

# Michigan Law Revision Commission

FIFTEENTH ANNUAL REPORT  
1980

# MICHIGAN LAW REVISION COMMISSION

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TOM DOWNS, *Vice Chairman*  
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MICHIGAN LAW REVISION COMMISSION  
Fifteenth Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Law Revision Commission hereby presents its fifteenth annual report pursuant to Section 14(e) of Act No. 412 of the Public Acts of 1965.

The Commission, created by Section 12 of that Act, consists of the chairperson and ranking minority members of the Committees on Judiciary of the Senate and House of Representatives, the Director of the Legislative Service Bureau, being the five ex-officio members, and four members appointed by the Legislative Council. Terms of appointed Commissioners are staggered. The Legislative Council designates the Chairman of the Commission.

The ex-officio members of the Commission during 1980 were Senator Basil W. Brown of Highland Park, Senator Donald E. Bishop of Rochester, Representative Dennis Hertel of Detroit, Representative Richard D. Fessler of Pontiac, and Elliott Smith, Director of the Legislative Service Bureau. Representative Mark Clodfelter of Flint also served as an ex-officio member for part of the year. The appointed members of the Commission were Tom Downs, Jason L. Honigman, David Lebenbom, and Richard C. Van Dusen. Jason L. Honigman was Chairman and Tom Downs was Vice Chairman of the Commission. Professor Jerold Israel of the University of Michigan Law School served as Executive Secretary.

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reform.
2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.
3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers and the public generally as to defects and anachronisms in the law.
4. To recommend, from time to time, such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal into harmony with modern conditions.

The problems to which the Commission directs its studies are largely identified by a study of statute and case law of Michigan and legal literature by the Commission members and Executive Secretary. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

The Commission's efforts during the past year have been devoted primarily to three areas. First, Commission members met with legislative committees to secure disposition of 12 proposals recommended by the Commission. Meetings with legislature members also have focused upon possible subjects for future study.

Second, the Commission examined suggested legislation proposed by various groups involved in law revision activity. These proposals included legislation advanced by the Council of State Governments, the National Conference of Commissioners on Uniform State Laws, and the Law Revision Commissions of various jurisdictions within and without the United States (e.g., California, New York, and British Columbia).

Finally, the Commission considered various problems relating to special aspects of current Michigan law suggested by its own review of Michigan decisions and the recommendations of others.

As in previous years, the Commission studied various proposals that did not lead to legislative recommendations. In the case of several Uniform or Model Acts, we found that the subjects treated had been considered by the Michigan legislature in recent legislation. Similarly, various aspects of Michigan law were examined, but were viewed as inappropriate for legislative recommendation at this time. Topics in this category included punitive damages and compensation for the use of items that are the subject of claim and delivery actions. Five of the topics studied did lead to recommendations for legislative action. These are:

- (1) Technical Amendments to the Business Corporations Act
- (2) Amendment of Business Entity Exemption to Usury Laws
- (3) Amendment of R.J.A. Section 308 (Court of Appeals Jurisdiction) In Accordance with R.J.A. Section 861
- (4) Amendment of Probate Code Section 767 (Interest on Judgments) with R.J.A. Section 6013
- (5) Revised Uniform Limited Partnership Act

Recommendations and proposed statutes on the above topics accompany this report.

In addition to the new recommendations contained in this report, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken by the 80th Michigan Legislature.

(1) Construction Debt -- Former S.B. 908, before Senate Committee on State Affairs. See Recommendations of 1976 Annual Report, page 10.

(2) Unlawful Assessments -- Former H.B. 5319, before House Committee on Judiciary. See Recommendations of 1976 Annual Report, page 44.

(3) Marital Agreements/Divorce Amendment -- Former S.B. 906, before Senate Committee on Judiciary. During the 1978 session, an earlier version of this proposal, S.B. 632, passed the Senate and was before the House Committee on Judiciary. See Recommendations of 1976 Annual Report, page 38.

(4) Elimination of Reference to the Justice of the Peace: Provision on the Sheriff's Service of Process -- Former H.B. 5329. This proposal passed the House in 1980 and was before the Senate Committee on Judiciary. See Recommendations of 1976 Annual Report, page 74.

(5) Appeals to the Tax Tribunal -- Former H.B. 5318, before the House Committee on Judiciary. See Recommendations of 1978 Annual Report, page 9.

(6) Commercial Mortgage Foreclosure Act -- Former H.B. 5317, before the House Committee on Judiciary. See Recommendations of 1978 Annual Report, page 13.

(7) In Rem Jurisdiction by Attachment or Garnishment Before Judgment -- H.B. 5316. This bill passed the House in 1980 and was before the Senate Committee on Judiciary. See Recommendations of 1978 Annual Report, page 22.

(8) Disclosure of Treatment as an Element of the Psychologist/Psychiatrist-Patient Privilege -- Former H.B. 5297, before House Committee on Mental Health. See Recommendations of 1978 Annual Report, page 28.

(9) Elimination of various Statutory References to Abolished Courts -- Former S.B. 1233, before Senate Committee on Judiciary. See Recommendations of the 1979 Annual Report, page 9.

(10) Uniform Federal Lien Registration Act -- see Recommendations of the 1979 Annual Report, page 26.

Topics on the current study agenda of the Commission are:

- (1) Amendments to Article 8 -- Uniform Commercial Code
- (2) Eliminating Statutory References to Justice of the Peace and Other Abolished Courts
- (3) Enforcement of Administrative Agency Subpoenas
- (4) Revision of the Administrative Procedure Act
- (5) Transfer of A Business Having Liquor Sales As A Minor Portion of Its Activities
- (6) Product Liability, Model Acts
- (7) Revised Uniform Extradition and Rendition Act
- (8) Applicability of Statute of Limitations to Actions to Recover Stolen or Lost Chattels
- (9) Revisions of State Anti-Trust Laws
- (10) Model Periodic Payment of Judgments Act

The Commission, continues to operate with its sole staff member, the part-time Executive Secretary, whose offices are in the University of Michigan Law School, Ann Arbor, Michigan 48109. The use of consultants has made it possible to expedite a large volume of work and at the same time give the Commission the advantage of expert assistance at relatively low cost. Faculty members of the several law schools in Michigan continue to cooperate with the Commission in accepting specific research assignments.

The Legislative Service Bureau has generously assisted the Commission in the development of its legislative program. The Director of the Legislative Service Bureau, who acts as Secretary to the Commission, continues to handle the fiscal operations of the Commission under procedures established by the Legislative Council.

The following Acts have been adopted to date pursuant to recommendations of the Commission and in some cases amendments thereto by the Legislature:

1967 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Powers of Appointment	1966, p. 11	224
Interstate and International Judicial Procedures	1966, p. 25	178
Dead Man's Statute	1966, p. 29	263
Corporation Use of Assumed Names	1966, p. 36	138
Stockholder Action Without Meetings	1966, p. 41	201
Original Jurisdiction of Court of Appeals	1966, p. 43	65

1968 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Jury Selection	1967, p. 23	326
Emancipation of Minors	1967, p. 50	293
Guardian ad Litem	1967, p. 53	292
Possibilities of Reverter and Right of Entry	1966, p. 22	13
Corporations as Partners	1966, p. 34	288
Stockholder Approval of Mortgaging Assets	1966, p. 39	287

1969 Legislative Session

Administrative Procedures Act	1967, p. 11	306
Access to Adjoining Property	1968, p. 21	55
Antenuptial Agreements	1968, p. 27	139
Notice of Tax Assessments	1968, p. 30	115
Anatomical Gifts	1968, p. 39	189
Recognition of Acknowledgments	1968, p. 61	57
Dead Man's Statute Amendment	1969, p. 29	63
Venue Act	1968, p. 19	333

1970 Legislative Session

Appeals from Probate Court Act	1968, p. 32	143
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships Act	1969, p. 44	90
Warranties in Sales of Art Act	1969, p. 47	121
Minor Students Capacity to Borrow Act	1969, p. 51	107
Circuit Court Commission Power of Magistrates Act	1969, p. 62	238

1971 Legislative Session

Revision of Grounds for Divorce	1970, p. 7	75
Civil Verdicts by 5 of 6 Jurors in Retained Municipal Courts	1970, p. 40	158
Amendment of Uniform Anatomical Gift Act	1970, p. 45	186

1972 Legislative Session

Business Corporation Act	1970, Supp.	284
Summary Proceedings for Possession of Premises	1970, p. 16	120
Interest on Judgments Act	1969, p. 64	135
Constitutional Amendment re Juries of 12	1969, p. 65	HJR "M"



1973 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Technical Amendments to Business Corporation Act	1973, p. 8	98
Execution and Levy in Proceedings Supplementary to Judgment	1970, p. 51	96

1974 Legislative Session

Venue in Civil Actions Against Non-Resident Corporations	1971, p. 63	52
Model Choice of Forum Act	1972, p. 60	88
Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90
Technical Amendments to the General Corporations Act	1973, p. 38	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
1974 Technical Amendments to the Business Corporation Act	1974, p. 30	303
Attachment Fees Act	1968, p. 23	306
Amendment of "Dead Man's" Statute	1972, p. 70	305
Contribution Among Joint Tort-feasors Act	1968, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Elimination of Pre-judgment Garnishment	1972, p. 7	371

1975 Legislative Session

Amendment of Hit-Run Provisions to Provide Specific Penalty	1973, p. 54	170
Uniform Child Custody Jurisdiction Act	1969, p. 22	297
Insurance Policy in Lieu of Bond Act	1972, p. 59	290
Uniform Disposition of Community Property Rights At Death Act	1973, p. 50	289
Equalization of Income Rights of Husband and Wife in Entirety Property	1974, p. 30	288

1976 Legislative Session

Due Process in Replevin Actions	1972, p. 7	79
Qualifications of Fiduciaries	1966, p. 32	262
Revision of Revised Judicature Act		
Venue Provisions	1975, p. 20	375
Durable Family Power of Attorney	1975, p. 18	376

1978 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of References to Abolished Courts		
Preservation of Property Act	1976, p. 74	237
Bureau of Criminal Identification	1976, p. 74	538
Charter Townships	1976, p. 74	553
Fourth Class Cities	1976, p. 74	539
Election Law Amendments	1976, p. 74	540
Home Rule Cities	1976, p. 74	191
Home Rule Village Ordinances	1976, p. 74	190
Village Ordinances	1976, p. 74	189
Public Recreation Hall Licenses	1976, p. 74	138
Township By-laws	1976, p. 74	103
Study Report on Juvenile Obscenity Law	1975, p.133	33
Multiple Party Deposits	1966, p. 18	53
Amendment of Telephone and Messenger		
Service Act Amendments	1973, p. 48	63
Amendments of the Plat Act	1976, p. 58	367
Amendments to Article 9 of the Uniform Commercial Code	1975, Special Supplement	369

1980 Legislative Session

Condemnation Procedures Act	1968, p. 11	87
Technical Revision of the Code of Criminal Procedure	1978, p. 37	

The Commission continues to welcome suggestions for improvement of its program and proposals.

Respectfully submitted,

Jason L. Honigman, Chairman  
Tom Downs, Vice Chairman  
David Lebenbom  
Richard C. Van Dusen

Ex-Officio Members  
Sen. Basil W. Brown  
Sen. Donald E. Bishop  
Rep. Dennis M. Hertel  
Rep. Richard D. Fessler  
Elliott Smith, Secretary

Date: December 31, 1980

1980 RECOMMENDATIONS RELATING TO TECHNICAL  
AMENDMENTS TO BUSINESS CORPORATION ACT

Further experience with the Business Corporation Act, Act No. 284 of the Public Acts of 1972 (M.C.L. §450.1101 et seq.), has demonstrated a need for technical amendments to several sections thereof. Explanations of the proposed amendments follow each section.

These proposed amendments were prepared in behalf of the Commission by Professor Stanley Siegel, the Reporter in the preparation of the present Business Corporation Act. The proposed changes were prepared in cooperation with the Corporation Finance and Business Law Section of the Michigan State Bar Association and the Michigan Department of Commerce.

Because of the desire of many interested parties to seek early enactment of these amendments, the Commission agreed to submit its Recommendations in advance of this Annual Report. The proposed bill follows.

1980 TECHNICAL AMENDMENTS TO THE  
BUSINESS CORPORATION ACT

A bill to amend sections 123, 212, 321, 501, 631, 711, 911, 921, 923, 1016, 1021, 1023, 1051, 1060, and 1062 of Act No. 284 of the Public Acts of 1972, entitled

"Business corporation act,"

sections 123, 911, 921, 923, 1023, 1060, and 1062 as amended by Act No. 32 of the Public Acts of 1978, section 212 as amended by Act No. 303 of the Public Acts of 1974, and section 1021 as amended by Act No. 98 of the Public Acts of 1973, being sections 450.1123, 450.1212, 450.1321, 450.1501, 450.1631, 450.1711, 450.1911, 450.1921, 450.1923, 450.2016, 450.2021, 450.2023, 450.2051, 450.2060, and 450.2062 of the Compiled Laws of 1970; and to add sections 708 and 1056.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 123, 212, 321, 501, 631, 711, 911, 921, 923, 1016, 1021, 1023, 1051, 1060, and 1062 of Act No. 284 of the Public Acts of 1972, sections 123, 911, 921, 923, 1023, 1060, and 1062 as amended by Act No. 32 of the Public Acts of 1978, section 212 as amended by Act No. 303 of the Public Acts of 1974, and section 1021 as amended by Act No. 98 of the Public Acts of 1973, being sections 450.1123, 450.1212, 450.1321, 450.1501, 450.1631, 450.1711, 450.1911, 450.1921, 450.1923, 450.2016, 450.2021, 450.2023, 450.2051, 450.2060, and 450.2062 of the Compiled Laws of 1970, are amended and sections 708 and 1056 are added to read as follows:

Sec. 123. (1) Unless otherwise provided in, or inconsistent with, the act under which a corporation is or has been formed, this act applies to deposit and security companies, summer resort associations, brine pipeline companies, telegraph companies, telephone companies, safety and collateral deposit companies, canal, river, and harbor improvement companies, cemetery, burial, and cremation associations, and agricultural and horticultural fair societies. However, the entities specified in this subsection shall not be incorporated under this act.

(2) This act does not apply to insurance, surety, savings and loan associations, fraternal benefit societies, railroad, bridge, and tunnel companies, union depot companies, and banking corporations.

COMMENT: Section 123(1) is amended to add language clarifying the fact that though certain sections of the Act may be applicable to the listed corporations, none of them may be incorporated under the Business Corporation Act.

Sec. 212. (1) The corporate name of a corporation formed or existing under or subject to this act:

(a) Shall not contain a word or phrase or abbreviation or derivative ~~thereof~~ OF A WORD OR PHRASE, which indicates or implies that the corporation is organized for a purpose other than 1 or more of the purposes permitted by its articles of incorporation.

(b) Shall ~~not be the same as, or confusingly similar to,~~ BE SUCH AS TO DISTINGUISH THE CORPORATE NAME UPON THE RECORDS IN THE OFFICE OF THE ADMINISTRATOR FROM the corporate name of ~~a~~ ANY OTHER domestic corporation, ~~or of a~~ foreign corporation authorized to transact business in this state, ~~or~~ a corporate name currently reserved OR REGISTERED under this act or a predecessor act, or a CORPORATE name assumed under section 217. ~~, unless the written consent, of the other domestic or foreign corporation or holder of a reserved name, to the adoption of a confusingly similar~~

~~name, but not the same name, is filed in the office of the administrator or, in lieu of the consent, there is filed a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state.~~

(c) ~~Shall not contain a word or phrase, or an abbreviation or derivative thereof~~ OF A WORD OR PHRASE, the use of which is prohibited or restricted by any other statute of this state, unless ~~such~~ IN COMPLIANCE WITH THAT restriction. ~~has been complied with.~~

(2) ~~Whenever~~ IF a foreign corporation is unable to obtain a certificate of authority to transact business in this state because its corporate name does not comply with the provisions of subsection (1), ~~it~~ THE FOREIGN CORPORATION may apply for authority to transact business in this state by adding to its corporate name in ~~such~~ THE application a word, abbreviation, or other distinctive and distinguishing element, or alternatively, adopting for use in this state an assumed name otherwise available for use. If in the judgment of the administrator ~~such~~ THAT name would comply with the provisions of subsection (1), the subsection shall not be a bar to the issuance to ~~such~~ THE corporation of a certificate of authority to transact business in this state. The certificate issued to the foreign corporation shall be issued in ~~such~~ THE name APPLIED FOR and the corporation shall use ~~such~~ THAT name in all its dealings with the administrator and in the conduct of its affairs in this state.

COMMENT: Section 212 is amended to simplify the problems of acceptance of corporate names. The Section as revised requires that the corporate name be such as to "distinguish it upon the records in the office of the administrator" from any of four different categories of names currently filed under the Act: (i) domestic corporations, (ii) foreign corporations authorized to transact business in the state, (iii) corporate names currently reserved or registered under the Act, and (iv) names assumed under Section 217. The contemplated distinction should, of course, be substantial; more, for example, than simply adding, deleting or changing the words "company, corporation, incorporated or limited." No substantive change is intended with respect to the right to use a name, and the Section does not preclude action for unfair competition based on confusion of names.

Sec. 321. (1) Subject to any provision in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issue and sale of its shares or bonds, rights or options entitling the holders ~~thereof~~ OF THE RIGHTS OR OPTIONS to purchase from the corporation, upon such consideration, terms, and conditions as may be fixed by the board, shares of any class or series, whether authorized but unissued shares, treasury shares, or shares to be purchased or acquired.

(2) The consideration for shares to be purchased under the rights or options shall comply with sections 311, 313, and 315.

(3) The terms and conditions of the rights or options, including the times at or within which and the prices at which they may be exercised and any limitation upon transferability, shall be set forth or incorporated by reference in the instruments evidencing the rights or options.

