership accounts upon winding up the
18 partnership business. In settling accounts among the partners, the profits and losses that result from the
19 liquidation of the partnership assets must be credited and charged to the partners' accounts. The
20 partnership shall make a distribution to a partner in an amount equal to that partner's positive account
21 balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance
22 but only to the extent that the negative balance is attributable to debts, obligations, or liabilities for which
23 the partner is personally liable under 35-10-307.

24 (3) To the extent not taken into account in settling the accounts among partners pursuant to
25 subsection (2), each partner shall contribute, in the proportion in which the partner shares partnership
26 losses and to the extent the partner is personally liable under 35-10-307, the amount necessary to satisfy
27 partnership obligations. If a partner fails or is not obligated to contribute, the other partners shall
28 contribute, in the proportions in which the partners share partnership losses, the additional amount
29 necessary to satisfy the partnership obligations. A partner or a partner's legal representative may recover
30 from the other partners any contributions the partner makes to the extent the amount contributed exceeds

1 that partner's share of the partnership obligations but only to the extent the contributions are made because
2 of obligations for which the other partners are personally liable under 35-10-307.

3 (4) The estate of a deceased partner is liable for the partner's obligation to contribute to the
4 partnership under subsections (2) and (3).

5 (5) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by
6 a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute
7 to the partnership under subsections (2) and (3)."

8

9 **Section 16.** Section 35-10-635, MCA, is amended to read:

10 **"35-10-635. Conversion of partnership to limited partnership.** (1) A partnership may be converted
11 to a limited partnership pursuant to this section.

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

15 (3) After the conversion is approved by the partners, the partnership shall file a certificate of limited
16 partnership that satisfies the requirements of 35-12-601 and includes:

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

18 (b) its former name; and

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

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

24 (5) A partner who becomes a limited partner as a result of the conversion remains liable as a
25 partner for an obligation, incurred by the partnership before the conversion takes effect, for which the
26 partner is personally liable under 35-10-307 and 35-10-629. If the other party to a transaction with the
27 limited partnership reasonably believes when entering the transaction that the limited partner is a general
28 partner, the partner is liable for an obligation incurred by the limited partnership within 90 days after the
29 conversion takes effect but only to the extent that the limited partner would have been personally liable for
30 the partnership under 35-10-307 or 35-10-629 immediately prior to the conversion. The partner's liability

1 for all other obligations of the limited partnership incurred after the conversion takes effect is that of a
2 limited partner as provided in Title 35, chapter 12."

3

4 **Section 17.** Section 35-10-636, MCA, is amended to read:

5 **"35-10-636. Conversion of limited partnership to partnership.** (1) A limited partnership may be
6 converted to a partnership pursuant to this section.

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

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

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

12 (5) A limited partner who becomes a partner as a result of the conversion remains liable only as
13 a limited partner for an obligation incurred by the limited partnership before the conversion takes effect.
14 The limited partner is liable as a partner for an obligation of the partnership for which the partner is
15 personally liable under 35-10-307 or 35-10-629 and which arises or is incurred after the conversion takes
16 effect."

17

18 **NEW SECTION. Section 18. Registration of limited liability partnerships.** (1) To become a limited
19 liability partnership, a partnership shall file with the secretary of state an application for registration of an
20 assumed business name, on a form furnished by the secretary of state, that indicates an intention to
21 register as a limited liability partnership under this section. The registration of a limited liability partnership
22 under this section is subject to all of the terms and conditions otherwise applicable to the registration of
23 an assumed business name pursuant to Title 30, chapter 13, part 2.

24 (2) The application for registration of an assumed business name must be executed by one or more
25 partners authorized to execute the application and registration.

26 (3) The secretary of state shall register as a limited liability partnership any partnership that
27 substantially complies with Title 30, chapter 13, part 2, and this section.

28 (4) A partnership's registration under this section is effective when the secretary of state files the
29 partnership's application for registration of an assumed business name under subsection (1) and remains
30 in effect until it is canceled by the secretary of state pursuant to Title 30, chapter 13, part 2.

1 (5) The fact that an application for registration of an assumed business name under this section
2 or any renewals of the assumed business name is on file with the office of the secretary of state is notice
3 that the partnership is a limited liability partnership and is notice of all other facts set forth in the
4 application.