~~(4) The issue of the rights or options to 1 or more directors, officers or employees of the corporation or a subsidiary or affiliate thereof, as an incentive to service or continued service with the corporation, a subsidiary or affiliate thereof, or to a trustee on behalf of such directors, officers or employees, shall be authorized or ratified at a meeting of shareholders, or issued pursuant to a plan adopted or ratified by the shareholders.~~

COMMENT: Section 321 is amended to delete the requirement that the issuance of rights or options to directors, officers, or employees be approved by a shareholder vote. The deleted requirement changed prior Michigan practice and was based in part on now obsolete provisions of the Internal Revenue Code relating to qualified stock options. Since without requirement for stockholder approval, directors can sell stock at such price as they deem fair and can pay such compensation as they deem reasonable, there appears no good reason for requiring stockholder approval as to issuance to employees of rights or options to buy stock.

Sec. 501. The business and affairs of a corporation shall be managed by its board, except as otherwise provided in this act or in its articles of incorporation. A director SHALL BE A NATURAL PERSON OF NOT LESS THAN 18 YEARS OF AGE, BUT need not be a shareholder of the corporation unless the articles or bylaws so require. The articles or bylaws may prescribe ADDITIONAL qualifications for directors.

COMMENT: Section 501 is amended to add the requirement that a director be a natural person of the age of 18 years or older. This language is present in a number of major corporation acts (e.g., in New York Business Corporation Law Section 701, N.J.S.A. Section 14A:6-1):

The language eliminates any ambiguity with respect to the inability of minors or nonnatural persons to serve as directors.

Sec. 631. (1) If the amendment is made as provided in ~~subsection (1)~~ of section 611(1), a certificate of amendment shall be signed by all the incorporators and filed on behalf of the corporation, setting forth the amendment and certifying that the amendment is adopted by unanimous consent of the incorporators before the first meeting of the board.

(2) In case of any other amendment, except as otherwise provided in this act, a certificate of amendment shall be executed and filed on behalf of the corporation, setting forth the amendment, and certifying that the amendment has been adopted in accordance with ~~subsection (2)~~ of section 611(2).

(3) A CERTIFICATE OF AMENDMENT SHALL SET FORTH THE ENTIRE ARTICLE BEING AMENDED, HOWEVER, IF THE ARTICLE BEING AMENDED IS DIVIDED INTO SEPARATELY IDENTIFIED SECTIONS, THE CERTIFICATE OF AMENDMENT NEED ONLY SET FORTH THE SECTION OF THE ARTICLE BEING AMENDED.

COMMENT: Section 631(3) is added to simplify the paperwork involved with amending the articles of incorporation. The provision would require that to the extent the articles of incorporation are divided into separately identified sections, only the section being amended need be set forth in a certificate of amendment.



SEC. 708. (1) A DOMESTIC CORPORATION MAY MERGE OR CONSOLIDATE WITH ANOTHER CORPORATION OR CORPORATIONS BY ACTION OF ITS INCORPORATORS, IF THE CORPORATION COMPLIES WITH ALL OF THE FOLLOWING CONDITIONS:

- (A) HAS NOT COMMENCED BUSINESS.
- (B) HAS NOT ISSUED ANY SHARES.
- (C) HAS NOT ELECTED A BOARD OF DIRECTORS.

(2) THE MERGER OR CONSOLIDATION OF THE CORPORATION SHALL BE EFFECTED BY THE MAJORITY OF THE INCORPORATORS EXECUTING AND FILING A CERTIFICATE OF MERGER OR CERTIFICATE OF CONSOLIDATION WHICH SHALL SET FORTH THE PLAN OF MERGER OR THE PLAN OF CONSOLIDATION AND THE FOLLOWING STATEMENTS:

- (A) THAT THE CORPORATION HAS NOT COMMENCED BUSINESS, HAS NOT ISSUED ANY SHARES, AND HAS NOT ELECTED A BOARD OF DIRECTORS.
- (B) THAT THE PLAN OF MERGER OR CONSOLIDATION WAS APPROVED BY A MAJORITY OF THE INCORPORATORS.
- (3) THE CERTIFICATE OF MERGER OR CONSOLIDATION SHALL BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 131.

COMMENT: Section 708. This new Section establishes authority in the incorporator or incorporators to approve a plan of merger where the corporation has not yet been "activated" by election of a board, issuance of stock or commencement of business. This Section avoids additional paperwork where a corporation is to have only transitory existence in order to facilitate a merger procedure.

Sec. 711. (1) A domestic corporation owning ~~at least~~ NOT LESS THAN 90% of the outstanding shares of each class of another domestic corporation OR CORPORATIONS may merge ~~such~~ THE other corporation OR CORPORATIONS into itself, or may merge itself, or itself and any such subsidiary corporation OR CORPORATIONS, into ~~another~~ ANY SUCH subsidiary corporation, without approval of the shareholders of any of the corporations, except as provided in section 713. The board of the parent corporation shall approve a plan of merger setting forth those matters required to be set forth in a plan of merger under section 701. Approval by the board of any such subsidiary corporation is not required.

(2) If the parent corporation owns less than 100% of the outstanding shares of each subsidiary corporation, ~~it~~ THE PARENT CORPORATION shall mail to each minority shareholder of record of each subsidiary corporation, unless waived in writing, a copy or summary of the plan of merger. The parent corporation shall also mail to each shareholder, who under sections 761 or 762 is entitled to dissent, a statement informing the shareholder that ~~he~~ THE SHAREHOLDER has the right to dissent and to be paid the fair value of ~~his~~ THE shares HELD by complying with sections 763 to 771.

(3) The grant of power to merge under this section does not preclude the effectuation of a merger as elsewhere provided in this act.

COMMENT: Section 711 is amended to eliminate any ambiguity with respect to the use of the short-merger provision. The revised section would clarify the fact that multiple short mergers into the parent or any subsidiary are permissible under the procedures herein.

Sec. 911. Each domestic or foreign corporation subject to this act ~~and each foreign corporation transacting business, employing capital or persons, owning or managing property or maintaining an office in this state~~ shall file a report with the administrator before May 16 of each year. The report, SHALL BE ~~it~~ on a form approved by the administrator, SIGNED IN INK BY AN AUTHORIZED OFFICER OR AGENT OF THE CORPORATION, AND shall contain the following:

- (a) Name of the corporation.
- (b) Name of its resident agent and address of its registered office in this state.
- (c) State and date of incorporation, term of corporate existence, if other than perpetual; and, if a foreign corporation, the date when authorized to transact business in this state.
- (d) Names and addresses of its president, secretary, treasurer, and directors.
- (e) General nature and kind of business in which the corporation is engaged.
- (f) Amount of authorized capital stock and number and par value of shares of each class authorized, and the number of shares of stock without par value authorized.
- (g) Amount of capital stock subscribed.
- (h) Amount of capital stock paid in.
- (i) Nature and book value of the property owned and used by the corporation listed separately as to property within and without this state.
- (j) Complete and detailed statement of the assets and liabilities of the corporation as shown by the books of the corporation, at the close of business on December 31 or upon the date of the close of its latest fiscal year, which, in the case of a domestic corporation shall be the

same balance sheet as furnished to shareholders as required by section 901. ~~A corporation~~ MEMBERS OF A GROUP OF AFFILIATED CORPORATIONS WHICH REGULARLY PREPARE FINANCIAL STATEMENTS ON A CONSOLIDATED BASIS MAY FILE A CONSOLIDATED BALANCE SHEET IN PLACE OF THE STATEMENT OF ASSETS AND LIABILITIES REQUIRED IN THIS SUBDIVISION. CORPORATIONS organized after December 31 and before May 15 of a year, and ~~each foreign corporation~~ FOREIGN CORPORATIONS authorized to transact business after December 31 and before May 15 of a year, shall ~~file a report showing the condition of its business on the date of its incorporation or admittance, with a filing fee as provided in section 915~~ NOT BE REQUIRED TO FILE A REPORT FOR THAT YEAR.

(k) Other information as the administrator reasonably requires for other purposes under this act.

COMMENT: Section 911 is amended to permit the filing of consolidated financial statements by members of a group of affiliated corporations who regularly prepare such statements. In addition, the procedures are simplified in several respects, including elimination of the requirement for filing a report for corporations organized or authorized to transact business after December 31 and before May 15 of a year.

Sec. 921. (1) If a domestic or foreign corporation neglects or refuses to file a report or pay a fee required by this act within the time specified, the corporation, in addition to its liability for the fee, is subject to a penalty of ~~\$25.00~~ \$10.00 for ~~the first~~ EACH month or part of a month that the corporation is delinquent, NOT TO EXCEED \$50.00. ~~A corporation delinquent beyond 1 month is subject to a further penalty of \$100.00 for each year or part of a year of delinquency.~~

(2) The ~~penalties~~ PENALTY prescribed in this section shall not apply during an extension granted pursuant to section 923.

~~(3) As to penalties assessed under this section, the administrator may waive the assessment of the penalties in whole or in part where it appears the assessment of the penalties would constitute an improper and inequitable imposition upon the corporation and the administrator finds the waiver of such penalties to be in the public interest.~~

COMMENT: Section 921 is amended to reduce the penalties for failure to report or pay a fee, and to eliminate the provision with respect to waiver of penalties. The change will eliminate the administrative burden of dealing with requests for waiver of unduly large penalties.

Sec. 923. (1) The administrator for good cause shown may extend the time for filing of a report for not more than 1 year from the due date of the filing.

(2) The administrator may report promptly to the attorney general any failure or neglect under sections 921, 922, 931, and 932, and the attorney general may ~~commence~~ BRING an action for imposition of the prescribed penalties. When a corporation neglects or refuses to file its report within ~~90 days after~~ the time prescribed by this act, the administrator shall notify the corporation of that fact by mail directed to its registered office NOT LATER THAN 90 DAYS AFTER THE DUE DATE OF THE FILING. The administrator's certificate of mailing of the notice is prima facie evidence in all courts and places ~~of that fact~~ THE NOTICE WAS MAILED, and that the notice was received by the corporation.

COMMENT: Section 923 is amended to clarify the requirement that the administrator notify the corporation of a neglect to file within 90 days after the date of the required filing.

Sec. 1016. (1) ~~A copy of the articles of incorporation and all amendments thereto, certified by the proper officer of the jurisdiction of its incorporation shall be attached to the application of a foreign corporation.~~ A certificate setting forth that the corporation is in good standing under the laws of the jurisdiction of its incorporation, executed by the official of the jurisdiction who has custody of the records pertaining to corporations and dated not earlier than 30 days before filing of the application, shall ~~also~~ be attached to the application OF A FOREIGN CORPORATION. If ~~such~~ THE certificate is in a foreign language, a translation ~~thereof~~ OF THE CERTIFICATE under oath of the translator shall be attached ~~thereto~~ TO THE CERTIFICATE.

(2) Upon filing of the application, accompanied by the filing and franchise fees prescribed by law, the administrator shall issue to the foreign corporation a certificate of authority to transact business in this state. ~~Thereupon~~ UPON THE ISSUANCE OF A CERTIFICATE OF AUTHORITY, the foreign corporation is authorized to transact in this state any business of the character set forth in its application. The authority continues so long as the foreign corporation retains its authority to transact such business in the jurisdiction of its incorporation and its authority to transact business in this state has not been surrendered, suspended, or revoked.

COMMENT: Sections 1016 and 1021 are amended to simplify a filing requirement of foreign corporations by eliminating the filing of copies of the articles of incorporation, certificates of merger, or certificates of similar corporate actions since these documents are available from the state of incorporation if needed. Their filing in Michigan is burdensome upon both the foreign corporation and the administrator.

Sec. 1021. (1) ~~When the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, the foreign corporation, within 60 days after the amendment is effective, shall file with the administrator a copy of the amendment certified by the proper officers of the jurisdiction of its incorporation.~~

~~(2) When a foreign corporation authorized to transact business in this state is a party to a merger, consolidation, or similar corporate action taken in accordance with the laws of the jurisdiction of its incorporation, the foreign corporation, within 60 days after the effective date thereof, shall file with the administrator a copy of the certificate of merger, consolidation, or similar corporate action, certified by the proper officers of the jurisdiction of its incorporation.~~

A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE WHICH CHANGES ITS CORPORATE NAME, OR ENLARGES, LIMITS OR OTHERWISE CHANGES THE BUSINESS WHICH THE FOREIGN CORPORATION PROPOSES TO DO IN THIS STATE, OR OTHERWISE CHANGES ITS APPLICATION FOR CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE, SHALL FILE AN AMENDED APPLICATION WITH THE ADMINISTRATOR NOT LATER THAN 30 DAYS AFTER THE TIME A CHANGE BECOMES EFFECTIVE. THE AMENDED APPLICATION SHALL SET FORTH ALL OF THE FOLLOWING:

(A) THE NAME OF THE FOREIGN CORPORATION AS IT APPEARS ON THE RECORDS OF THE ADMINISTRATOR AND THE JURISDICTION OF ITS INCORPORATION.

(B) THE DATE THE FOREIGN CORPORATION WAS AUTHORIZED TO DO BUSINESS IN THIS STATE.

(C) IF THE NAME OF THE FOREIGN CORPORATION HAS BEEN CHANGED, A STATEMENT OF THE NAME RELINQUISHED, A STATEMENT OF THE NEW NAME, AND A STATEMENT THAT THE CHANGE OF NAME HAS BEEN EFFECTED UNDER THE LAWS OF THE JURISDICTION OF ITS INCORPORATION AND THE DATE THE CHANGE WAS EFFECTED.

(D) IF THE BUSINESS THE FOREIGN CORPORATION PROPOSES TO DO IN THIS STATE IS TO BE ENLARGED, LIMITED, OR OTHERWISE CHANGED, A STATEMENT REFLECTING THE CHANGE AND A STATEMENT THAT THE FOREIGN CORPORATION IS AUTHORIZED TO DO IN THE JURISDICTION OF ITS INCORPORATION THE BUSINESS WHICH IT PROPOSES TO DO IN THIS STATE.

(E) SUCH ADDITIONAL INFORMATION AS THE ADMINISTRATOR MAY REQUIRE.

(2) IF A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE IS THE SURVIVOR OF A MERGER PERMITTED BY THE LAWS OF THE STATE OR COUNTRY IN WHICH THE FOREIGN CORPORATION IS INCORPORATED, NOT LATER THAN 30 DAYS AFTER THE MERGER BECOMES EFFECTIVE, THE FOREIGN CORPORATION SHALL FILE A CERTIFICATE ISSUED BY THE PROPER OFFICER OF THE STATE OR COUNTRY OF ITS INCORPORATION ATTESTING TO THE OCCURRENCE OF THE MERGER. IF THE MERGER HAS CHANGED THE CORPORATE NAME OF THE FOREIGN CORPORATION, OR HAS ENLARGED, LIMITED, OR CHANGED THE BUSINESS THE FOREIGN CORPORATION PROPOSES TO DO IN THIS STATE, OR HAS AFFECTED THE INFORMATION SET FORTH IN THE APPLICATION, THE FOREIGN CORPORATION SHALL COMPLY WITH SUBSECTION (1).

COMMENT: See Comment under Section 1016.

Sec. 1023. A foreign corporation which has been authorized to transact business in this state, AND which, after its authorization, increases the amount of its authorized capital stock attributable to this state over the previous highest amount of its authorized capital stock attributable to this state, shall file a supplemental statement SIGNED IN INK BY AN OFFICER OR AGENT OF THE CORPORATION giving a detailed account of the amount of the increase, and shall pay an additional franchise fee on account of the increased authorized stock as prescribed by law. The supplemental



statement shall be filed before May 16 of each year. The administrator for good cause shown may extend the time for filing of a supplemental statement for not more than 1 year after the due date of the filing. The portion of authorized capital stock of the corporation attributable to this state shall be determined by multiplying the entire amount of its authorized capital stock by the most recent apportionment percentage used in the computation of the tax required by Act No. 228 of the Public Acts of 1975, AS AMENDED, being sections 208.1 to 208.145 of the Michigan Compiled Laws. The capital stock attributable to this state shall be determined pursuant to section 1062.

COMMENT: Section 1023 is amended to permit the signing of a foreign corporation's supplemental statement by any duly authorized officer or agent, thereby permitting a foreign corporation the same freedom in the execution of supplemental statements as is permitted domestic corporations in executing annual reports pursuant to the amendments to Section 911.

Sec. 1051. (1) A foreign corporation transacting business in this state without a certificate of authority shall not maintain an action or proceeding in any court of this state ~~—~~ until the corporation has obtained a certificate of authority. An action commenced by a foreign corporation having no certificate of authority shall not be dismissed if a certificate of authority has been obtained before the order of dismissal. This prohibition applies to:

(a) A successor in interest of the foreign corporation, except a receiver, trustee in bankruptcy, or other representative of creditors of the corporation.

(b) An assignee of the foreign corporation, except an assignee for value who accepts an assignment without knowledge that the foreign corporation should have but has not obtained a certificate of authority in this state.

(2) AN ACTION OR PROCEEDING THAT HAS BEEN DISMISSED DUE TO THE ABSENCE OF A CERTIFICATE OF AUTHORITY AS PROVIDED IN SUBSECTION (1), MAY BE RECOMMENCED BY THE FOREIGN CORPORATION UPON OBTAINING A CERTIFICATE OF AUTHORITY.

(3) ~~(2)~~ Failure of a foreign corporation to obtain a certificate of authority to transact business in this state does not impair the validity of a contract or act of the corporation, and does not prevent the corporation from defending an action or proceeding in a court of this state.

COMMENT: Section 1051 is amended to provide expressly that dismissal of an action brought by a foreign corporation transacting business without a certificate of authority shall be without prejudice to reinstitution of such action after obtaining the certificate of authority. The decision of the Michigan Supreme Court in Thomas Industries, Inc. v. Wells, 403 Mich. 466 (1978) left open the possibility that a trial judge could order such a dismissal with prejudice.

SEC. 1056. (1) ANY FOREIGN CORPORATION NOT AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE MAY REGISTER ITS CORPORATE NAME UNDER THIS ACT, IF PERMISSIBLE UNDER SECTION 212.

(2) REGISTRATION SHALL BE MADE BY FILING ALL OF THE FOLLOWING IN THE OFFICE OF THE ADMINISTRATOR:

(A) AN APPLICATION FOR REGISTRATION EXECUTED ON BEHALF OF THE CORPORATION, SETTING FORTH THE NAME AND THE MAILING ADDRESS OF THE CORPORATION, THE JURISDICTION OF ITS INCORPORATION, THE DATE OF ITS INCORPORATION, A STATEMENT THAT IT IS CARRYING ON OR DOING BUSINESS, AND A BRIEF STATEMENT OF THE BUSINESS IN WHICH IT IS ENGAGED.

(B) A CERTIFICATE DATED NOT EARLIER THAN 30 DAYS BEFORE FILING OF THE APPLICATION, SETTING FORTH THAT THE CORPORATION IS IN GOOD STANDING UNDER THE LAWS OF THE JURISDICTION OF ITS INCORPORATION, EXECUTED BY THE OFFICE OF THE JURISDICTION WHICH HAS CUSTODY OF THE RECORDS PERTAINING TO CORPORATIONS.

(3) UNLESS SOONER TERMINATED BY THE FILING OF A CERTIFICATE OF TERMINATION, THE REGISTRATION SHALL BE EFFECTIVE UNTIL THE CLOSE OF THE CALENDAR YEAR IN WHICH THE APPLICATION FOR REGISTRATION IS FILED. HOWEVER, REGISTRATIONS FILED AFTER SEPTEMBER 30 OF A YEAR SHALL EXPIRE AT THE END OF THE FOLLOWING CALENDAR YEAR. THE ADMINISTRATOR SHALL NOTIFY THE CORPORATION OF THE IMPENDING EXPIRATION NOT LATER THAN 90 DAYS BEFORE THE EXPIRATION OF THE REGISTRATION. A FOREIGN CORPORATION WHICH HAS IN EFFECT A REGISTRATION OF ITS CORPORATE NAME MAY RENEW THE REGISTRATION FROM YEAR TO YEAR BY FILING ANNUALLY AN APPLICATION FOR RENEWAL AND A CERTIFICATE OF GOOD STANDING AS REQUIRED FOR THE ORIGINAL REGISTRATION. A RENEWAL APPLICATION MAY BE FILED BETWEEN OCTOBER 1 AND DECEMBER 31 IN EACH YEAR, AND SHALL EXTEND THE REGISTRATION FOR THE FOLLOWING CALENDAR YEAR.

COMMENT: Section 1056 is a new Section that permits a foreign corporation not authorized to transact business in the state to register its corporate name under the Act, provided such corporate name is not precluded from use under Section 212. Under the provisions of Section 212 as revised, the corporate name of such a foreign corporation would then not be available for filing under the Act. Comparable provisions permitting registration of the corporate name of a foreign corporation not authorized to transact business in the state are now in effect in a majority of United States jurisdictions.

Sec. 1060. (1) The fees to be paid to the administrator by or in behalf of corporations, for the purposes specified in this section, shall be as follows:

(a) Examining ~~, filing, and copying~~ AND FILING articles of domestic corporations \$10.00.

(b) Examining and filing ~~articles or certificates of incorporation, and other~~ papers connected with the application of a foreign corporation for admission to do business in this state, \$10.00.

(c) Examining ~~, filing, and copying~~ AND FILING an amendment to the articles of a domestic corporation, \$10.00.

(d) Examining and filing an ~~amendment to the articles of a foreign corporation~~ AMENDED APPLICATION FOR A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE, \$10.00.

(e) Examining and filing a supplemental statement, \$10.00.

(f) Examining ~~, filing, and copying~~ AND FILING a certificate of merger or consolidation as provided in chapter 7, \$50.00.

(g) Examining and filing a certificate of merger or consolidation of a foreign corporation, as provided in section 1021, \$10.00.

(h) Examining ~~, filing, and copying~~ AND FILING a certificate of dissolution, \$10.00.

(i) Examining and filing AN application for withdrawal and issuance of a certificate of withdrawal of a foreign corporation, \$10.00.

(j) Examining ~~, filing, and copying~~ AND FILING AN application

for reservation of corporate name, \$10.00.

(k) Examining ~~, filing, and copying~~ AND FILING A certificate of assumed name or certificate of termination of assumed name, \$10.00.

(l) Examining ~~, filing, and copying~~ AND FILING A statement of change of registered office or resident agent, \$5.00.

(m) Examining ~~, filing, and copying~~ AND FILING restated articles of domestic corporations, \$10.00.

(n) Examining ~~, filing, and copying~~ AND FILING a certificate of abandonment, \$10.00.

(o) Examining ~~, filing, and copying~~ AND FILING A certificate of correction, \$10.00.

(p) Examining ~~, filing, and copying~~ AND FILING A certificate of revocation of dissolution proceedings, \$10.00.

(q) Examining ~~, filing, and copying~~ AND FILING A certificate of renewal of corporate existence, \$10.00.

(r) Filing and examination of a special report required by law, \$2.00.

(S) EXAMINING AND FILING A CERTIFICATE OF REGISTRATION OF CORPORATE NAME OF A FOREIGN CORPORATION, \$50.00.

(T) EXAMINING AND FILING A CERTIFICATE OF RENEWAL OF REGISTRATION OF CORPORATE NAME OF A FOREIGN CORPORATION, \$50.00.

(U) EXAMINING AND FILING A CERTIFICATE OF TERMINATION OF REGISTRATION OF CORPORATE NAME OF A FOREIGN CORPORATION, \$10.00.

(2) These fees shall be paid to the administrator at the time of filing or when the service is rendered by the administrator. The fees shall be in addition to the franchise fees prescribed in this act, and shall, when collected, be paid into the treasury of the state and credited to the general fund.

(3) Fees paid by or on behalf of domestic and foreign regulated investment companies as defined in section 1064 shall be the same as are charged foreign and domestic corporations for the purposes specified in this section.

(4) The fees received pursuant to section 915 shall be deposited in the state treasury to the credit of the administrator to be used by the corporation and securities bureau in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of the state.

(5) A minimum charge of \$1.00 for each certificate and 50 cents per folio shall be paid to the administrator for certifying a part of a file or record pertaining to a corporation for which provision for payment is not set forth in subsection (1). The administrator may furnish copies of documents, reports, and papers required or permitted by law to be filed with the administrator, and shall charge for those copies pursuant to a schedule of fees which the administrator shall adopt with the approval of the state administrative board. The administrator shall retain the revenue collected under this subsection to be used by the corporation and securities bureau to defray the costs for its copying and certifying services.

COMMENT: Section 1060 is amended to add fees for the filings permitted by foreign corporations because of the amendments to Section 1016, 1021 and 1056. The changes also clarify administrative filing and copying procedures.

Sec. 1062. (1) A domestic corporation or cooperative association, organized for profit, and a domestic regulated investment company, except corporations organized under Act No. 156 of the Public Acts of 1964, as amended, being sections 489.501 to 489.920 of the Michigan Compiled Laws, at the time of filing its articles, shall pay to the administrator, as an organization fee and as an admission fee, a sum equal to 1/2 mill upon the dollar for each dollar of the authorized capital stock of the corporation. The organization fee shall not be less than \$25.00. In case of a regulated investment company the fee shall not exceed \$40.00. The initial admission franchise fee of a foreign corporation for profit and foreign regulated investment company applying for admission to do business in this state shall be \$25.00, and authorized capital stock in the amount of \$50,000.00 shall be considered initially attributable to this state at the time of admission. Every corporation heretofore or hereafter incorporated under the laws of this state which increases its authorized capital stock shall pay a sum equal to 1/2 mill upon each dollar for each increase in its authorized capital stock. A foreign corporation authorized to transact business in this state which increases the amount of its authorized capital stock attributable to this state over the previous highest amount of authorized capital stock attributable to this state, shall file a supplemental statement before the next May 16 giving a detailed account of the amount of the increase, and shall pay the additional franchise fee on account of the increase as provided in this section. The amount of authorized capital stock attributable to this state shall be determined by multiplying the entire amount of authorized capital stock by the apportionment percentage used in the computation of the tax required by Act No. 228 of the Public Acts of 1975, AS AMENDED. If the business activities are confined solely to this state, the entire amount of authorized capital

stock shall be considered attributable to this state. A foreign corporation required to file a supplemental statement shall pay with the filing an additional admission franchise fee of 1/2 mill upon each dollar of increase in the amount of authorized capital stock attributable to this state. This increase shall be the excess of the then current amount of authorized capital stock attributable to this state over the previous highest amount of authorized capital stock attributable to this state. A supplemental statement shall be filed on or before May 15, 1973, by every foreign corporation authorized to transact business in this state on December 31, 1972. Every such foreign corporation shall be considered to have that amount of its authorized capital stock initially attributable to this state which shall be determined by applying its entire amount of authorized capital stock by the allocation factor used in the computation of its annual privilege fee. If the annual privilege fee is computed upon the entire paid-up capital and surplus, the entire amount of authorized capital stock shall be considered to be initially attributable to this state. A minimum authorized capital stock of \$50,000.00 shall be considered to be initially attributable to this state. The supplemental statement setting forth this initial determination shall be without fee other than the filing fee and shall be used as a base in connection with ascertaining future supplemental statement filing requirements. The administrator shall be authorized to require the corporation to furnish detailed and exact information touching those matters before making a final determination of the organization fee to be paid by the corporation. "Corporation" as used in this section includes partnership associations, limited, cooperative associations, joint associations having any of the powers of corporations,



and common law trust or trusts created by statute of this or another state or country exercising common law powers in the nature of corporations, whether domestic or foreign, in addition to other corporations as are referred to in this act.

(2) If the capital of a corporation is not divided into shares, the property of the corporation is the authorized capital stock for the purposes of this section.

(3) IF A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE MERGES INTO ANY DOMESTIC CORPORATION OR CONSOLIDATES WITH 1 OR MORE CORPORATIONS INTO A DOMESTIC CORPORATION BY COMPLYING WITH THE PROVISIONS OF SECTION 731, THE RESULTING DOMESTIC CORPORATION SHALL PAY FRANCHISE FEES FOR ANY INCREASE IN AUTHORIZED CAPITAL STOCK OR FOR ANY AUTHORIZED CAPITAL STOCK AS PROVIDED IN SUBSECTION (1), LESS SUCH SUMS AS THE FOREIGN CORPORATION SO MERGING OR CONSOLIDATING HAS PREVIOUSLY PAID TO THE STATE UNDER SUBSECTION (1), AS AN INITIAL OR ADDITIONAL ADMISSION FRANCHISE FEE.

COMMENT: Section 1062 is amended by adding a provision giving a credit for franchise fees paid by a foreign corporation that, in effect, reincorporates in Michigan by means of merger or consolidation. The intention of the amendment is to encourage the reincorporation of Michigan based foreign corporations in Michigan.

RECOMMENDATION RE AMENDMENT OF BUSINESS  
ENTITY EXEMPTION ACT RELATING TO USURY LAWS

The proposed bill is an amendment to Act No. 52 of the Public Acts of 1970, M.C.L. 438.31, which is known as the Business Entity Exemption Act to the Michigan usury laws. Except for this Act, the general limit on interest on a loan in this state is 5%, but if evidenced by an agreement in writing, it is 7%. There are many statutes in this state which provide for permissible higher rates of interest for particular types of lenders or for specific types of transactions.

In 1970, the Business Entity Exemption Act was enacted exempting from the otherwise legal rate limitations, the "extensions of credit to any business entity" by state banks, national banks and insurance companies. A business entity is defined as a corporation, trust, estate, partnership, cooperative or association. An individual can also fit within the definition if he furnishes to the extender of credit a sworn statement in writing specifying a business and business purpose for which the proceeds of the extension of credit will be used. In 1978, the Business Entity Exemption was amended to cover extensions of credit by a finance subsidiary of a manufacturing corporation as well as the lenders previously covered.

The Business Entity Exemption has freed business related transactions from the restrictions of the legal interest rates, thereby permitting businesses to obtain financing that lenders would not otherwise provide. However, as the exemptions currently stand, two difficulties persist. First, it is not available if any other statute limiting interest rates is applicable. Thus, the 25% criminal usury limit applies to loans to business entities as do the particular requirements of other acts. Second, loans made by the many types of lenders not covered by the statute are still subject to the legal rate limitations. As a result, a bank can make a loan to a business entity at any rate below 25% interest, but anyone other than a bank, insurance company, or finance subsidiary could only make the same loan at 7%. Interest on judgments has recently been raised to 12% (Act 134 P.A. 1980).

For many years in this state, corporations have been deprived of the defense of usury with no apparent adverse results. See M.C.L. §450.1275. There should be no need to protect business from usurious interest rates under today's business climate which permits interest to reach whatever level the competitive market requires for the use of money.

In the proposed bill, by revising the first part of subsection (2) to read "Notwithstanding the provisions of any other statute of this state relating to lawful or usurious interest," the Business Entity will no longer be subject to the restrictions created by the maze of all the other usury statutes of this state. The Business Entity Exemption is also broadened by eliminating the requirement that the extension of credit be made only by a specified type of lender. The requirement that the extension of credit be made to a business entity is sufficient to ensure that only business loans are covered by the Act and that consumer type loans are not affected.

As they currently stand, the usury laws of this state are a trap for the unwary. Both borrowers and lenders should be able to enter into legitimate business loans without fear that their bargain will be unmade if they fail to structure the transaction in the precise way required to comply with a host of complex and confusing usury laws. The proposed bill accomplishes this result by permitting business loans to be made by lenders and borrowers at whatever rate they freely agree upon.

The proposed bill follows:

BUSINESS ENTITY EXEMPTION  
FROM USURY LAWS

A bill to amend section 1 of Act No. 52 of the Public Acts of 1970, entitled "An Act to Exempt Loans to Business Entities From the Provisions of the Usury Statutes," as amended by Act No. 15 of the Public Acts of 1978, being Section 438.61 of the Compiled Laws of 1970, as amended.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 1 of Act No. 52 of the Public Acts of 1970, as amended by Act No. 15 of the Public Acts of 1978, being Section 438.61 of the Compiled Laws of 1970, is amended to read as follows:

Sec. 1. (1) As used in this act "business entity" means: (a) A corporation, trust, estate, partnership, cooperative, or association; or (b) A natural person who furnishes to the extender of the credit a sworn statement in writing specifying the type of business and business purpose for which the proceeds of the loan OR OBLIGATION will be used, but the exemption provided by this act does not apply if the extender of credit has notice that the person signing the sworn statement was not engaged in the business indicated.

(2) Notwithstanding the provisions of Act No. 326 of the Public Acts of 1966, as amended, being sections 438.31 to 438.33 of the Michigan Compiled Laws, but subject to any other applicable law of this state or of the United States which regulates the rate of interest, it is lawful in connection with an extension of credit to a business entity by a state or national chartered bank, insurance carrier, or finance subsidiary of a manufacturing corporation for the parties to agree in writing to any rate of interest.

(2) NOTWITHSTANDING THE PROVISIONS OF ANY OTHER STATUTE OF THIS STATE RELATING TO LAWFUL OR USURIOUS INTEREST, ANY RATE OR AMOUNT OF INTEREST IS LAWFUL IF AGREED UPON IN WRITING SIGNED BY AN OBLIGOR WHICH IS A BUSINESS ENTITY AS DEFINED IN THIS ACT.

RECOMMENDATION RE AMENDMENT OF R.J.A. SECTION  
308 (COURT OF APPEALS JURISDICTION) IN ACCORD  
WITH R.J.A. SECTION 861

M.C.L. §600.308 provides that the Court of Appeals has jurisdiction on appeal from "all final judgments from the circuit courts, courts of claims, and recorder's court, except judgments on ordinance violations in the traffic and ordinance division of recorder's court." It further provides that "appeals from final judgments from all other courts . . . shall be taken to the circuit court."

M.C.L. §600.861, adopted in 1978, added to the appellate jurisdiction of the Court of Appeals, but did not amend §600.308. M.C.L. §600.861 provides:

Sec. 861. A party to a proceeding in the probate court may appeal the following orders as a matter of right to the court of appeals:

(a) A final order affecting the rights or interests of any interested person in an estate or trust.

(b) An order entered in an adoption proceeding under chapter 10 of Act No. 288 of the Public Acts of 1930, as amended, and appealed in accordance with section 65 of this chapter.

(c) A final order in a condemnation case entered under Act No. 40 of the Public Acts of 1956, as amended, being sections 280.1 to 280.630 of the Michigan Compiled Laws.

The Commission recommends that section 308 be amended to take note of the additional jurisdiction vested in section 861. Section 308 as currently written not only fails to take note of section 861, but seems to be directly contrary to that provision in stating that appeals from final judgments of "all other courts" shall be taken to the circuit court. The orders of the probate court specified in section 861 may often constitute final judgments.

The proposed bill follows:

COURT OF APPEALS JURISDICTION

A bill to amend section 308 of Act No. 236 of the Public Acts of 1961, entitled as amended "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," as added by Act No. 281 of the Public Acts of 1964 and as amended by Act No. 116 of the Public Acts of 1968, being section 600.308 of the Compiled Laws of 1970.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 308 of Act No. 236 of the Public Acts of 1961, as added by Act No. 281 of the Public Acts of 1964 and as amended by Act No. 116 of the Public Acts of 1968, being section 600.308 of the Compiled Laws of 1970, is amended to read as follows:

Sec. 308. The court of appeals has jurisdiction on appeals from:

(1) All final judgments from the circuit courts, court of claims, and recorder's court, except judgments on ordinance violations in the traffic and ordinance division of recorder's court. EXCEPT AS PROVIDED IN SUBSECTION (2), appeals from final judgments from all other courts and from convictions for ordinance violations in the traffic and ordinance division of recorder's court shall be taken to the circuit courts, upon which further review may be had only upon application for leave to appeal granted by the court of appeals.

(2) THOSE ORDERS OF THE PROBATE COURT SPECIFIED IN SECTION 608.

(3) Such other judgments or interlocutory orders as the supreme court may by rules determine.