5 (6) The secretary of state shall provide necessary forms for the registration of a limited liability
6 partnership under subsection (1) or any renewals of registration.

7

8 **NEW SECTION. Section 19. Effect of registration -- entity unchanged.** (1) A partnership that has
9 registered under [section ~~47~~ 18] is for all purposes of the laws of this state, including but not limited to all
10 licensing laws, whether for professionals or otherwise, the same entity that existed before the registration.

11 (2) When registration of a partnership under [section ~~47~~ 18] takes effect:

12 (a) all tangible and intangible property, whether real or personal, owned by the partnership remains
13 vested in the partnership;

14 (b) all debts, obligations, or liabilities of and chargeable to the partnership continue as debts,
15 obligations, or liabilities of the partnership; and

16 (c) any actions or proceedings pending by or against the partnership may be continued as if the
17 registration under [section ~~47~~ 18] had not occurred.

18 (3) If a partnership dissolves and its business continues without liquidation of the partnership
19 affairs, the registration of the limited liability partnership must **BE CONSIDERED CONTINUED AND MUST**
20 continue to be applicable to the partnership continuing the business. The partnership continuing the
21 business is considered to have filed any documents required or permitted under this section that were filed
22 by the dissolved partnership. The partnership continuing the business shall renew its registration at the
23 time the dissolved partnership would have been required to file an application for renewal pursuant to Title
24 30, chapter 13, part 2.

25 (4) If a partnership dissolves, winds up its affairs, and liquidates, the registration of the limited
26 liability partnership must **BE CONSIDERED CONTINUED AND MUST** remain in effect as to the partnership
27 and the partners during the period of dissolution, winding up, and liquidation and as to the partners
28 subsequent to dissolution, winding up, and liquidation as to debts, obligations, or liabilities for which a
29 partner was not personally liable under 35-10-307 or 35-10-629.

30

1 **NEW SECTION. Section 20. Name of limited liability partnerships.** The name of a limited liability
2 partnership must contain the words "limited liability partnership" ~~or, in the case of professionals subject~~
3 ~~to licensing laws of this state or other states, "professional limited liability partnership" or, the abbreviation~~
4 "l.l.p.", OR "llp", OR OTHER WORDS OR ABBREVIATIONS THAT MAY BE REQUIRED OR AUTHORIZED
5 BY THE LAWS OF THE STATE IN WHICH THE PARTNERSHIP IS FORMED, INCLUDING WITHOUT
6 LIMITATION "PROFESSIONAL LIMITED LIABILITY PARTNERSHIP" OR THE ABBREVIATION "p.l.l.p." or
7 "pllp" as the last words or letters of its name.

8
9 **NEW SECTION. Section 21. Applicability to foreign or interstate commerce.** (1) A partnership
10 formed pursuant to an agreement governed by this chapter may conduct its business, carry on its
11 operations, and have and exercise the powers granted by this chapter in any state, territory, district, or
12 possession of the United States or in any foreign country.

13 (2) It is the intent of the legislature that the legal existence of partnerships formed pursuant to an
14 agreement governed by this chapter must be recognized outside the boundaries of this state and that the
15 laws of this state governing a partnership transacting business outside this state be granted the protection
16 of full faith and credit under the United States constitution.

17 (3) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an
18 agreement governed by this chapter, including the personal liability of partners for debts, obligations, and
19 liabilities of or chargeable to the partnership or another partner, are subject to and governed by the laws
20 of this state.

21 (4) Before transacting business in this state as a limited liability partnership, a partnership formed
22 pursuant to an agreement governed by the laws of any state or jurisdiction other than this state shall:

23 (a) comply with any statutory or administrative registration or filing requirements governing the
24 specific type of business in which the partnership is engaged; and

25 (b) register under [section ~~47~~ 18]. If registered, the partnership appoints the secretary of state as
26 its agent for service of process with respect to causes of action arising out of the transaction of business
27 in this state.

28 (5) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an
29 agreement governed by the laws of any state or jurisdiction other than this state, including the liability of
30 partners for debts, obligations, and liabilities of or chargeable to the partnership or another partner, are

1 subject to and governed by the laws of the jurisdiction in which the partnership is formed.