RECOMMENDATION RE AMENDMENT OF PROBATE CODE  
SECTION 767 (INTEREST ON PROBATE CODE JUDG-  
MENTS) IN ACCORD WITH R.J.A. SECTION 6013

Section 767 of the probate code provides that interest on judgments shall be calculated "at the rate of 6% per year" unless the judgment is awarded on a claim or counterclaim based on "a written instrument having a higher rate of interest, in which event interest shall be computed at the rate specified in the instrument if the rate was legal at the time the instrument was executed." At the time of adoption of section 767, this standard was in accord with R.J.A. section 6013, which specifies the interest rate on all money judgments in civil actions. In 1980, however, section 6013 was amended by Public Act 134. Section 6013 now provides:

Sec. 6013. (1) Interest shall be allowed on a money judgment recovered in a civil action, as provided in this section.

(2) For complaints filed before June 1, 1980, in an action involving other than a written instrument having a rate of interest exceeding 6% per year, the interest on the judgment shall be calculated from the date of filing the complaint to June 1, 1980 at the rate of 6% per year and on and after June 1, 1980 to the date of satisfaction of the judgment at the rate of 12% per year compounded annually.

(3) For complaints filed before June 1, 1980, in an action involving a written instrument having a rate of interest exceeding 6% per year, the interest on the judgment shall be calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate specified in the instrument if the rate was legal at the time the instrument was executed. However, the rate after the date judgment is entered shall not exceed the following:

(a) Seven percent per year compounded annually for any period of time between the date judgment is entered and the date of satisfaction of the judgment which elapses before June 1, 1980.

(b) Thirteen percent per year compounded annually for any period of time between the date judgment is entered and the date of satisfaction of the judgment which elapses after May 31, 1980.



(4) For complaints filed on or after June 1, 1980, interest shall be calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate of 12% per year compounded annually unless the judgment is rendered on a written instrument having a higher rate of interest. In that case interest shall be calculated at the rate specified in the instrument if the rate was legal at the time the instrument was executed. The rate shall not exceed 13% per year compounded annually after the date judgment is entered.

(5) If a bona fide written offer of settlement in a civil action based on tort is made by the party against whom the judgment is subsequently rendered and the offer of settlement is substantially identical or substantially more favorable to the prevailing party than the judgment, the court may order that interest shall not be allowed beyond the date the written offer of settlement is made.

Since section 6013 applies to all civil actions, section 767 of the Probate Code should be amended to incorporate the provisions of section 6013. The proposed bill would achieve this objective by substituting a cross-reference to 6013 for the current description of the applicable interest rate in section 767. This approach is utilized so as to avoid the necessity of amending section 767 every time a change is made in section 6013.

The proposed bill follows:

INTEREST ON CLAIM OR COUNTERCLAIM  
IN PROBATE COURT PROCEEDINGS

A bill to amend section 767 of Act No. 642 of the Public Acts of 1978, entitled as amended "An act to revise and consolidate the laws relative to the probate of decedents' estates, guardianships, conservatorships, protective proceedings, trusts and powers of attorney;

to prescribe penalties and liabilities, and to repeal certain acts and parts of acts," being section 700.767 of the Compiled Laws of 1970.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 767 of Act No. 642 of the Public Acts of 1978, being section 700.767 of the Compiled Laws of 1970, is amended to read as follows:

Sec. 767. Unless otherwise provided in a judgment in another court entered against the estate, interest shall be allowed on any allowed claim or allowed counterclaim in a civil action or proceeding in the probate court. The interest shall be calculated from the date of the filing of the claim, and in the event of a counterclaim, from the date of its filing, at ~~the~~ A rate DETERMINED PURSUANT TO SECTION 6013 OF ACT NO. 236 OF THE PUBLIC ACTS OF 1961, AS AMENDED, BEING SECTION 600.6013 OF THE COMPILED LAWS OF 1970. ~~of 6% per year unless the allowance of the claim or counterclaim is based on a written instrument having a higher rate of interest, in which event interest shall be computed at the rate specified in the instrument if that rate was legal at the time the instrument was executed.~~

RECOMMENDATION RE REVISED UNIFORM  
LIMITED PARTNERSHIP ACT

The present statute controlling limited partnerships is based on the Uniform Limited Partnership Act and is M.C.L. 449.201 et seq. (the Existing Act). The National Conference of Commissioners of Uniform State Laws adopted in August, 1976, a Revised Uniform Limited Partnership Act (the Revised Act), with preferatory note and comments, copy of which is attached hereto as Exhibit A. This Commission has employed Mr. Joel S. Adelman, who is a partner in the Detroit law firm of Honigman Miller Schwartz and Cohn to review the Revised Act.

Mr. Adelman specializes in the field of formation and syndication of limited partnerships and we deem him to be one of the most knowledgeable attorneys in this field. He has kept in touch with the work of the national body in the course of the drafting of this proposal and has a knowledge in depth of the purposes of the revision and the problems which need resolution. Fortunately, Mr. Adelman has volunteered his services without charge to this Commission, for which we, in behalf of the State, express our thanks and appreciation.

Mr. Adelman informs us that he has consulted with the following persons concerning the proposed bill:

- (1) E.C. Mackey, Director of the Corporation and Securities Bureau of the Michigan Department of Commerce, and members of his staff.
- (2) Members of the Corporation, Finance and Business Law Section of the State Bar of Michigan, including members of the Unincorporated Enterprises Subcommittee of the Corporation, Finance and Business Law Section.

- (3) Representatives of the Attorney General's office who are assigned to handle matters relating to the Corporation and Securities Bureau.

Mr. Adelman prepared a proposed bill and an extensive report which is attached hereto. His report, which we have labeled as the Reporter's Commentary, discusses (1) the primary differences between the Revised Act and the Existing Act, (2) the changes from the Uniform Revised Act contained in the proposed bill, and (3) amendments that should be made in related statutes upon adoption of the Revised Act. Exhibit A accompanying this report reprints the Revised Act with official notes and comments. Exhibit A-1 contains a marked-up copy of the Revised Act showing changes from that Act that have been made in the proposed bill.

The proposed changes have a bearing on several other statutes which Mr. Adelman suggests should be amended in the form shown in Exhibits B and C. In addition he has attached hereto as Exhibit D, a copy of the Attorney General's opinion dated November 5, 1979, concerning limitations of voting rights of limited partners which is referred to in section I-4 of his report.

Members of the Commission have reviewed with Mr. Adelman the subject matter of the proposed bill and have suggested certain limited changes which have been incorporated in the proposed bill. The Commission is very grateful to Mr. Adelman for the considerable time and effort which he has expended in the preparation of the proposed bill and his report thereon and for the excellent quality of the work product which he has submitted to us and which we are herewith recommending to the Legislature. The proposed Bill follows:

MICHIGAN REVISED UNIFORM LIMITED PARTNERSHIP ACT

ARTICLE 1

General Provisions

1 SECTION 101. [Definitions.] As used in this Act, unless  
2 the context otherwise requires:

3 (1) "Administrator" means the chief officer of the Michigan  
4 Department of Commerce or his designated representative.

5 (2) "Certificate of limited partnership" means the certificate re-  
6 ferred to in Section 201, and the certificate as amended or restated.

7 (3) "Contribution" means any cash, property, services  
8 rendered, or a promissory note or other binding obligation  
9 to contribute cash or property or to perform services, which a  
10 partner contributes to a limited partnership in his capacity  
11 as a partner.

12 (4) "Event of withdrawal of a general partner" means an  
13 event that causes a person to cease to be a general partner as  
14 provided in Section 402.

15 (5) "Foreign limited partnership" means a partnership formed  
16 under the laws of any state other than this State and having  
17 as partners one or more general partners and one or more limited  
18 partners.

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

23 (7) "Limited partner" means a person who has been admitted  
24 to a limited partnership as a limited partner in accordance with  
25 the partnership agreement and named in the certificate of limited  
26 partnership as a limited partner.

27 (8) "Limited partnership" and "domestic limited partnership"  
28 mean a partnership formed by 2 or more persons under the laws of  
29 this State and having one or more general partners and one or more  
30 limited partners.

31 (9) "Partner" means a limited or general partner.

32 (10) "Partnership agreement" means any valid agreement, written  
33 or oral, of the partners as to the affairs of a limited partnership  
34 and the conduct of its business.

35 (11) "Partnership interest" means a partner's share of the profits  
36 and losses of a limited partnership and the right to receive distri-  
37 butions of partnership assets.

38 (12) "Person" means a natural person, partnership, limited partner-  
39 ship (domestic or foreign), trust, estate, association, corporation,  
40 or any other legal entity.

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

1 SECTION 102. [Name.] The name of each limited partner-  
2 ship as set forth in its certificate of limited partnership:

3 (1) shall contain without abbreviation the words "limited  
4 partnership";

5 (2) may not contain the name of a limited partner unless  
6 (i) it is also the name of a general partner or the corporate  
7 name of a corporate general partner, or (ii) the business of the  
8 limited partnership had been carried on under that name before  
9 the admission of that limited partner;

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

13 (4) shall be such as to distinguish it upon the records in the  
14 office of the administrator from (i) the name of each other  
15 domestic limited partnership, (ii) the name of each foreign limited  
16 partnership authorized to transact business in this State and  
17 the name under which each such foreign limited partnership has  
18 registered in this State, (iii) each name currently reserved under  
19 Section 103 or assumed under Section 104, (iv) the name of each  
20 domestic corporation, and each foreign corporation authorized to  
21 transact business in this State and (v) each corporate name  
22 currently reserved or registered under the business corporation  
23 act or a predecessor act and each corporate name assumed under section  
24 217 of the business corporation act; and

25 (5) may not contain the words "corporation" or "incorporated" or  
26 any abbreviation or derivative thereof.

1 SECTION 103. [Reservation of Name.]

2 (a) The exclusive right to the use of a name may be reserved by:

3 (1) any person intending to organize a limited partnership  
4 under this Act and to adopt that name;

5 (2) any domestic limited partnership or any foreign limited  
6 partnership registered in this State which, in either case,  
7 intends to adopt that name;

8 (3) any foreign limited partnership intending to register  
9 in this State and adopt that name; and

10 (4) any person intending to organize a foreign limited  
11 partnership and intending to have it register in this State  
12 and adopt that name.

13 (b) The reservation shall be made by filing with the  
14 administrator an application, executed by the applicant, to  
15 reserve a specified name. If the administrator finds that  
16 the name is available for use by a domestic or foreign  
17 limited partnership and all filing fees required by law  
18 have been paid, he shall reserve the name for the exclusive  
19 use of the applicant for a period expiring at the end of the  
20 fourth full calendar month following the month in which the

21 application was filed. The administrator, for good cause  
22 shown, may extend the reservation for periods of not more  
23 than 2 calendar months each. Not more than 2 extensions  
24 shall be granted. The right to the exclusive use of a  
25 reserved name may be transferred to any other person by  
26 filing in the office of the administrator a notice of the  
27 transfer, executed by the applicant for whom the name was  
28 reserved and specifying the name and address of the transferee.

1 SECTION 104. [Transacting Business Under Assumed Name;  
2 Certificate.]

3 (a) A domestic limited partnership may transact its busi-  
4 ness under any assumed name or names other than its name as set  
5 forth in its certificate of limited partnership and a foreign  
6 limited partnership may transact its business under any assumed  
7 name or names other than the name under which it has registered in  
8 this State if not precluded from use by Section 102(2), (3), (4) or  
9 (5), and the same name may be assumed by 2 or more domestic or  
10 foreign limited partnerships participating together in any partner-  
11 ship or joint venture by filing with the administrator a certificate  
12 stating the name as set forth in the certificate of limited partner-  
13 ship, in the case of a domestic limited partnership, or under which  
14 it has registered in this State, in the case of a foreign limited  
15 partnership, and the assumed name under which the business is to be  
16 transacted. Such certificate shall be effective for a period expiring  
17 on December 31 of the fifth full calendar year following the year in  
18 which it was filed, unless sooner terminated by the filing with the  
19 administrator of a certificate of termination of assumed name or by  
20 the dissolution and the commencement of winding up of a domestic or  
21 foreign limited partnership or the filing with the administrator of a  
22 certificate of cancellation of registration of a foreign limited  
23 partnership. It may be extended for additional consecutive periods  
24 of 5 full calendar years each by the filing with the administrator  
25 of similar certificates not earlier than 90 days preceding the expira-  
26 tion of any such period. The administrator shall notify the limited  
27 partnership of the impending expiration of the certificate of assumed  
28 name no later than 90 days before the initial or subsequent 5-year  
29 period will expire. This Section does not create substantive rights  
30 to the use of a particular assumed name.

31 (b) Each certificate filed pursuant to Section 104(a) shall be  
32 executed by at least one general partner.

1 SECTION 105. [Specified Office and Agent; Resignation of Agent.]

2 (a) Each limited partnership shall continuously maintain in this  
3 State:

4 (1) an office, which may but need not be a place of its  
5 business in this State, at which shall be kept the records  
6 required by Section 106 to be maintained; and

7 (2) an agent for service of process on the limited partner-  
8 ship, which agent must be an individual resident of this State,  
9 a domestic corporation, or a foreign corporation authorized to  
10 do business in this State.

11 (b) An agent for service of process on a domestic or foreign  
12 limited partnership may resign by filing a written notice thereof  
13 with a general partner of such domestic or foreign limited partner-  
14 ship and with the administrator. The general partners shall  
15 promptly appoint a successor agent and shall promptly cause the  
16 certificate of limited partnership to be amended, in the case of a  
17 domestic limited partnership, or a certificate pursuant to Section  
18 905 to be filed, in the case of a foreign limited partnership,  
19 to reflect such appointment. The appointment of the resigning agent  
20 terminates upon the (i) appointment of a successor and the filing of  
21 a certificate of amendment or restated certificate of limited part-  
22 nership, in the case of a domestic limited partnership, or a certi-  
23 ficate pursuant to Section 905, in the case of a foreign limited  
24 partnership, reflecting such appointment, or (ii) expiration of 30  
25 days after receipt of the notice by the administrator, whichever  
26 first occurs.

1 SECTION 106. [Records to be Kept.] Each limited partnership  
2 shall keep at the office referred to in Section 105(a)(1) the  
3 following: (1) a current list of the full name and last known busi-  
4 ness or residence address of each partner, specifying separately the  
5 general partners and limited partners and set forth in alphabetical  
6 order within each category, (2) a copy of the certificate of limited  
7 partnership and all certificates of amendment thereto, restated certi-  
8 ficates of limited partnership and certificates filed pursuant to Section  
9 104(a), together with executed copies of any powers of attorney pursuant  
10 to which any certificate has been executed, (3) copies of the limited  
11 partnership's federal, state and local income tax returns and reports,  
12 if any, for the 3 most recent years, and (4) copies of any then effective  
13 written partnership agreements and of any financial statements of the  
14 limited partnership for the 3 most recent years. Those records are  
15 subject to inspection and copying by any partner or his designated  
16 representative during ordinary business hours, at the reasonable request  
17 and at the expense of such partner.

1 SECTION 107. [Nature of Business.] A limited partnership  
2 may carry on any business that a partnership without limited  
3 partners may carry on except as otherwise provided by law.

1 SECTION 108. [Business Transactions of Partner with Partner-  
2 ship.] Except as provided in the partnership agreement, a  
3 partner may lend money to and transact other business with  
4 the limited partnership and, subject to other applicable law,  
5 has the same rights and obligations with respect thereto as a  
6 person who is not a partner.

1 SECTION 109. [Agreement to Pay Interest in Excess of Legal  
2 Rate; Defense of Usury Prohibited.] A domestic or foreign



3 limited partnership, whether or not formed at the request of  
4 a lender, may by agreement in writing, and not otherwise,  
5 agree to pay a rate of interest in excess of the legal rate  
6 (including, without limitation, a rate of interest in excess  
7 of the rate set forth in Act No. 259 of the Public Acts  
8 of 1968, being sections 438.41 and 438.42 of the Michigan  
9 Compiled Laws) and in such case the defense of usury is  
10 prohibited.

## ARTICLE 2

### Formation: Certificate of Limited Partnership

#### 1 SECTION 201. [Certificate of Limited Partnership.]

2 (a) In order to form a limited partnership two or more per-  
3 sons must execute a certificate of limited partnership. The certi-  
4 ficate shall be filed in the office of the administrator and set  
5 forth:

6 (1) the name of the limited partnership;

7 (2) the general character of its business;

8 (3) the address of the office and the name and address of  
9 the agent for service of process required to be maintained by  
10 Section 105(a);

11 (4) the name and the business or residence address of  
12 each partner (specifying separately the general partners and  
13 limited partners);

14 (5) the amount of cash and a description and statement  
15 of the agreed value of the other property or services contribu-  
16 ted by each limited partner and which each limited partner has  
17 agreed to contribute in the future;

18 (6) the times at which or events on the happening of which  
19 any additional contributions agreed to be made by each limited  
20 partner are to be made;

21 (7) any power of a limited partner to grant the right to be-  
22 come a limited partner to an assignee of any part of his partnership  
23 interest, and the terms and conditions of the power;

24 (8) if agreed upon, the time at which or the events on the  
25 happening of which a partner may terminate his membership in the  
26 limited partnership and, in the case of a limited partner, the  
27 amount of, or the method of determining, the distribution to  
28 which he may be entitled respecting his partnership interest,  
29 and the terms and conditions of the termination and distribution;

30 (9) any right of a limited partner to receive distributions  
31 of property, including cash from the limited partnership;

32 (10) any right of a limited partner to receive, or of a  
33 general partner to make to a limited partner, distributions  
34 which include a return of all or any part of the limited partner's  
35 contribution;

36 (11) any time at which or events upon the happening of which  
37 the limited partnership is to be dissolved and its affairs wound  
38 up;

39 (12) any right of the remaining general partners to continue  
40 the business on the happening of an event of withdrawal of a  
41 general partner; and

42 (13) any other matters the partners determine to  
43 include therein.

44 (b) A limited partnership is formed on the effective date  
45 of the certificate of limited partnership as provided in  
46 Section 206.

1 SECTION 202. [Amendment to Certificate.]

2 (a) A certificate of limited partnership is amended by  
3 filing a certificate of amendment thereto in the office of  
4 the administrator. The certificate of amendment shall set forth:

5 (1) the name of the limited partnership;

6 (2) the date of filing of its original certificate of  
7 limited partnership; and

8 (3) the amendment or amendments to the certificate of  
9 limited partnership.

10 (b) Within 60 days after the happening of any of the  
11 following events, an amendment to a certificate of limited  
12 partnership reflecting the occurrence of the event or events  
13 shall be filed:

14 (1) a change in the amount or character of the contri-  
15 bution of any limited partner, or in any limited partner's  
16 obligation to make a contribution;

17 (2) the admission of a new partner;

18 (3) the withdrawal of a partner; or

19 (4) the continuation of the business under Section  
20 801 after an event of withdrawal of a general partner.

21 (c) A general partner who becomes aware that any state-  
22 ment in a certificate of limited partnership was false when  
23 made or that any arrangements or other facts described have  
24 changed, making the certificate inaccurate in any respect,  
25 shall promptly amend the certificate, but an amendment to  
26 show a change of address of a limited partner need be filed  
27 only once every 12 months.

28 (d) A certificate of limited partnership may be amended at  
29 any time for any other proper purpose the general partners  
30 determine.

31 (e) No person has any liability because an amendment to a  
32 certificate of limited partnership has not been filed to reflect  
33 the occurrence of any event referred to in subsection (b) of  
34 this Section if the amendment is filed within the 60 day  
35 period specified in subsection (b).

36 (f) The provisions of a limited partnership's certificate of  
37 limited partnership which are then in effect and operative, as there-  
38 tofore amended, may be integrated into a single instrument and at the  
39 same time its certificate of limited partnership may also be  
40 further amended by the execution and filing of a restated certificate  
41 of limited partnership. An amendment effected in connection  
42 with the restatement and integration of the certificate of

43 limited partnership is subject to any other provision of this  
44 Act, not inconsistent with this subsection, which would apply  
45 if a certificate of amendment were filed to effect such amend-  
46 ment. A restated certificate of limited partnership shall be  
47 specifically designated as such in the heading thereof and shall  
48 state, either in the heading or in an introductory paragraph, the  
49 limited partnership's present name, and, if it has been changed,  
50 all of its former names and the date of filing of its original  
51 certificate of limited partnership.

52 (g) The certificate of limited partnership is amended on the  
53 effective date of the certificate of amendment or restated certifi-  
54 cate of limited partnership effecting an amendment as provided in  
55 Section 206.

1 SECTION 203. [Cancellation of Certificate.]

2 (a) A certificate of limited partnership shall be cancelled upon  
3 the dissolution and the commencement of winding up of the partnership  
4 or at any other time there are no limited partners. A certificate of  
5 cancellation shall be filed in the office of the administrator and  
6 set forth:

- 7 (1) the name of the limited partnership;
- 8 (2) the date of filing of its original certificate of  
9 limited partnership;
- 10 (3) the reason for filing the certificate of cancellation; and
- 11 (4) any other information the general partners filing the  
12 certificate determine.

13 (b) The certificate of limited partnership is cancelled  
14 on the effective date of the certificate of cancellation as  
15 provided in Section 206.

1 SECTION 204. [Execution of Certificates.]

2 (a) Each certificate required by this Article to be filed in  
3 the office of the administrator shall be executed in the following  
4 manner:

- 5 (1) an original certificate of limited partnership must  
6 be signed by all partners named therein;
- 7 (2) a certificate of amendment or a restated certificate  
8 of limited partnership must be signed by at least one general  
9 partner and by each other partner designated in the certificate  
10 as a new partner or whose contribution is described as having  
11 been increased; and
- 12 (3) a certificate of cancellation must be signed by at  
13 least one general partner.

14 (b) Any person may sign any certificate required or per-  
15 mitted to be filed under this Act by an attorney-in-fact.

16 (c) The execution of a certificate by a general partner  
17 constitutes an affirmation under the penalties of perjury that  
18 the facts stated therein are true.

1 SECTION 205. [Amendment or Cancellation by Judicial Act.]

2 If a person required by Section 204 to execute a certificate  
3 of amendment, a restated certificate of limited partnership or  
4 a certificate of cancellation fails or refuses to do so, any other  
5 partner, and any assignee of a partnership interest, who is  
6 adversely affected by the failure or refusal, may petition the  
7 circuit court of the county in which the office referred to in

8 Section 105(a)(1) is located to direct the amendment,  
9 restatement or cancellation. If the court finds that the  
10 amendment, restatement or cancellation is proper and that  
11 any person so designated has failed or refused to execute  
12 the certificate, it shall order the administrator to record  
13 an appropriate certificate of amendment, restated certifi-  
14 cate of limited partnership or certificate of cancellation,  
15 and the court may require the person who has failed or refused  
16 to execute the certificate to pay to the petitioner the  
17 reasonable expenses, including court costs and fees of  
18 attorneys, incurred by him with respect to the proceedings.  
19 The certificate of limited partnership is amended on the  
20 effective date of the certificate of amendment or restated  
21 certificate of limited partnership effecting an amendment,  
22 and the certificate of limited partnership is cancelled on  
23 the effective date of the certificate of cancellation, as  
24 provided in Section 206.

1 SECTION 206. [Filing in Office of Administrator.]

2 (a) A document required or permitted to be filed under this  
3 Act shall be filed by delivering the document to the adminis-  
4 trator together with the fees and accompanying documents required  
5 by law. A person who executes a certificate as an attorney-in-fact,  
6 agent or fiduciary need not exhibit evidence of his authority as a  
7 prerequisite to filing. If the document substantially conforms to  
8 the requirements of this Act, the administrator shall endorse upon  
9 it the word "filed" with his official title and the dates of receipt  
10 and of filing thereof, and shall file and index the document or a  
11 microfilm or other reproduced copy thereof in his office. If so  
12 requested at the time of the delivery of the document to his office,  
13 the administrator shall include the hour of filing in his endorsement  
14 thereon. The administrator shall prepare and return a true copy of  
15 the document, or at his discretion the original thereof, to the person  
16 who submitted it for filing showing the filing date thereof. The  
17 records and files of the administrator relating to limited partner-  
18 ships shall be open to reasonable inspection by the public. The  
19 records or files may, at the discretion of the administrator, be  
20 maintained either in their original form or in microfilm or other  
21 reproduced form. The administrator may make copies of all documents  
22 filed under this Act, or any predecessor Act, by microfilm or other  
23 process and may destroy the originals of the documents so copied.

24 (b) The document is effective at the time it is endorsed unless a  
25 subsequent effective time is set forth in the document which shall not  
26 be later than 90 days after the date of delivery.

27 (c) The administrator may, at his discretion, require that a document  
28 required or permitted to be filed under this Act be on a form prescribed  
29 by the administrator.

1 SECTION 207. [Liability for False Statement in Certificate.]

2 If any certificate of limited partnership, certificate of amendment,  
3 restated certificate of limited partnership or certificate of can-  
4 cellation contains a false statement, one who suffers loss by  
5 reliance on the statement may recover damages for the loss from:

6 (1) any person who executes the certificate, or causes another  
7 to execute it on his behalf, and knew the statement to be false at the  
8 time the certificate was executed; and

10           (2) any general partner who thereafter knows that any arrangement  
11 or other fact described in the certificate has changed, making the state-  
12 ment inaccurate in any respect within a sufficient time before the state-  
13 ment was relied upon reasonably to have enabled that general partner to  
14 cancel or amend the certificate, or to file a petition for its cancellation  
15 or amendment under Section 205; provided, however, the provisions of this  
16 subsection are subject in all respects to the provisions of Section 202(e).

1       SECTION 208. [Notice.] The fact that a certificate of limited  
2 partnership is on file in the office of the administrator is  
3 notice that the partnership is a limited partnership and the  
4 persons designated therein as limited partners are limited partners,  
5 and is notice of the matters included therein that are specified  
6 in Sections 201(a)(1) through (12) or that are included therein  
7 pursuant to any other section of this Act, but it is not notice  
8 of any other fact.

1       SECTION 209. [Delivery of Certificates to Limited Partners.] Upon  
2 the return by the administrator pursuant to Section 206 of a true  
3 copy or original of a certificate of limited partnership, certifi-  
4 cate of amendment, restated certificate of limited partnership or  
5 certificate of cancellation, the general partners shall promptly  
6 deliver or mail a copy of the certificate to each limited partner  
7 unless the partnership agreement provides otherwise.

### ARTICLE 3 Limited Partners

1       SECTION 301. [Admission of Additional Limited Partners.]

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

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

10       (2) in the case of an assignee of a partnership interest  
11 of a partner who has the power, as provided in Section 704, to  
12 grant the assignee the right to become a limited partner,  
13 upon the exercise of that power and compliance with any conditions  
14 limiting the grant or exercise of the power.

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

1       SECTION 302. [Voting.] Subject to Section 303, the partner-  
2 ship agreement may grant to all or a specified group of the  
3 limited partners the right to vote (with or without the concur-  
4 rence of the general partners, on a per capita or other basis) upon  
5 any matter.

1       SECTION 303. [Liability to Third Parties.]

2       (a) Except as provided in subsection (d), a limited partner

is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

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

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

(3) acting as surety for the limited partnership;

(4) approving or disapproving an amendment to the partnership agreement;

(5) approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership;

(6) requesting or attending a meeting of partners; or

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

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

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

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

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

(v) the removal of a general partner.

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by Section 102(2)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

#### SECTION 304. [Person Erroneously Believing Himself Limited Partner.]

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously

5 but in good faith believes that he has become a  
6 limited partner in the enterprise is not a general  
7 partner in the enterprise and is not bound by its  
8 obligations by reason of making the contribution,  
9 receiving distributions from the enterprise, or  
10 exercising any rights of a limited partner, if, on  
11 ascertaining the mistake, he:

12 (1) causes an appropriate certificate of limited  
13 partnership, certificate of amendment or restated  
14 certificate of limited partnership to be executed and filed; or

15 (2) withdraws from future equity participation  
16 in the enterprise.

17 (b) A person who makes a contribution of the kind  
18 described in subsection (a) is liable as a general  
19 partner to any third party who transacts business with  
20 the enterprise (i) before the person withdraws and an  
21 appropriate certificate is filed to show withdrawal,  
22 or (ii) before an appropriate certificate is filed to  
23 show his status as a limited partner and, in the case  
24 of an amendment, after expiration of the 60-day period  
25 for filing an amendment relating to the person as a  
26 limited partner under Section 202, but in either case  
27 only if the third party actually believed in good  
28 faith that the person was a general partner at the time  
29 of the transaction.

1 SECTION 305. [Information.] Each limited partner has  
2 the right to:

3 (1) inspect and copy or have his designated represen-  
4 tative inspect and copy any of the partnership records required  
5 to be maintained by Section 106; and

6 (2) obtain from the general partners from time to time  
7 upon reasonable demand (i) true and full information regar-  
8 ding the state of the business and financial condition of  
9 the limited partnership, (ii) promptly after becoming avail-  
10 able, a copy of the limited partnership's federal, state and  
11 local income tax returns for each year, and (iii) other in-  
12 formation regarding the affairs of the limited partnership as  
13 is just and reasonable.

#### ARTICLE 4

##### General Partners

1 SECTION 401. [Admission of Additional General Partners.] Af-  
2 ter the filing of a limited partnership's original certificate  
3 of limited partnership, additional general partners may be  
4 admitted as provided in the partnership agreement or, if the  
5 partnership agreement does not so provide, upon the written  
6 consent of all partners.

1       SECTION 402. [Events of Withdrawal.] Except as approved by  
2 the specific written consent of all partners at the time, a  
3 person ceases to be a general partner of a limited partnership  
4 upon the happening of any of the following events:

5       (1) the general partner withdraws from the limited part-  
6 nership as provided in Section 602;

7       (2) the general partner is removed as a general partner  
8 in accordance with the partnership agreement;

9       (3) unless otherwise provided in the certificate of limi-  
10 ted partnership, the general partner: (i) makes an assignment  
11 for the benefit of creditors; (ii) files a voluntary petition  
12 in bankruptcy; (iii) is adjudicated a bankrupt or insolvent;  
13 (iv) files a petition or answer seeking for himself any re-  
14 organization, arrangement, composition, readjustment, liquid-  
15 ation, dissolution or similar relief under any statute, law or  
16 regulation; (v) files an answer or other pleading admitting  
17 or failing to contest the material allegations of a petition  
18 filed against him in any proceeding of this nature; or (vi)  
19 seeks, consents to, or acquiesces in the appointment of a  
20 trustee, receiver, or liquidator of the general partner or of  
21 all or any substantial part of his properties;

22       (4) unless otherwise provided in the certificate of limit-  
23 ed partnership, 120 days after the commencement of any proceeding  
24 against the general partner seeking reorganization, arrangement,  
25 composition, readjustment, liquidation, dissolution or similar  
26 relief under any statute, law, or regulation, the proceeding has  
27 not been dismissed, or if within 90 days after the appointment  
28 without his consent or acquiescence of a trustee, receiver, or  
29 liquidator of the general partner or of all or any substantial  
30 part of his properties, the appointment is not vacated or stayed  
31 or within 90 days after the expiration of any such stay, the  
32 appointment is not vacated;

33       (5) in the case of a general partner who is a natural  
34 person,

35               (i) his death; or

36               (ii) the entry of an order by a court of competent jurisdiction  
37 adjudicating him to be legally incapacitated or unable or incompetent to  
38 manage his person or his estate;

39       (6) in the case of a general partner who is acting as a  
40 general partner by virtue of being a trustee of a trust, the  
41 termination of the trust (but not merely the substitution of a  
42 new trustee);

43       (7) in the case of a general partner that is a separate  
44 partnership, the dissolution and commencement of winding up of  
45 the separate partnership;

46       (8) in the case of a general partner that is a corpora-  
47 tion, the dissolution of the corporation or the revocation of  
48 its charter;

49       (9) in the case of an estate, the distribution by the  
50 fiduciary of the estate's entire interest in the partnership;

51       (10) in the case of a general partner that is any other  
52 legal entity, the cessation of the legal existence of the legal  
53 entity; or



54 (11) any event specified in the partnership agreement as  
55 resulting in a person ceasing to be a general partner.

1 SECTION 403. [General Powers and Liabilities.] Except as  
2 provided in this Act or in the partnership agreement, a general  
3 partner of a limited partnership has the rights and powers and  
4 is subject to the restrictions and liabilities of a partner  
5 in a partnership without limited partners.

1 SECTION 404. [Contributions by General Partner.] A general  
2 partner of a limited partnership may make contributions to the  
3 partnership and share in the profits and losses of, and in  
4 distributions from, the limited partnership as a general part-  
5 ner. A general partner also may make contributions to and  
6 share in profits, losses, and distributions as a limited  
7 partner. A person who is both a general partner and a limited  
8 partner has the rights and powers, and is subject to the  
9 restrictions and liabilities, of a general partner and,  
10 except as provided in the partnership agreement, also has the  
11 powers, and is subject to the restrictions, of a limited part-  
12 ner to the extent of his participation in the partnership as a  
13 limited partner.

1 SECTION 405. [Voting.] The partnership agreement may grant  
2 to all or certain identified general partners the right to vote  
3 (on a per capita or any other basis), separately or with all or  
4 any class of the limited partners, on any matter.

## ARTICLE 5

### Finance

1 SECTION 501. [Form of Contribution.] The contribution of  
2 a partner may be in cash, property, or services rendered, or  
3 a promissory note or other obligation to contribute cash or  
4 property or to perform services.

1 SECTION 502. [Liability for Contribution.]  
2 (a) Except as provided in the certificate of limited part-  
3 nership, a limited partner is obligated to the limited part-  
4 nership to perform any promise to contribute cash or property  
5 or to perform services, even if he is unable to perform because  
6 of death, disability or any other reason. If a limited partner  
7 does not make the required contribution of property or services,  
8 he is obligated at the option of the limited partnership to con-  
9 tribute cash equal to that portion of the value (as stated in  
10 the certificate of limited partnership) of the stated contribu-  
11 tion that has not been made, in addition to any other rights that  
12 the limited partnership may have against such limited partner  
13 under the partnership agreement or applicable law.

14 (b) Unless otherwise provided in the partnership agreement,  
15 the obligation of a limited partner to make a contribution or

return money or other property paid or distributed in violation of this Act may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, after the filing of the certificate of limited partnership or an amendment thereto which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

(c) The obligation of a general partner to the limited partnership to contribute cash or property or perform services shall be as provided in the partnership agreement.

SECTION 503. [Sharing of Profits and Losses.] The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. For purposes of this Section, the value of the contributions made by each limited partner shall be as stated in the certificate of limited partnership, and the value of the contributions made by each general partner shall be as stated in the partnership agreement, and if the partnership agreement does not so state, the value of the contributions made by each general partner shall be as stated in the books and records of the partnership or determined by any other reasonable method.

SECTION 504. [Sharing of Distributions.] Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. For purposes of this Section, the value of the contributions made by each limited partner shall be as stated in the certificate of limited partnership, and the value of the contributions made by each general partner shall be as stated in the partnership agreement, and if the partnership agreement does not so state, the value of the contributions made by each general partner shall be as stated in the books and records of the partnership or determined by any other reasonable method.

ARTICLE 6

Distributions and Withdrawal

1       SECTION 601. [Interim Distributions.] Except as provided  
2 in this Article, a partner is entitled to receive distri-  
3 butions from a limited partnership before his withdrawal  
4 from the limited partnership and before the dissolution and  
5 winding up thereof:  
6       (1) to the extent and at the times or upon the happen-  
7 ing of the events specified in the partnership agreement; and  
8       (2) if any distribution to a limited partner constitutes  
9 a return of any part of his contribution under Section 608(c),  
10 to the extent and at the times or upon the happening of the  
11 events specified in the certificate of limited partnership.