2

3 NEW SECTION. Section 22. Codification instruction. [Sections ~~17 through 20~~ 18 THROUGH 21]
4 are intended to be codified as an integral part of Title 35, chapter 10, and the provisions of Title 35,
5 chapter 10, apply to [sections ~~17 through 20~~ 18 THROUGH 21].

6

-END-

SENATE BILL NO. 340

INTRODUCED BY CRIPPEN, R. JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FORMATION, REGISTRATION, AND REGULATION OF LIMITED LIABILITY PARTNERSHIPS; AND AMENDING SECTIONS 30-13-201, 30-13-202, 30-13-206, 30-13-209, 30-13-213, 30-13-217, 35-10-102, 35-10-116, 35-10-307, 35-10-308, 35-10-312, 35-10-401, 35-10-621, 35-10-628, 35-10-629, 35-10-635, AND 35-10-636, MCA."

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

Section 1. Section 30-13-201, MCA, is amended to read:

"30-13-201. Definitions. As used in this part, the following definitions apply:

(1) "Assumed business name" means:

(a) any business name other than the full, true, and correct name of a person; or

(b) the full, true, and correct name of a limited liability partnership.

(2) "Person" means any individual, partnership, corporation, or other association."

Section 2. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name -- when prohibited. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or ~~deceptively similar to~~ NOT DISTINGUISHABLE ON THE RECORD FROM an assumed business name already registered or ~~to~~ FROM any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is other than a corporation, limited partnership, ~~or~~ limited liability company, or limited liability partnership, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of the words."

1 **Section 3.** Section 30-13-206, MCA, is amended to read:

2 **"30-13-206. Term and renewal of assumed business name registration.** (1) Registration of an
3 assumed business name is effective for a term of 5 years from the date of registration. Upon application
4 for renewal of registration on forms furnished by the secretary of state, the registration may be renewed
5 for another 5-year term.

6 (2) Not less than 90 days before the expiration date of registration of an assumed business name,
7 the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice
8 to the last-known address of ~~such~~ the applicant.

9 (3) ~~(a) If~~ Subject to subsection (3)(b), if the applicant or person in whose name an assumed
10 business name is registered fails to file an application for renewal with the secretary of state within a
11 90-day period prior to the expiration date of ~~such~~ the registration, the secretary of state shall cancel the
12 registration.

13 (b) If a limited liability partnership fails to file an application for renewal with the secretary of state
14 within a 90-day period prior to the expiration date of the registration, the secretary of state shall again
15 notify the limited liability partnership of the pending expiration and give the limited liability partnership an
16 additional 90 days within which to renew its registration. If the limited liability partnership fails to renew
17 its registration within the second 90-day period, the secretary of state shall cancel the registration and the
18 partnership is no longer a limited liability partnership."

19

20 **SECTION 4. SECTION 30-13-209, MCA, IS AMENDED TO READ:**

21 **"30-13-209. Amendment.** An amendment to registration of an assumed business name ~~shall~~ must
22 be filed with the secretary of state within ~~60 days~~ 1 year after any one of the following events occurs:

23 (1) there is a change in the name or identity of the person or persons transacting or having interest
24 in the business for which the name is registered;

25 (2) there is a change in the identity of the county or counties in which the name is or is intended
26 to be used;

27 (3) a person having an interest in the business with a registered assumed business name withdraws
28 from the business or dies; or

29 (4) the registrant wishes to change the name of a registered assumed business name."
30

1 **Section 5.** Section 30-13-213, MCA, is amended to read:

2 "**30-13-213. Voluntary cancellation of registration of assumed business name.** (1) When the
3 registrant of record of a registered assumed business name wishes to cancel ~~such the~~ registration, ~~he the~~
4 registrant shall deliver to the secretary of state an executed and verified original affidavit of cancellation
5 of registration of an assumed business name, which ~~shall~~ must include but not be limited to the following
6 information:

7 (a) the complete name of the registered assumed business name to be canceled; and

8 (b) the name and address, including the street name and number, if any, of the registrant of record.

9 (2) If the secretary of state finds the affidavit complies with the provisions of this section, ~~he the~~
10 secretary of state shall file it ~~in his office~~ and mail a letter ~~of acknowledgment~~ acknowledging cancellation
11 of ~~such the~~ filing to the registrant of record."