1       SECTION 602. [Withdrawal of General Partner.] A general  
2 partner may withdraw from a limited partnership at any time  
3 by giving written notice to the other partners, but if the  
4 withdrawal violates the partnership agreement, the limited  
5 partnership may recover from the withdrawing general partner  
6 damages for breach of the partnership agreement and offset the  
7 damages against the amount otherwise distributable to him.

1       SECTION 603. [Withdrawal of Limited Partner.] A limited  
2 partner may withdraw from a limited partnership at the time  
3 or upon the happening of events specified in the certificate  
4 of limited partnership (but not before) and in accordance with  
5 the partnership agreement. If the certificate does not specify  
6 the time or the events upon the happening of which a limited  
7 partner may withdraw but does specify a definite time for the  
8 dissolution and winding up of the limited partnership, a limited  
9 partner may not withdraw prior to the dissolution and winding up  
10 of the limited partnership. If the certificate does not specify  
11 the time or the events upon the happening of which a limited  
12 partner may withdraw or a definite time for the dissolution and  
13 winding up of the limited partnership, a limited partner may  
14 withdraw upon not less than 6 months' prior written notice to  
15 each general partner at his address on the books of the limited  
16 partnership at its office in this State.

1       SECTION 604. [Distribution Upon Withdrawal.] Except as  
2 provided in this Article, upon withdrawal any withdrawing  
3 partner is entitled to receive any distribution to which he  
4 is entitled under the partnership agreement and, if not  
5 otherwise provided in the agreement, he is entitled to  
6 receive, within a reasonable time after withdrawal, the  
7 fair value of his interest in the limited partnership as of  
8 the date of withdrawal based upon his right to share in  
9 distributions from the limited partnership.

1       SECTION 605. [Distribution in Kind.] Except as provided  
2 in the certificate of limited partnership, a limited partner,  
3 and except as provided in the partnership agreement, a general  
4 partner, regardless of the nature of his contribution, has no  
5 right to demand and receive any distribution from a limited  
6 partnership in any form other than cash. Except as provided  
7 in the partnership agreement, a partner may not be compelled  
8 to accept a distribution of any asset in kind from a limited  
9 partnership to the extent that the percentage of the asset  
10 distributed to him exceeds a percentage of that asset which  
11 is equal to the percentage in which he shares in distributions  
12 from the limited partnership.

1       SECTION 606. [Right to Distribution.] At the time a partner  
2 becomes entitled to receive a distribution, he has the status of,  
3 and is entitled to all remedies available to, a creditor of the  
4 limited partnership with respect to the distribution.

1       SECTION 607. [Limitations on Distribution.] A partner  
2 may not receive a distribution from a limited partnership to the  
3 extent that, after giving effect to the distribution, all liabilities  
4 of the limited partnership, other than liabilities to partners  
5 on account of their partnership interests, exceed the fair value of  
6 the partnership assets.

1       SECTION 608. [Liability Upon Return of Contribution.]  
2       (a) If a limited partner has received the return of any part  
3 of his contribution without violation of the partnership agree-  
4 ment or this Act, he is liable to the limited partnership for a  
5 period of one year thereafter for the amount of the returned  
6 contribution, but only to the extent necessary to discharge the  
7 limited partnership's liabilities to creditors who extended  
8 credit to the limited partnership during the period the contri-  
9 bution was held by the partnership.

10       (b) If a limited partner has received the return of any part  
11 of his contribution in violation of the partnership agreement  
12 or this Act, he is liable to the limited partnership for a  
13 period of 6 years thereafter for the amount of the contribution  
14 wrongfully returned.

15       (c) A limited partner receives a return of his contribution  
16 to the extent that a distribution to him reduces his share of  
17 the fair value of the net assets of the limited partnership  
18 below the value (as set forth in the certificate of limited  
19 partnership) of his contribution which has not been distributed  
20 to him.

ARTICLE 7

Assignment of Partnership Interests

1 SECTION 701. [Nature of Partnership Interest.] A partner-  
2 ship interest is personal property.

1 SECTION 702. [Assignment of Partnership Interest.] Except  
2 as provided in the partnership agreement, a partnership interest  
3 is assignable in whole or in part. An assignment of a partner-  
4 ship interest does not dissolve a limited partnership or entitle  
5 the assignee to become or to exercise any rights of a partner.  
6 An assignment entitles the assignee to receive, to the extent  
7 assigned, only the distribution to which the assignor would be  
8 entitled.

1 SECTION 703. [Rights of Creditor.] On application to a court  
2 of competent jurisdiction by any judgment creditor of a partner,  
3 the court may charge the partnership interest of the partner with  
4 payment of the unsatisfied amount of the judgment with interest.  
5 To the extent so charged, the judgment creditor has only the rights  
6 of an assignee of the partnership interest. This Act does not  
7 deprive any partner of the benefit of any exemption laws applicable  
8 to his partnership interest.

1 SECTION 704. [Right of Assignee to Become Limited Partner.]

2 (a) An assignee of a partnership interest, including an  
3 assignee of a general partner, may become a limited partner  
4 if and to the extent that (1) the assignor gives the assignee  
5 that right in accordance with authority described in the certi-  
6 ficate of limited partnership, or (2) all other partners consent.

7 (b) An assignee who has become a limited partner has, to the  
8 extent assigned, the rights and powers, and is subject to the  
9 restrictions and liabilities, of a limited partner under the  
10 partnership agreement and this Act. An assignee who becomes  
11 a limited partner also is liable for the obligations of his  
12 assignor to make and return contributions as provided in  
13 Article 6. However, the assignee is not obligated for liabili-  
14 ties unknown to the assignee at the time he became a limited  
15 partner and which could not be ascertained from the certifi-  
16 cate of limited partnership.

17 (c) If an assignee of a partnership interest becomes a  
18 limited partner, the assignor is not released from his liability  
19 to the limited partnership under Sections 207 and 502.

1 SECTION 705. [Power of Estate of Deceased or Incompetent  
2 Partner.] If a partner who is an individual dies or a court

3 of competent jurisdiction adjudges him to be unable  
4 to manage his property, or incompetent to manage his  
5 person or his property, the partner's personal re-  
6 presentative, executor, administrator, guardian, con-  
7 servator, or other legal representative may exercise all  
8 the partner's rights for the purpose of settling his  
9 estate or administering his property, including any power  
10 the partner had to give an assignee the right to become  
11 a limited partner. If a partner is a corporation, trust,  
12 or other entity and is dissolved or terminated, the powers  
13 of that partner may be exercised by its legal representative  
14 or successor.

## ARTICLE 8

### Dissolution

1 SECTION 801. [Nonjudicial Dissolution.] A limited part-  
2 nership is dissolved and its affairs shall be wound up upon  
3 the happening of the first to occur of the following:

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

6 (2) written consent of all partners;

7 (3) an event of withdrawal of a general partner unless  
8 at the time there is at least one other general partner and  
9 the certificate of limited partnership permits the business  
10 of the limited partnership to be carried on by the remaining  
11 general partner and that partner does so, but the limited  
12 partnership is not dissolved and is not required to be wound  
13 up by reason of any event of withdrawal, if, within 90 days  
14 after the withdrawal, all remaining partners agree in writing  
15 to continue the business of the limited partnership and to the  
16 appointment of one or more additional general partners if neces-  
17 sary or desired; or

18 (4) entry of a decree of judicial dissolution under  
19 Section 802 or 803.

1 SECTION 802. [Judicial Dissolution.] On application by  
2 or for a partner the circuit court of the county in which  
3 the office referred to in Section 105(a)(1) is located may  
4 decree dissolution of a limited partnership when it is  
5 established that the acts of the general partners, or those  
6 of the general partners in control of the limited partner-  
7 ship, are illegal, fraudulent or willfully unfair and  
8 oppressive to the limited partnership or to such partner.  
9 On application by or for a partner to dissolve a limited part-  
10 nership on a ground enumerated in this Section, the court upon  
11 establishment of such ground may make such order or grant  
12 such relief, other than dissolution, as it deems appropriate.  
13 A copy of a judicial order of dissolution shall be forwarded  
14 promptly to the administrator by the person designated by the  
15 court.

1 SECTION 803. [Action by attorney general for dissolution.]

2 (a) The attorney general may bring an action in the circuit  
3 court of the county in which the office referred to in Section  
4 105(a)(1) is located for dissolution of a limited partnership  
5 upon the ground that the limited partnership has committed  
6 any of the following acts:

- 7 (1) procured its organization through fraud;
- 8 (2) repeatedly and wilfully exceeded the
- 9 authority conferred upon it by law; or
- 10 (3) repeatedly and wilfully conducted its business in
- 11 an unlawful manner.
- 12 (b) The enumeration in this Section of grounds for dissolu-
- 13 tion does not exclude any other statutory or common law action
- 14 by the attorney general for dissolution of a limited partnership.

1 SECTION 804. [Winding Up.] Except as provided in the part-  
2 nership agreement, the general partners who have not wrongfully  
3 dissolved a limited partnership or, if none, the limited partners  
4 may wind up the limited partnership's affairs; but the circuit  
5 court of the county in which the office referred to in Section  
6 105(a)(1) is located may wind up the limited partnership's affairs  
7 upon application of, and good cause shown by, any partner, his  
8 legal representative, or assignee.

1 SECTION 805. [Distribution of Assets.] Upon the winding up of  
2 a limited partnership, the assets shall be distributed as follows:  
3 (1) to creditors, including partners who are creditors, to  
4 the extent permitted by law, in satisfaction of liabilities of the  
5 limited partnership other than liabilities for distributions to  
6 partners under Section 601 or 604;  
7 (2) except as provided in the partnership agreement, to part-  
8 ners and former partners in satisfaction of liabilities for distri-  
9 butions under Section 601 or 604; and  
10 (3) except as provided in the partnership agreement, to part-  
11 ners, first for the return of their contributions and secondly  
12 respecting their partnership interests, in the proportions in which  
13 the partners share in distributions.

## ARTICLE 9

### Foreign Limited Partnerships

1 SECTION 901. [Law Governing.] Subject to the Constitution of  
2 this State, (1) the laws of the state under which a foreign limi-  
3 ted partnership is organized govern its organization and internal  
4 affairs and the liability of its limited partners, and (2) a foreign  
5 limited partnership may not be denied registration by reason of any  
6 difference between those laws and the laws of this State.

1 SECTION 902. [Registration.] Before transacting business in this  
2 State, a foreign limited partnership shall register with the adminis-  
3 trator. In order to register, a foreign limited partnership shall  
4 submit to the administrator an application for regis-  
5 tration as a foreign limited partnership, signed and sworn to by a  
6 general partner and setting forth:

- 7 (1) the name of the foreign limited partnership and, if
- 8 different, the name under which it proposes to register and
- 9 transact business in this State;
- 10 (2) the state and date of its formation, and the names and addresses of
- 11 the governmental departments, agencies or authorities in such state with
- 12 which its certificate of limited partnership is currently on file and from
- 13 which copies may be obtained;

14 (3) the general character of the business it proposes  
15 to transact in this State;

16 (4) the name and address of any agent for service of  
17 process on the foreign limited partnership whom the foreign  
18 limited partnership elects to appoint; the agent must be an  
19 individual resident of this State, a domestic corporation, or  
20 a foreign corporation having a place of business in, and  
21 authorized to do business in, this State;

22 (5) a statement that the administrator is appointed  
23 the agent of the foreign limited partnership for service of  
24 process if no agent has been appointed under paragraph (4)  
25 or, if appointed, the agent has resigned or the agent's  
26 authority has been revoked or if the agent cannot be found  
27 or served with the exercise of reasonable diligence, and the  
28 name and business or residence address of a general partner to  
29 whom the administrator is to send copies of any process served  
30 on the administrator;

31 (6) the address of the office required to be maintained  
32 in the state of its organization by the laws of that state or,  
33 if not so required, of the principal office of the foreign  
34 limited partnership; and

35 (7) if the certificate of limited partnership filed in  
36 the foreign limited partnership's state of organization is  
37 not required to include the names and business or residence  
38 addresses of the partners, a list of the names and addresses.

1 SECTION 903. [Issuance of Registration.]

2 (a) If the administrator finds that an application for  
3 registration conforms to law and all requisite fees have  
4 been paid, he shall file in his office the application and  
5 issue a certificate of registration to transact business  
6 in this State.

7 (b) The certificate of registration, together with a true  
8 copy of the application or the original thereof, shall be  
9 returned to the person who filed the application or his  
10 representative.

1 SECTION 904. [Name.] A foreign limited partnership may register  
2 with the administrator under any name (whether or not it is the name  
3 under which it is registered in its state of organization) that in-  
4 cludes without abbreviation the words "limited partnership" and that  
5 could be registered by a domestic limited partnership formed under  
6 this Act.

1 SECTION 905. [Changes and Amendments.]

2 If any statement in the application for registration of a foreign  
3 limited partnership was false when made or any arrangements  
4 or other facts described have changed, making the application inac-  
5 curate in any respect, the foreign limited partnership shall promptly  
6 file in the office of the administrator a certificate, signed  
7 and sworn to by a general partner, correcting such statement.



1       SECTION 906. [Cancellation of Registration.]

2       A foreign limited partnership may cancel its registration  
3       by filing with the administrator a certificate of cancel-  
4       lation signed and sworn to by a general partner. A can-  
5       cellation does not terminate the authority of the adminis-  
6       trator to accept service of process on the foreign limited  
7       partnership with respect to causes of action arising out  
8       of the transactions of business in this State.

1       SECTION 907. [Transaction of Business Without  
2       Registration.]

3       (a) A foreign limited partnership transacting business in  
4       this State may not maintain any action, suit, or proceeding  
5       in any court of this State until it has registered in this  
6       State. An action commenced by a foreign limited partnership  
7       which has not registered in this State shall not be dismis-  
8       sed if it registers before the order of dismissal. This  
9       prohibition applies to:

10       (1) a successor in interest of the foreign limited  
11       partnership, except a receiver, trustee in bankruptcy or  
12       other representative of creditors of the foreign limited  
13       partnership, and

14       (2) an assignee of the foreign limited partnership,  
15       except an assignee for value who accepts an assignment with-  
16       out knowledge that the foreign limited partnership should  
17       have but has not registered in this State.

18       (b) The failure of a foreign limited partnership to register  
19       in this State does not impair the validity of any contract or  
20       act of the foreign limited partnership or prevent the foreign  
21       limited partnership from defending any action, suit, or procee-  
22       ding in any court of this State.

23       (c) A limited partner of a foreign limited partnership is  
24       not liable as a general partner of the foreign limited part-  
25       nership solely by reason of having transacted business in this  
26       State without registration.

27       (d) A foreign limited partnership, by transacting business  
28       in this State without registration, appoints the administrator  
29       as its agent for service of process with respect to causes of  
30       action arising out of the transaction of business in this State.

1       SECTION 908. [Action by Appropriate Official.] The  
2       attorney general may bring an action to restrain a foreign  
3       limited partnership from transacting business in this State  
4       in violation of this Article,

1       SECTION 909. [Activities not Constituting  
2 Transaction of Business; Exception.]

3       (a) Without excluding other activities which may not  
4 constitute transacting business in this State, a foreign  
5 limited partnership is not considered to be transacting  
6 business in this State, for the purposes of this Act,  
7 solely because it is carrying on in this State any 1 or  
8 more of the following activities:

9       (1) maintaining or defending an action or suit or  
10 an administrative or arbitral proceeding, or effecting  
11 the settlement thereof or the settlement of a claim or  
12 dispute;

13       (2) holding meetings of its partners or carrying on  
14 any other activities concerning its internal affairs;

15       (3) maintaining a bank account;

16       (4) maintaining an office or agency for the transfer,  
17 exchange, and registration of its securities, or appointing  
18 and maintaining a trustee or depository with relation to its  
19 securities;

20       (5) effecting sales through an independent contractor;

21       (6) soliciting or procuring orders, whether by mail or  
22 through employees or agents or otherwise, where such orders  
23 require acceptance without this State before becoming binding  
24 contracts;

25       (7) borrowing money, with or without security;

26       (8) securing or collecting debts or enforcing any right  
27 in property securing the same;

28       (9) transacting any business in interstate commerce; or

29       (10) conducting an isolated transaction not in the course  
30 of a number of repeated transactions of like nature.

31       (b) This Section does not apply in determining the contacts  
32 or activities which may subject a foreign limited partnership  
33 to service of process or taxation in this State or to regula-  
34 tion under any other act of this State.

1       SECTION 910. [Loans.] A foreign limited partnership may  
2 acquire or, through another person entitled to transact  
3 business in this State, may make loans, or participations  
4 or interests therein, insured or guaranteed in whole or in  
5 part by the federal housing administration or the veterans'  
6 administration or a successor or similar agency of the federal  
7 government, which are secured in whole or in part by mortgages

8 of real property located in this State, and a foreign limited  
9 partnership may purchase a loan, or participation or interest  
10 therein, secured in whole or in part by a mortgage of real  
11 property located in this State, without registering in this  
12 State. The failure of such foreign limited partnership to  
13 register in this State shall not affect or impair its ownership  
14 of such loans or participations or interests therein, or its  
15 right to collect and service the same through another person  
16 entitled to transact business in this State, or its right to  
17 enforce the same or to acquire, hold, protect, convey, lease  
18 and otherwise contract and deal with respect to the property  
19 mortgaged as security therefor.

## ARTICLE 10

### Derivative Actions

1 SECTION 1001. [Right of Action.] A limited partner may  
2 bring an action in the right of a limited partnership to  
3 recover a judgment in its favor if general partners with  
4 authority to do so have refused to bring the action or if  
5 an effort to cause those general partners to bring the  
6 action is not likely to succeed.

1 SECTION 1002. [Proper Plaintiff.] In a derivative action,  
2 the plaintiff must be a partner at the time of bringing the  
3 action and (1) at the time of the transaction of which he  
4 complains or (2) his status as a partner had devolved upon  
5 him by operation of law or pursuant to the terms of the part-  
6 nership agreement from a person who was a partner at the time  
7 of the transaction.

1 SECTION 1003. [Pleading.] In a derivative action, the  
2 complaint shall set forth with particularity the effort of the  
3 plaintiff to secure initiation of the action by a general partner  
4 or the reasons for not making the effort.