12

13 **Section 6.** Section 30-13-217, MCA, is amended to read:

14 "**30-13-217. Fees and charges to be established and collected by secretary of state.** (1) The
15 secretary of state shall by administrative rule establish, charge, and collect in accordance with the
16 provisions of this part and commensurate with costs:

17 (a) fees for filing documents and issuing certificates; and

18 (b) miscellaneous charges.

19 (2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous
20 charges established under this section.

21 (3) In addition to the fees and charges in subsection (1), the secretary of state shall charge and
22 collect from each limited liability partnership a license fee of:

23 (a) ~~\$250~~ \$50 at the time of registration under 30-13-203; and

24 (b) ~~\$250~~ \$50 at the time of each renewal of registration under 30-13-206 through 30-13-208."

25

26 **Section 7.** Section 35-10-102, MCA, is amended to read:

27 "**35-10-102. Definitions.** In this chapter, the following definitions apply:

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

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

30 (a) an order for relief under Title 11 of the United States Code or a comparable order under a

1 successor statute of general application; or

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

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

5 (4) "Limited liability partnership" means a partnership registered under [section 47 18] and includes
6 both domestic and foreign limited liability partnerships.

7 (5) (a) "Partnership" means an association of two or more persons to carry on as co-owners a
8 business for profit formed under 35-10-202, a predecessor law, or a comparable law of another jurisdiction.

9 (b) The term includes but is not limited to a limited liability partnership for all purposes of the laws
10 of this state and all licensing laws, whether for professionals or otherwise.

11 ~~(4)~~(6) "Partnership agreement" means an agreement, written or oral, among the partners
12 concerning the partnership.

13 ~~(6)~~(7) "Partnership at will" means a partnership in which the partners have not agreed to remain
14 partners until the expiration of a definite term or the completion of a particular undertaking.

15 ~~(6)~~(8) "Person" means:

16 (a) an individual;

17 (b) a corporation;

18 (c) a business trust;

19 (d) an estate;

20 (e) a trust;

21 (f) a partnership;

22 (g) an association;

23 (h) a joint venture;

24 (i) a government;

25 (j) a governmental subdivision, agency, or instrumentality; or

26 (k) any other legal or commercial entity.

27 ~~(7)~~(9) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest
28 therein.

29 ~~(8)~~(10) "State" means a state of the United States, the District of Columbia, the Commonwealth
30 of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

1 ~~(9)(11)~~ "Statement" means a statement of partnership authority under 35-10-310, a statement of
 2 denial under 35-10-311, a statement of dissociation under 35-10-622, a statement of dissolution under
 3 35-10-627, a statement of merger under 35-10-643, an application for registration of assumed business
 4 name or a renewal of registration under [section ~~47~~ 18], or an amendment, or cancellation, or withdrawal
 5 of the foregoing.

6 ~~(10)(12)~~ "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and
 7 encumbrance."

8
 9 **Section 8.** Section 35-10-116, MCA, is amended to read:

10 **"35-10-116. Law governing internal affairs.** ~~The~~ Except as provided in [section ~~20~~ 21], the law
 11 of the state in which a partnership has its chief executive office governs the partnership's internal affairs."
 12

13 **Section 9.** Section 35-10-307, MCA, is amended to read:

14 **"35-10-307. Partner's liability.** (1) ~~All~~ Except as provided in subsection (2), all partners are liable
 15 jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or
 16 provided by law.

17 (2) Except as provided in subsections (3) and (4), a partner of a LIMITED LIABILITY partnership is
 18 not liable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise,
 19 for:

20 (a) any debts, obligations, or liabilities of or chargeable to the limited liability partnership or another
 21 partner OF THE LIMITED LIABILITY PARTNERSHIP, whether arising in tort, contract, or otherwise; or

22 (b) the acts or omissions of any other partner or agents, contractors, or employees of the limited
 23 liability partnership if the debts, obligations, or liabilities arise or are incurred while the limited liability
 24 partnership is registered under [section ~~47~~ 18].

25 (3) Subsection (2) does not affect the liability of a partner in a limited liability partnership for the
 26 partner's own negligence, wrongful act, or misconduct, including without limitation an act under
 27 35-10-628(2), or that of any person under the partner's direct supervision and control.