1 SECTION 1004. [Discontinuance, Compromise or Settlement  
2 of Derivative Action.] An action authorized by Section 1001  
3 shall not be discontinued, compromised or settled without  
4 approval by the court having jurisdiction of the action. If  
5 the court determines that the interest of the limited partners  
6 or of any class thereof will be substantially affected by the  
7 discontinuance, compromise or settlement, the court may  
8 direct that notice, by publication or otherwise, be given to  
9 the limited partners or any class thereof whose interests it  
10 determines will be so affected. If notice is so directed to  
11 be given, the court may determine which 1 or more of the  
12 parties to the action shall bear the expense of giving the  
13 notice, in such amount as the court determines and finds to  
14 be reasonable in the circumstances. The amount of such

15 expense shall be awarded as special costs of the action,  
16 and recoverable in the same manner as statutory taxable  
17 costs.

1 SECTION 1005. [Expenses.]

2 (a) If a derivative action is successful, in whole or  
3 in part, or if anything is received by the plaintiff as a  
4 result of a judgment, compromise or settlement of an action  
5 or claim, the court may award the plaintiff reasonable  
6 expenses, including reasonable attorneys' fees, and shall  
7 direct him to remit to the limited partnership the remainder  
8 of those proceeds received by him. This subsection does not  
9 apply to a judgment rendered for the benefit of an injured  
10 limited partner only and limited to a recovery of the  
11 loss or damage sustained by him.

12 (b) In an action brought in the right of the limited partner-  
13 ship by a limited partner of the limited partnership, the court  
14 having jurisdiction, upon final judgment and finding that the  
15 action was brought without reasonable cause, may require the  
16 plaintiff to pay to the parties named as defendants the  
17 reasonable expenses, including fees of attorneys, incurred by  
18 them in the defense of the action.

ARTICLE 11

Miscellaneous

1 SECTION 1101. [Construction and Application.] This Act  
2 shall be so applied and construed to effectuate its general  
3 purpose to make uniform the law with respect to the subject  
4 of this Act among states enacting it.

1 SECTION 1102. [Short Title.] This Act may be cited as the  
2 Michigan Revised Uniform Limited Partnership Act.

1 SECTION 1103. [Severability.] If any provision of this Act  
2 or its application to any person or circumstance is held invalid,  
3 the invalidity does not affect other provisions or applications  
4 of the Act which can be given effect without the invalid provi-  
5 sion or application, and to this end the provisions of this Act  
6 are severable.

1 SECTION 1104. [Effective Date and Repeal.] The effective date  
2 of this Act is July 1, 1982 and, except as otherwise provided in  
3 Section 1105, chapter 33 of the Revised Statutes of 1846, as amended,  
4 being sections 9885 to 9908 of the Compiled Laws of 1929, and Act  
5 No. 110 of the Public Acts of 1931, as amended, being sections  
6 449.201 to 449.231 of the Compiled Laws of 1970, are hereby repealed.  
7  
8

1 SECTION 1105. [Existing Limited Partnerships; Saving Clause.]

2 (a) A limited partnership formed under any other statute of  
3 this State and in existence on the effective date of this Act shall  
4 not dissolve and its legal existence shall not cease as a result of

5 the repeal of the statute under which it was formed or the enactment  
6 of this Act. A limited partnership formed under any other statute of  
7 this State and in existence on the effective date of this Act and the  
8 partners thereof shall be governed by the provisions of this Act and  
9 an existing limited partnership and its partners shall have the same  
10 rights and be subject to the same limitations, restrictions and lia-  
11 bilities as a limited partnership formed under this Act and its partners,  
12 except as follows:

13 (1) The partners of an existing limited partnership shall not be  
14 required to execute and file a certificate of limited partnership under  
15 this Act in order to maintain the continued existence of the  
16 limited partnership as a limited partnership under the laws  
17 of this State; and, as used in this Act with respect to an  
18 existing limited partnership, unless the context otherwise  
19 requires, "certificate of limited partnership" means the  
20 certificate of limited partnership of the limited partnership  
21 executed and filed pursuant to and in accordance with the  
22 provisions of the statute under which such limited partnership  
23 was formed, and the certificate as amended or restated;

24 (2) an existing limited partnership shall not be  
25 subject to the provisions of Sections 102(1), (3) or (4) with  
26 respect to its name as set forth in its certificate of limited  
26 partnership on the effective date of this Act, but it shall  
28 become subject to such provisions if, and at the time, any  
29 change in its name is made after the effective date of this  
30 Act;

31 (3) an existing limited partnership may continue to  
32 transact its business under any assumed name or names with  
33 respect to which there is on file on the effective date of  
34 this Act a certificate pursuant to Act No. 101 of the Public  
35 Acts of 1907, as amended, being Sections 445.1 through  
36 445.5, inclusive, of the Michigan Compiled Laws, by the  
37 filing of the certificate referred to in Section 104(a),  
38 provided that such assumed name or names are not precluded  
39 from use by Section 102(2) or (5);

40 (4) an existing limited partnership shall not be subject  
41 to the provisions of Section 105(a)(2) until the execution and  
42 filing of the restated certificate of limited partnership  
43 referred to in subsection (5) below, at which time the general  
44 partners of an existing limited partnership shall have the  
45 obligation, and the right and power, to appoint and thereafter  
46 continuously maintain an agent for service of process as required  
47 by Section 105(a)(2), anything contained in the partnership agree-  
48 ment to the contrary notwithstanding;

49 (5) the provisions of this Act relating to the events  
50 requiring, and the method of effecting, an amendment or cancella-  
51 tion of a certificate of limited partnership shall apply to an  
52 existing limited partnership to the same extent and in the same  
53 way that such provisions apply to a limited partnership formed  
54 under this Act; provided, however, the first amendment of the

certificate of limited partnership of an existing limited partnership made after the effective date of this Act shall be effected by the execution and filing of a restated certificate of limited partnership setting forth all of the information specified in Section 201(a), including, but not limited to, the name and address of the agent for service of process required to be maintained by Section 105 (a)(2), which information shall be current as of the date of the execution and filing of such restated certificate of limited partnership; and the execution and filing of such restated certificate of limited partnership shall not result in the dissolution, or in any way adversely affect the continued existence, of the existing limited partnership;

(6) the references in Sections 202(a)(2), 202(f) and 203(a)(2) to the date of the filing of a limited partnership's original certificate of limited partnership mean, with respect to an existing limited partnership, the date on which the limited partnership's original certificate of limited partnership was filed pursuant to and in accordance with the provisions of the statute under which it was formed;

(7) a certificate of amendment, a restated certificate of limited partnership and a certificate of cancellation with respect to an existing limited partnership, in addition to setting forth the information specified in Sections 202(a), 202(f) and 203 (a), shall state the place where the original certificate of limited partnership was filed;

(8) Sections 501, 502 and 608 apply only to contributions and distributions made after the effective date of this Act; and

(9) Section 704 applies only to assignments made after the effective date of this Act.

(b) Within 30 days after the effective date of this Act, the county clerk of each county shall certify and send to the administrator, for filing, the certificate of limited partnership, as amended or restated, of each existing limited partnership which is on file in the office of the county clerk on the effective date of this Act. From and after the effective date of this Act, (i) all amendments to and restatements of, and a cancellation of, the certificate of limited partnership of an existing limited partnership shall be filed with the administrator and shall be executed and filed in accordance with, and shall otherwise comply, with all of the requirements of this Act, and (ii) no such amendment, restatement or cancellation shall be filed in the office of the county clerk of any county of this State. At the time that the county clerk of each county certifies and sends to the administrator, for filing, the certificate of limited partnership, as amended or restated, of each existing limited partnership which is on file in the office of the county clerk on the effective date of this Act, the county clerk shall mail to a general partner of each limited partnership, at his address as set forth in the certificate of limited partnership of the limited partnership, as amended or restated, written notice that the certificate of limited partnership of the limited partnership, as amended or restated, has been sent to the administrator for filing, and that from and after the effective date of this Act (i) all amendments to and restatements of, and a cancellation of, the certificate of limited partnership of the limited partnership must be filed

111 with the administrator and comply with all of the require-  
112 ments of this Act, and (ii) no such amendment, restatement  
113 or cancellation may be filed in the office of the county  
114 clerk.

115 (c) This Act does not affect a cause of action, liabili-  
116 ty, penalty or action or special proceeding, which on the  
117 effective date of this Act is accrued, existing, incurred  
118 or pending, but the same may be asserted, enforced, prosecu-  
119 ted or defended as if this Act had not been enacted.

1 SECTION 1106. [Cases Not Provided in This Act.]  
2 In any case not provided for in this Act the provisions  
3 of the Uniform Partnership Act govern.

1 SECTION 1107. [Fees.]

2 (a) The fees to be paid to the administrator with  
3 respect to a limited partnership, for the purposes  
4 specified in this Section, shall be as follows:

5 (1) examining, filing and copying a certificate of  
6 limited partnership, \$10; provided, however, no fee shall  
7 be payable for examining and filing a certified copy of a  
8 certificate of limited partnership sent to the administrator  
9 by a county clerk pursuant to the provisions of Section  
10 1105(b);

11 (2) examining, filing and copying a certificate of  
12 amendment to a certificate of limited partnership, \$10;

13 (3) examining, filing and copying a restated  
14 certificate of limited partnership, \$10;

15 (4) examining, filing and copying a certificate of cancel-  
16 lation of a certificate of limited partnership, \$10;

17 (5) examining, filing and copying an application for  
18 registration as a foreign limited partnership and issuance of  
19 a certificate of registration to transact business in this State,  
20 \$10;

21 (6) examining, filing and copying a certificate correcting  
22 a statement contained in an application for registration of a  
23 foreign limited partnership, \$10;

24 (7) examining, filing and copying a certificate of cancella-  
25 tion of the registration of a foreign limited partnership, \$10;

26 (8) examining, filing and copying an application for  
27 reservation of a name, \$10; and

28 (9) examining, filing and copying a certificate of  
29 assumed name or certificate of termination of assumed  
30 name, \$10.

38 (b) These fees shall be paid to the administrator  
39 at the time of filing or when the service is rendered by  
40 the administrator.

41 (c) A minimum charge of \$1 for each certificate and  
42 50¢ per folio shall be paid to the administrator for  
43 certifying a part of a file or record pertaining to a  
44 domestic limited partnership or a foreign limited partner-  
45 ship for which provision for payment is not set forth in  
46 subsection (a) of this Section. The administrator may  
47 furnish copies of documents, reports and papers required or  
48 permitted by law to be filed with the administrator, and  
49 shall charge for those copies pursuant to a schedule of fees  
50 which the administrator shall adopt with the approval of the  
51 state administrative board.

52 (d) The administrator shall retain the revenue to be  
53 collected under this Section to be used by the corporation  
54 and securities bureau to defray the costs of the services  
55 described in this Section.



REPORTER'S COMMENTARY

I. THE PRIMARY DIFFERENCES BETWEEN THE REVISED ACT AND THE EXISTING ACT:

1. Recognition that the basic document in a limited partnership is the partnership agreement, and not the certificate of limited partnership:

The Existing Act nowhere refers to the partnership agreement, and assumes that all significant matters concerning the relationship of the partners with respect to the partnership will be set forth in the certificate of limited partnership, which is the document that is filed on the public record by persons desiring to organize a limited partnership. However, the current practice is for the partners to execute and file a brief certificate of limited partnership, setting forth only those items required to be set forth in the certificate of limited partnership under Section 2 of the Existing Act, and to enter into a comprehensive partnership agreement setting forth all aspects of their relationship with respect to the partnership. The Revised Act recognizes that the basic document is the partnership agreement, and that the certificate of limited partnership is intended to perform the limited function of putting on the public record those matters relating to the partnership that are of significance to creditors. (See the Prefatory Note to, and the Comments to Sections 101 and 201 of, the Revised Act, which is attached hereto as Exhibit A.)

2. Business transactions between a limited partner and the partnership:

Section 13 of the Existing Act prohibits a limited partner who makes a loan to, or transacts other business with, his partnership from receiving a security interest in partnership property. Section 107 of the Revised Act does away with this needless prohibition.

3. Execution of certificates of limited partnership by an attorney-in-fact:

It is a common practice among limited partnerships with large numbers of limited partners to have the limited partners

sign the certificate of limited partnership by an attorney-in-fact. However, the Existing Act does not specifically authorize the use of attorneys-in-fact, and practitioners have expressed concern that a limited partner who signs a certificate of limited partnership by an attorney-in-fact may be treated as not having signed the certificate of limited partnership. Section 204(b) of the Revised Act specifically authorizes the use of attorneys-in-fact for the execution of certificates of limited partnership.

4. Voting rights of limited partners:

Many limited partnership agreements give the limited partners certain voting rights with respect to major partnership transactions, e.g., the incurrence of indebtedness in excess of specified amounts, the sale or other disposition of partnership assets other than in the ordinary course of the partnership's business, etc. In addition, the securities laws and regulations of many states, including Michigan, require the inclusion of so-called "democracy provisions" in the limited partnership agreement of any limited partnership engaged in certain offerings of limited partnership interests. These "democracy provisions" normally grant to the limited partners the right to vote on such matters as the removal of the general partner, the dissolution of the partnership, the amendment of the partnership agreement and the termination of contracts between the partnership and the general partner or affiliates of the general partner.

The Existing Act does not specifically authorize limited partner voting rights, and practitioners have been concerned that the exercise of such voting rights might constitute "taking part in the control of the business," within the meaning of Section 7 of the Existing Act, thereby making the limited partners exercising such rights liable as general partners.

In addition, in an unpublished opinion of the Michigan Attorney General dated November 5, 1979 and directed to the Director of the Michigan Department of Commerce (the Attorney General's Opinion), a copy of which is attached hereto as Exhibit D, the Attorney General, confronted with the question of whether a limited partnership agreement may provide that a majority in interest of the limited partners may, without the concurrence of the general partner, exercise certain voting rights on basic partnership matters, concluded that ". . . Michigan law does not permit a limited partnership agreement which contains a provision allowing limited partners to take action without concurrence by the general partner."

Sections 302 and 303 of the Revised Act go a long way toward eliminating this problem by specifically providing that the partnership agreement may grant voting rights to the limited partners and by providing that a limited partner shall not be treated as having participated in the control of the business solely by virtue of exercising certain specified voting rights.

5. Form of a limited partner's contribution:

Section 4 of the Existing Act prohibits the contribution of services by a limited partner. This has created many problems. For example, it is not uncommon for a real estate limited partnership and an architect rendering services to the partnership to desire that the architect be compensated, in whole or in part, in the form of a partnership interest. The existence of the prohibition against the contribution of services by a limited partner has resulted in the use of various questionable devices in an attempt to get around the prohibition. For example, the partnership referred to above might issue the partnership interest to the architect for his services notwithstanding the prohibition, but the certificate of limited partnership might characterize the partnership interest as having been issued for a nominal cash contribution.

Section 501 of the Revised Act eliminates the prohibition against the contribution of services by a limited partner.

6. The liability of a limited partner with respect to the return of his capital contribution:

Section 17(4) of the Existing Act provides that a limited partner who rightfully receives the return of his capital contribution continues to be liable to the partnership, for an indefinite period of time, ". . . for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit . . . before such return." Section 17(2)(b) of the Existing Act provides that "a limited partner holds as trustee for the partnership . . . money or other property wrongfully paid or conveyed to him on account of his contribution," again, for an indefinite period of time.

The lack of a specific cut off date beyond which a limited partner cannot be forced to recontribute the portion of his capital contribution that was returned to him is troublesome. This is particularly true in the case of a limited partner who rightfully receives the return of his capital contribution, i.e., in accordance with the certificate of limited partnership and the partnership agreement and at a time when the partnership is solvent. It is not uncommon for a limited partner to receive the return of small portions of his capital contribution periodically over an extended period of time, e.g., in the form of cash flow distributions at a time when the partnership has losses for accounting purposes. Under the Existing Act, such a limited partner could be required to recontribute such capital contributions many years later to enable the partnership to discharge its liabilities to creditors who extended credit before such return.

Section 608 of the Revised Act addresses this problem by establishing a one year statute of limitations with respect to a limited partner who rightfully receives the return of his capital contribution, and a six year statute of limitations with respect to a limited partner who wrongfully receives the return of his capital contribution.

7. Order of priority for the disposition of partnership assets on dissolution and winding up:

Section 23 of the Existing Act establishes an order of priority for the disposition of partnership assets after dissolution which is unfairly preferential to the limited partners. In addition, Section 23 does not provide that (and the cases are not clear on whether) the partners may vary the statutory order of priority, as among themselves. Section 804 of the Revised Act clears up these problems, by (i) establishing a more reasonable order of priority, and (ii) permitting the partners to vary the statutory order of priority, as among themselves, in the partnership agreement.

8. Foreign limited partnerships:

There are no provisions under the Existing Act with respect to a limited partnership formed in another state which engages in business activities in Michigan. It is unclear whether the limited partners of a foreign limited partnership conducting business in Michigan retain their limited liability. It is also unclear which law governs the partnership. Article 9 of the Revised Act clears up these problems.

9. Certain restrictions on the rights of a general partner:

Sections 9(1)(b) and (c) of the Existing Act provide that unless a general partner has obtained the written consent or ratification of the specific act by all of the limited partners, he may not (i) "do any act which would make it

impossible to carry on the ordinary business of the partnership," or (ii) "confess a judgment against the partnership." These are troublesome provisions. The prohibition against doing an act which would make it impossible to carry on the ordinary business of the partnership frequently has the effect of requiring a general partner of a real estate limited partnership to obtain the consent of all of the limited partners in connection with a sale of the partnership's property, even though the sale may be taking place under circumstances contemplated by the partners and agreed to in the partnership agreement. The confession of judgment provision sometimes interferes with the ability of a general partner to settle litigation, since settlement by the entry of a consent judgment might require the consent of all of the limited partners. These troublesome provisions do not appear in the Revised Act.