28 (4) Subsection (2) does not affect or impair the ability of a partner OF A LIMITED LIABILITY
 29 PARTNERSHIP to act as a guarantor or surety for, provide collateral for, or otherwise agree to be primarily
 30 or contingently liable for the debts, obligations, or liabilities of a LIMITED LIABILITY partnership.

1 (5) Subsection (2) does not affect the liability of a LIMITED LIABILITY partnership for partnership
 2 debts, obligations, or liabilities to the extent of partnership assets.

3 (6) Unless the partner is personally liable under this section, a partner in a limited liability
 4 partnership is not a proper party to a proceeding by or against a limited liability partnership to recover any
 5 debts, obligations, or liabilities of or chargeable to the limited liability partnership."

6
 7 **Section 10.** Section 35-10-308, MCA, is amended to read:

8 "**35-10-308. Purported partner.** (1) If a person, by words or conduct, purports to be a partner or
 9 consents to being represented by another as a partner in a partnership or with one or more persons who
 10 are not partners, the purported partner is liable to a person to whom the representation is made;

11 (a) if that person, relying on the representation, enters into a transaction with the actual or
 12 purported partnership; and

13 (b) the purported partner would have been personally liable for obligations of the partnership under
 14 35-10-307 or 35-10-629 if the purported partner had been a partner.

15 (2) ~~Subject to subsection (1),~~ if the representation, either by the purported partner or by a person
 16 with the purported partner's consent, is made in a public manner, the purported partner is liable to a person
 17 who relies upon the purported partnership even if the purported partner is not aware of being held out as
 18 a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported
 19 partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally
 20 with any other person consenting to the representation.

21 ~~(2)(3)~~ (3) ~~Subject to subsection (1),~~ if a person is ~~thus~~ represented to be a partner in an existing
 22 partnership or with one or more persons who are not partners, the purported partner is an agent of persons
 23 consenting to the representation to bind them to the same extent and in the same manner as if the
 24 purported partner were a partner with respect to persons who enter into transactions in reliance upon the
 25 representation. If all of the partners of the existing partnership consent to the representation, a partnership
 26 act or obligation results. ~~Subject to subsection (1),~~ if fewer than all of the partners of the existing
 27 partnership consent to the representation, the person acting and the partners consenting to the
 28 representation are jointly and severally liable as if the person had actually been a partner.

29 ~~(3)(4)~~ (4) A person is not a partner in a partnership merely because the person is named by another
 30 in a statement of partnership authority.

1 ~~(4)~~(5) A person does not continue to be a partner merely because of a failure to file a statement
2 of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from
3 the partnership."
4

5 **Section 11.** Section 35-10-312, MCA, is amended to read:

6 "**35-10-312. Action by and against partnership and partners.** (1) A partnership may sue and be
7 sued in the name of the partnership.

8 (2) An action may be brought against the partnership and any or all of the partners who are
9 personally liable for obligations of the partnership under 35-10-307 or 35-10-629 in the same action or in
10 separate actions.

11 (3) A judgment against a partnership is not by itself a judgment against a partner. A judgment
12 against a partnership may not be satisfied from a partner's assets unless there is also a judgment against
13 the partner.

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

16 (A) THE PARTNER IS PERSONALLY LIABLE FOR THE LIABILITY OF THE PARTNERSHIP UNDER
17 35-10-307 OR 35-10-629; AND

18 (B) ONE OF THE FOLLOWING CONDITIONS IS SATISFIED:

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

21 ~~(b)~~(i) (II) (A) an involuntary case under Title 11 of the United States Code has been commenced
22 against the partnership and has not been dismissed within 60 days after commencement or the partnership
23 has commenced a voluntary case under Title 11 of the United States Code and the case has not been
24 dismissed; and

25 ~~(b)~~(B) Title 11 of the United States Code permits a judgment creditor of a partner to levy execution
26 against the assets of the partner to satisfy a judgment based on a claim against the partnership;

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

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

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

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

4 (5) This section applies to any partnership liability or obligation resulting from a representation by
5 a partner or purported partner under 35-10-308(1), ~~or (2), or (3).~~"

6

7 **Section 12.** Section 35-10-401, MCA, is amended to read:

8 **"35-10-401. Partner's rights and duties.** (1) A partnership shall establish an account for each
9 partner. The partnership shall credit the account with an amount equal to the money plus the value of any
10 other property, net of the amount of any liabilities, that the partner contributes to the partnership and the
11 partner's share of the partnership profits. The partnership shall charge the account with an amount equal
12 to the money plus the value of any other property, net of the amount of any liabilities, distributed by the
13 partnership to the partner and the partner's share of the partnership losses. However, the partner is
14 personally liable for the charges only as provided in 35-10-307 and 35-10-629.

15 (2) A partnership shall credit each partner's account with an equal share of the partnership profits.
16 A partnership shall charge each partner with a share of the partnership losses, whether capital or operating,
17 in proportion to the partner's share of the profits. However, a partner is personally liable for the
18 indemnification only to the extent that the partner would be personally liable under CHARGES AS
19 PROVIDED IN 35-10-307 and 35-10-629.

20 (3) A partnership shall indemnify each partner for payments reasonably made and liabilities
21 reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership
22 or for the preservation of its business or property. However, a partner is NOT personally liable for the
23 indemnification ~~only~~ OBLIGATION OF THE PARTNERSHIP, EXCEPT to the extent that the partner would be
24 personally liable under 35-10-307 and OR 35-10-629 FOR THE LIABILITIES INCURRED BY THE
25 INDEMNIFIED PARTNER.

26 (4) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance
27 beyond the amount of capital the partner agreed to contribute.

28 (5) A payment made by a partner that gives rise to a partnership obligation under subsection (3)
29 or (4) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

30 (6) Each partner has equal rights in the management and conduct of the partnership business.

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

2 (8) A partner is not entitled to remuneration for services performed for the partnership, except for
3 reasonable compensation for services rendered in winding up the business of the partnership.

4 (9) A person may become a partner only with the consent of all the partners.

5 (10) A difference arising as to a matter in the ordinary course of business of a partnership may be
6 decided by a majority of the partners. An act outside the ordinary course of business of a partnership and
7 an amendment to the partnership agreement may be undertaken only with the consent of all the partners.

8 (11) This section does not affect the obligations of a partnership to other persons under
9 35-10-301."

10
11 **Section 13.** Section 35-10-621, MCA, is amended to read:

12 **"35-10-621. Dissociated partner's liability to other persons.** (1) A partner's dissociation does not
13 of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A
14 dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided
15 in subsection (2).

16 (2) A partner who dissociates without resulting in a dissolution and winding up of the partnership
17 business is personally liable as a partner to the other party ~~in~~ as the result of a partnership obligation
18 incurred in connection with a transaction entered into by the partnership or a surviving partnership under
19 35-10-635 through 35-10-637 and 35-10-641 through 35-10-644 within 2 years after the partner's
20 dissociation only if the other party to the transaction:

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

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

24 (c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622; and

25 (d) the obligation is one for which the partner would be personally liable under 35-10-307 or
26 35-10-629 if the partner had not dissociated.

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

29 (4) A dissociated partner is released from liability for a partnership obligation if a partnership
30 creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material

1 alteration in the nature or time of payment of a partnership obligation."
2

3 **Section 14.** Section 35-10-628, MCA, is amended to read:

4 **"35-10-628. Partner's liability to other partners after dissolution.** (1) Except as provided in
5 35-10-625(3)(b) and subsection (2) of this section, after dissolution a partner is liable to the other partners
6 for the partner's share of any partnership liability incurred under 35-10-626 for which the partner is
7 personally liable under 35-10-307 or 35-10-621.

8 (2) A partner who, with knowledge of the winding up, incurs a partnership liability under
9 35-10-626(2) by an act that is not appropriate for winding up the partnership business is liable to the
10 partnership for any loss caused to the partnership arising from the liability."
11

12 **Section 15.** Section 35-10-629, MCA, is amended to read:

13 **"35-10-629. Settlement of accounts among partners.** (1) In winding up a partnership's business,
14 the assets of the partnership must be applied to discharge its obligations to creditors, including partners
15 who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in
16 accordance with their right to distributions pursuant to subsection (2).

17 (2) Each partner is entitled to a settlement of all partnership accounts upon winding up the
18 partnership business. In settling accounts among the partners, the profits and losses that result from the
19 liquidation of the partnership assets must be credited and charged to the partners' accounts. The
20 partnership shall make a distribution to a partner in an amount equal to that partner's positive account
21 balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance
22 but only to the extent that the negative balance is attributable to debts, obligations, or liabilities for which
23 the partner is personally liable under 35-10-307.

24 (3) To the extent not taken into account in settling the accounts among partners pursuant to
25 subsection (2), each partner shall contribute, in the proportion in which the partner shares partnership
26 losses and to the extent the partner is personally liable under 35-10-307, the amount necessary to satisfy
27 partnership obligations. If a partner fails or is not obligated to contribute, the other partners shall
28 contribute, in the proportions in which the partners share partnership losses, the additional amount
29 necessary to satisfy the partnership obligations. A partner or a partner's legal representative may recover
30 from the other partners any contributions the partner makes to the extent the amount contributed exceeds

1 that partner's share of the partnership obligations but only to the extent the contributions are made because
2 of obligations for which the other partners are personally liable under 35-10-307.

3 (4) The estate of a deceased partner is liable for the partner's obligation to contribute to the
4 partnership under subsections (2) and (3).

5 (5) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by
6 a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute
7 to the partnership under subsections (2) and (3)."

8

9 **Section 16.** Section 35-10-635, MCA, is amended to read:

10 **"35-10-635. Conversion of partnership to limited partnership.** (1) A partnership may be converted
11 to a limited partnership pursuant to this section.

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

15 (3) After the conversion is approved by the partners, the partnership shall file a certificate of limited
16 partnership that satisfies the requirements of 35-12-601 and includes:

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

18 (b) its former name; and

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

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

24 (5) A partner who becomes a limited partner as a result of the conversion remains liable as a
25 partner for an obligation, incurred by the partnership before the conversion takes effect, for which the
26 partner is personally liable under 35-10-307 and 35-10-629. If the other party to a transaction with the
27 limited partnership reasonably believes when entering the transaction that the limited partner is a general
28 partner, the partner is liable for an obligation incurred by the limited partnership within 90 days after the
29 conversion takes effect but only to the extent that the limited partner would have been personally liable for
30 the partnership under 35-10-307 or 35-10-629 immediately prior to the conversion. The partner's liability

1 for all other obligations of the limited partnership incurred after the conversion takes effect is that of a
2 limited partner as provided in Title 35, chapter 12."

3

4 **Section 17.** Section 35-10-636, MCA, is amended to read:

5 **"35-10-636. Conversion of limited partnership to partnership.** (1) A limited partnership may be
6 converted to a partnership pursuant to this section.

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

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

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

12 (5) A limited partner who becomes a partner as a result of the conversion remains liable only as
13 a limited partner for an obligation incurred by the limited partnership before the conversion takes effect.
14 The limited partner is liable as a partner for an obligation of the partnership for which the partner is
15 personally liable under 35-10-307 or 35-10-629 and which arises or is incurred after the conversion takes
16 effect."

17

18 **NEW SECTION. Section 18. Registration of limited liability partnerships.** (1) To become a limited
19 liability partnership, a partnership shall file with the secretary of state an application for registration of an
20 assumed business name, on a form furnished by the secretary of state, that indicates an intention to
21 register as a limited liability partnership under this section. The registration of a limited liability partnership
22 under this section is subject to all of the terms and conditions otherwise applicable to the registration of
23 an assumed business name pursuant to Title 30, chapter 13, part 2.

24 (2) The application for registration of an assumed business name must be executed by one or more
25 partners authorized to execute the application and registration.

26 (3) The secretary of state shall register as a limited liability partnership any partnership that
27 substantially complies with Title 30, chapter 13, part 2, and this section.

28 (4) A partnership's registration under this section is effective when the secretary of state files the
29 partnership's application for registration of an assumed business name under subsection (1) and remains
30 in effect until it is canceled by the secretary of state pursuant to Title 30, chapter 13, part 2.

1 (5) The fact that an application for registration of an assumed business name under this section
2 or any renewals of the assumed business name is on file with the office of the secretary of state is notice
3 that the partnership is a limited liability partnership and is notice of all other facts set forth in the
4 application.

5 (6) The secretary of state shall provide necessary forms for the registration of a limited liability
6 partnership under subsection (1) or any renewals of registration.

7
8 **NEW SECTION. Section 19. Effect of registration -- entity unchanged.** (1) A partnership that has
9 registered under [section ~~47~~ 18] is for all purposes of the laws of this state, including but not limited to all
10 licensing laws, whether for professionals or otherwise, the same entity that existed before the registration.

11 (2) When registration of a partnership under [section ~~47~~ 18] takes effect:

12 (a) all tangible and intangible property, whether real or personal, owned by the partnership remains
13 vested in the partnership;

14 (b) all debts, obligations, or liabilities of and chargeable to the partnership continue as debts,
15 obligations, or liabilities of the partnership; and

16 (c) any actions or proceedings pending by or against the partnership may be continued as if the
17 registration under [section ~~47~~ 18] had not occurred.

18 (3) If a partnership dissolves and its business continues without liquidation of the partnership
19 affairs, the registration of the limited liability partnership must **BE CONSIDERED CONTINUED AND MUST**
20 continue to be applicable to the partnership continuing the business. The partnership continuing the
21 business is considered to have filed any documents required or permitted under this section that were filed
22 by the dissolved partnership. The partnership continuing the business shall renew its registration at the
23 time the dissolved partnership would have been required to file an application for renewal pursuant to Title
24 30, chapter 13, part 2.

25 (4) If a partnership dissolves, winds up its affairs, and liquidates, the registration of the limited
26 liability partnership must **BE CONSIDERED CONTINUED AND MUST** remain in effect as to the partnership
27 and the partners during the period of dissolution, winding up, and liquidation and as to the partners
28 subsequent to dissolution, winding up, and liquidation as to debts, obligations, or liabilities for which a
29 partner was not personally liable under 35-10-307 or 35-10-629.

30

1 **NEW SECTION. Section 20. Name of limited liability partnerships.** The name of a limited liability
 2 partnership must contain the words "limited liability partnership" ~~or, in the case of professionals subject~~
 3 ~~to licensing laws of this state or other states, "professional limited liability partnership" or,~~ the abbreviation
 4 "l.l.p." OR "llp", OR OTHER WORDS OR ABBREVIATIONS THAT MAY BE REQUIRED OR AUTHORIZED
 5 BY THE LAWS OF THE STATE IN WHICH THE PARTNERSHIP IS FORMED, INCLUDING WITHOUT
 6 LIMITATION "PROFESSIONAL LIMITED LIABILITY PARTNERSHIP" OR THE ABBREVIATION "p.l.l.p." ~~or~~
 7 "pllp" ~~as the last words or letters of its name.~~

8
 9 **NEW SECTION. Section 21. Applicability to foreign or interstate commerce.** (1) A partnership
 10 formed pursuant to an agreement governed by this chapter may conduct its business, carry on its
 11 operations, and have and exercise the powers granted by this chapter in any state, territory, district, or
 12 possession of the United States or in any foreign country.

13 (2) It is the intent of the legislature that the legal existence of partnerships formed pursuant to an
 14 agreement governed by this chapter must be recognized outside the boundaries of this state and that the
 15 laws of this state governing a partnership transacting business outside this state be granted the protection
 16 of full faith and credit under the United States constitution.

17 (3) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an
 18 agreement governed by this chapter, including the personal liability of partners for debts, obligations, and
 19 liabilities of or chargeable to the partnership or another partner, are subject to and governed by the laws
 20 of this state.

21 (4) Before transacting business in this state as a limited liability partnership, a partnership formed
 22 pursuant to an agreement governed by the laws of any state or jurisdiction other than this state shall:

23 (a) comply with any statutory or administrative registration or filing requirements governing the
 24 specific type of business in which the partnership is engaged; and

25 (b) register under [section ~~47~~ 18]. If registered, the partnership appoints the secretary of state as
 26 its agent for service of process with respect to causes of action arising out of the transaction of business
 27 in this state.

28 (5) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an
 29 agreement governed by the laws of any state or jurisdiction other than this state, including the liability of
 30 partners for debts, obligations, and liabilities of or chargeable to the partnership or another partner, are

1 subject to and governed by the laws of the jurisdiction in which the partnership is formed.

2

3 **NEW SECTION. Section 22. Codification instruction.** [Sections ~~17 through 20~~ **18 THROUGH 21**]
4 are intended to be codified as an integral part of Title 35, chapter 10, and the provisions of Title 35,
5 chapter 10, apply to [sections ~~17 through 20~~ **18 THROUGH 21**].

6

-END-