10. Filing of limited partnership documents:

Under the Existing Act (Section 2(1)(b)), a limited partnership is formed by filing a certificate of limited partnership with the county clerk of the county in which the principal place of business of the partnership is situated. Problems arise where a limited partnership maintains an office and/or conducts business in more than one county. For example, it is sometimes difficult to determine where the principal place of business is located in a situation where the limited partnership's principal (or only) office is located in one county and the real estate development which constitutes its principal (or only) business activity is located in another county.

Section 201 of the Revised Act eliminates these problems by providing for central, statewide filing.

11. Derivative suits by limited partners:

There is nothing in the Existing Act that authorizes a derivative action by limited partners. Section 115-(a) of the

New York Partnership Law, N.Y. Partnership Law § 115-a(1) (McKinney Supp. 1976), allows a limited partner to bring an action "in the right of a limited partnership to procure a judgment in its favor," if certain requirements are satisfied, including the requirement that the plaintiff be a limited partner "at the time of bringing the action, and that he was such at the time of the transaction of which he complains or that his status as substituted limited partner devolved on him" as a matter of law or pursuant to the terms of the partnership agreement. An amendment to the Delaware version of the Existing Act also allows a limited partner to bring a derivative action, Section 1732 of The Delaware Limited Partnership Act, Delaware Code Ann. Tit 6, § 1732 (1974). Section 115-(a) of the New York Partnership Law and Section 1732 of The Delaware Limited Partnership Act appear to be the precursors of Article 10 of the Revised Act, which authorizes, and sets forth the requirements that must be satisfied for, limited partners to maintain a derivative action. Since, in this regard, a limited partner is like a stockholder, it would appear that a limited partner should have the same rights as a stockholder to maintain a derivative action, and the Revised Act recognizes this.

12. Integration of limited partnership names with corporate names:

Under the Existing Act, there is no integration of limited partnership names with corporate names. It is possible to form a limited partnership with a name that is identical to the name of an existing corporation (and vice verse). The Revised Act provides for the integration of limited partnership names with corporate names and contains standards to be applied by the filing officer in determining whether a particular name is available for use by a limited partnership.

13. Assignability of limited partnership interests:

Section 17(1) of the Existing Act provides that "A limited partner's interest is assignable." This has raised the question of whether the assignability of a limited partner's interest may be restricted by agreement. Section 702 eliminates this problem by providing that "Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part." (Emphasis supplied.)

14. Effect on the partnership of the cessation of the existence of a general partner which is not a natural person:

Section 20 of the Existing Act provides for the dissolution of the partnership in the event of the retirement, death or insanity of a general partner. However, the Existing Act nowhere addresses the question of the effect on the partnership of the cessation of the existence of a general partner which is an artificial person, e.g., the dissolution of a general partner which is a corporation or partnership, the termination of a trust acting as a general partner, etc. Section 401 of the Revised Act clears up this problem by expanding on the concept of death in the case of a general partner which is not a natural person.

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II. CHANGES FROM THE REVISED ACT (THE BELOW NUMBER PARAGRAPHS REFER TO THE LIKE NUMBERED SECTIONS OF THE REVISED ACT):<sup>\*/</sup>

101:

The Revised Act provides for central, statewide filing, with the Secretary of State. Under the Business Corporation Act, MCLA 450.1101, et seq., corporate filings are made with the chief officer of the Michigan Department of Commerce or his designated representative, who is referred to in the Business Corporation Act as the "administrator." The Revised Act has been changed to provide for limited partnership filings to be made where corporate filings are made, i.e., with the Michigan Department of Commerce. This change has been made by adding to Section 101, which is the definitional section, as subsection (1), the term "administrator" and by using this term, in lieu of the term "Secretary of State," throughout the Revised Act to refer to the person with whom limited partnership filings are to be made.

The change in subsection (2) is to incorporate the concept of the restated certificate of limited partnership added by Section 202(f). (See the discussion with respect to Section 202(f) in the second paragraph under 202 below.)

The change in subsection (12) is to make the definition of the term "person" in the Revised Act conform more closely to the definition of this term in the Business Corporation Act (Section 108(2)), and to make it clear that any form of legal entity may be a partner in a limited partnership.

102 and 103:

These sections have been changed to make the provisions of these sections conform to the parallel provisions of the Business Corporation Act. (In the case of Section 102(4), the changes

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<sup>\*/</sup> The Revised Act is reprinted as Exhibit A, and a marked-up copy of the Act, showing the changes contained in the Proposed Bill, is included as Exhibit A-1.

reflect the proposed changes to the parallel Section [Section 212(1)(b)] of the Business Corporation Act which are included in the amendments to the Business Corporation Act covered by Senate Bill 1319 [the so-called "Technical Amendments Act"].)

104:

The Revised Act contains no provisions relating to the use of assumed names by limited partnerships. Under the assumed name statute, MCLA 445.1, et seq., limited partnerships may use assumed names, and the filing of an assumed name certificate takes place at the county level. Section 104, which is derived from the Business Corporation Act, has been added so that essentially the same provisions that apply to the use of assumed names by corporations will apply to the use of assumed names by limited partnerships. Since this will result in central, statewide filing of assumed names, the assumed name statute should be amended to eliminate the provisions relating to county filing of assumed names by limited partnerships. Proposed changes to the affected sections of the assumed name statute have been drafted, and the amended sections, with the changes noted, are attached hereto in Exhibit B.

105:

The Revised Act contains no provisions relating to the resignation of an agent for service of process. Subsection (b), which is derived from the Business Corporation Act, has been added to remedy this omission.

106:

The Revised Act requires, wherever the address of a partner is to be stated, the use of the partner's business address. The Existing Act requires the use of residence addresses, a requirement which has been criticized. It would seem that each partner should have the choice of using his business or residence

address, and Section 106, and the other pertinent sections of the Revised Act, have been changed accordingly.

The list of the partners' names and addresses would be more useful if it were divided into two parts, one part setting forth the names and addresses of the general partners and the other part setting forth the names and addresses of the limited partners, and if the names in each part were set forth in alphabetical order. Clause (1) of Section 106 has been changed accordingly.

The change in clause (2) is to incorporate the concept of the restated certificate of limited partnership added by Section 202(f) and to expand the records required to be maintained by a limited partnership and available for inspection by the limited partners to include any certificates filed by a limited partnership with respect to the transaction of business under an assumed name.

The change in the last sentence is to make it clear that the records required to be maintained by a limited partnership are subject to inspection and copying by a partner's designated representative, as well as by the partner himself.

#### 107:

This section is derived from Section 3 of the Existing Act, which prohibits the use of a limited partnership to carry on a banking or insurance business. The requirements with respect to the types of business entities which may be used to carry on a banking or insurance business should be set forth in the banking and insurance codes, and not in the limited partnership act. (In fact, Section 51(1) of the Banking Code requires the use of the corporate form.) The Revised Act should simply provide that a limited partnership may carry on any business that a partnership without limited partners may carry on, except as otherwise provided by law, and Section 107 has been changed accordingly.

109:

Under Section 275 of the Business Corporation Act, MCLA 450.1275, provided there is a written agreement, the defense of usury is not available to a corporation (although it may be available if the interest rate exceeds the criminal usury rate of 25%). However, there is no similar provision with respect to limited partnerships. Section 109, which is derived from Section 275 of the Business Corporation Act, has been added to permit the elimination of the defense of usury as to limited partnerships. It should be noted that the parenthetical expression in Section 109 does not appear in Section 275 of the Business Corporation Act and has been added to permit the elimination of the defense of criminal usury as to limited partnerships.

201(a):

A limited partnership is formed by the filing, with the appropriate governmental agency, on the public record, of a certificate of limited partnership setting forth the information specified in Section 201(a). The Revised Act recognizes that the basic document in a limited partnership is the partnership agreement entered into by the partners (which is not a matter of public record), and not the certificate of limited partnership.<sup>1</sup> The certificate of limited partnership is intended to perform the limited function of putting on the public record those matters relating to the partnership as to which creditors should be put on notice.<sup>1</sup>

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See the Prefatory Note to the Revised Act and the Comment to Section 201.

The information required to be set forth in the certificate of limited partnership under Section 201(a) is similar to the information required to be set forth in the certificate of limited partnership under the parallel section of the Existing Act (Section 2), except in one important respect: Section 201(a) requires that the certificate set forth information with respect to the capital contributions of all partners, while Section 2 of the Existing Act requires that the certificate set forth capital contribution information only with respect to limited partners (presumably, because a general partner has unlimited liability for the obligations of the partnership, while the liability of a limited partner is normally limited to the amount that he has agreed to contribute to the partnership).

Potential problems could result from the provisions of Section 201(a) which require that the certificate of limited partnership set forth information with respect to the contributions of a general partner, in light of the fact that the Revised Act treats services rendered, and a binding obligation to perform services, which a partner contributes to a limited partnership in his capacity as a partner as a capital contribution.<sup>2</sup> Section 201(a) (5) requires, among other things, that the certificate of limited partnership set forth ". . . a description and statement of the agreed value of the . . . services contributed by each partner and which each partner has agreed to contribute in the future." A general partner, as such, is responsible for the management of the business and affairs of the partnership, and renders to the partnership such services as are necessary to carry out these responsibilities. Typically, a general partner does not receive remuneration from the partnership for such services, but, instead, contributes such services and receives an interest in the partnership. (If a general partner receives remuneration from the partnership for such services, equal to the value of such services, then no services would have been "contributed.") In order to

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See Sections 101(2) (changed to 101(3) as the result of the change discussed under 101 above) and 501.

comply with the provisions of Section 201(a)(5), it would be necessary for the partners to stipulate in the certificate as to the value of such services. It is not customary, and there is generally no reason, for partners to stipulate as to the value of such services, and determining the value of such services would be very difficult in most circumstances. Moreover, specifying the value of such services in the certificate could have serious, probably unanticipated, adverse consequences to a general partner, since, under Section 502(a) of the Revised Act, unless the certificate provides otherwise, a partner who does not make the required contribution of services (for any reason, even as a result of such partner's death or disability) is obligated to contribute to the partnership cash in an amount equal to the value of such services, as stipulated in the certificate.

In addition, the requirement that the certificate of limited partnership contain a description and statement of the agreed value of the services contributed and to be contributed by a general partner could result in serious adverse tax consequences to the general partner. The primary purpose of the certificate of limited partnership is to inform creditors as to the capital of the partnership.<sup>3</sup> By setting forth in the certificate a description and statement of the agreed value of the services contributed and to be contributed by a general partner, the general partner will be stating, on the public record, that he has received an interest in the capital of the partnership in exchange for services. Under Section 721(a) of the Internal Revenue Code and the Regulations with respect thereto, a contribution of property to a partnership in exchange for an interest in the partnership is, generally, not a taxable event. However,

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See the comment to Section 201.

under the Regulations, a contribution of services to a partnership in exchange for an interest in partnership capital is, generally, a taxable event, i.e., the contributing partner is treated as having received income in an amount equal to the value of the capital interest at the time of receipt.<sup>4</sup> It is not customary for a general partner to receive a capital account for services; and there is no reason for requiring that a general partner receive (or for creating the impression that he has received) a capital account for services under circumstances when the receipt of a capital account might have serious adverse tax consequences to him.

The requirement that the certificate of limited partnership contain a description and statement of the agreed value of the services contributed and to be contributed by a general partner could result in serious adverse tax consequences to the general partner, even if he is not treated as having received a capital account in exchange for services. For many years, it was assumed that the receipt by a partner of an interest in partnership profits in exchange for services was not a taxable event. However, a 1974 Court of Appeals decision, affirming a 1971 Tax Court case, held that a partner who receives an interest in partnership profits in exchange for services has received income in the year in which he received the profits interest, in an amount equal to the value of the profits interest at the time it was received.<sup>5</sup> There is an obvious problem in determining the amount of income received, since it is necessary to determine the present value of the right to receive partnership profits in the future. However, the requirement that the certificate of limited partnership contain a description and statement of the agreed value of the services contributed

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<sup>4</sup> Reg. 1.721-1(b).

<sup>5</sup> Sol Diamond, 56 T.C. 530 (1971), aff'd, 492 F. 2d 286 (7th Cir. 1974).

and to be contributed by a general partner would eliminate the valuation problem and clearly increase the tax risk to the general partner.

Because of the potential adverse consequences to a general partner discussed above, the certificate of limited partnership should not be required to describe and state the agreed value of services contributed and to be contributed by a general partner. In fact, there is no reason for the certificate of limited partnership to describe and state the agreed value of any contributions by a general partner. As indicated above, the certificate of limited partnership is intended to perform the limited function of putting on the public record those matters relating to the partnership as to which creditors should be put on notice; the certificate of limited partnership is not intended to perform the broader functions of a partnership agreement (which should cover all aspects of the relationship among the partners with respect to the partnership, including all matters relating to the contributions of the general partners). Information with respect to the nature and value of a general partner's contributions to a limited partnership is of little practical value to a potential creditor of the partnership. Such information does not define the scope of a general partner's liability for partnership obligations, since a general partner has unlimited liability for partnership obligations. Such information does not disclose anything meaningful about the current financial condition of the partnership and in fact may be misleading; the general partners may have made significant contributions to the partnership and the partnership may nevertheless be insolvent.<sup>6</sup> Accordingly, Section 201(a) has been revised to delete the requirement that the certificate of limited partnership set forth information with respect to the capital contributions of a general partner.

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6

It should be noted that neither a certificate of co-partnership, which is the document that is filed on the public record by persons desiring to conduct business in the form of a general partnership, nor articles of incorporation set forth any information with respect to the capital contributions of the partners or shareholders. The Michigan



201(b):

The changes in this subsection are to conform this subsection to Section 206. (See the discussion with respect to Section 206 below.)

202:

The changes in subsection (a) are for clarification. The change in subsection (b) is to provide a more adequate period of time for the filing of amendments. The change in subsection (b) (1) parallels the changes in Section 201(a). The change in subsection (e) parallels the change in subsection (b).

The Revised Act does not provide for effecting amendments to a certificate of limited partnership by use of a restated certificate of limited partnership, which is a common practice. Subsection (f) has been added to remedy this deficiency.

Subsection (g) has been added to conform Section 202 to Section 206.

203:

The change in subsection (2) is for clarification. Clause (4) has been deleted and subsection (b) has been added to conform Section 203 to Section 206.

204:

The change in subsection (a)(2) is to incorporate the concept of the restated certificate of limited partnership added by Section 202(f).

Subsection (a)(3) permits an amendment to a certificate of limited partnership to be signed by any general partner, but

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Annual Report, which is required to be filed with the Michigan Department of Commerce prior to May 16 of each year by each corporation organized or qualified in Michigan, does include a balance sheet.

requires that a certificate of cancellation of a certificate of limited partnership be signed by all general partners.

Subsection (a)(3) has been changed to apply the more liberal provision in both cases.

Subsection (b) provides for the use of powers of attorney in connection with the execution of certificates to be filed under the Revised Act. In so doing, the Revised Act recognizes the current practice among limited partnerships with large numbers of limited partners. However, subsection (b) requires that a power of attorney to sign a certificate relating to certain specified matters must contain certain provisions, i.e., a power of attorney to sign a certificate relating to the admission, or increased contribution, of a partner must specifically describe the admission or increase. This requirement could restrict the usefulness of a power of attorney with respect to reflecting in the certificate of limited partnership the future capital contributions of a limited partner and offers no real protection to a limited partner against a dishonest attorney-in-fact. For these reasons, subsection (b) has been revised by deleting the limiting language.

205:

The first change was made to conform this Section to Section 202(f).

The second change was made to supply the information called for as to the proper court with which a petition may be filed to compel the execution of a certificate by a person who wrongfully refuses to do so.

206:

This Section, which deals with the mechanics of filing documents with the administrator and related matters, has been changed to make it conform with the parallel Section (Section 131) of the Business Corporation Act.

207:

The changes in the introductory portion of this Section are to conform this Section to Section 202(f).

This Section imposes liability on any person who executes a certificate containing a false statement, or causes another to execute it on his behalf, "and knew," and any general partner "who knew or should have known" the statement to be false at the time the certificate was executed. There is no reason for imposing a tougher standard on a general partner than on any other person who participates in the execution of a false certificate, and subsections (1) and (2) have been changed accordingly.

The language added at the end of subsection (2) is for clarification.

208:

This Section provides that "The fact that a certificate of limited partnership is on file . . . is notice that the partnership is a limited partnership and the persons designated therein as limited partners are limited partners, but is not notice of any other fact." (Emphasis supplied.) The limiting language conflicts with the primary purpose of the certificate of limited partnership, as stated in the prefatory note to, and in the Comment to Section 201 of, the Revised Act; that the certificate is intended to place creditors on notice of the facts concerning the capital of the partnership. Accordingly, this Section has been revised to provide that the certificate of limited partnership is also notice of the matters included therein that are required to be included therein pursuant to the various provisions of the Revised Act, but is not notice of any additional matters included therein at the election of the partners.

209:

The changes in this Section are to conform this Section to Section 206.

302:

The change in this Section is for clarification purposes, and is intended to eliminate the basis for the conclusion in the Attorney General's Opinion that ". . . Michigan law does not permit a limited partnership agreement which contains a provision allowing limited partners to take action without concurrence of the general partners." (Emphasis supplied.)

303:

Subsection (a) provides that a limited partner is not liable for the obligations of a limited partnership unless he takes part in the control of the business. Subsection (b) provides a "safe harbor" by specifying certain activities which a limited partner may engage in without being deemed to have taken part in the control of the business. The changes to subsection (b) expand the list of permissible activities to include two activities which state securities regulators commonly require, i.e., the right to approve or disapprove a transaction involving an actual or potential conflict of interest between a general partner and the partnership, and the right to request or attend a meeting of the partners.

305:

The change in subsection (1) is to conform subsection (1) to the last sentence of Section 106.

401:

This Section provides that "After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only with the specific consent of each partner." (Emphasis supplied.) There is no reason why the partners should not be permitted to agree

in advance, in the partnership agreement, as to the circumstances under which additional general partners may be admitted, and this Section has been revised accordingly.

402:

This Section sets forth specific events upon the happening of which a person ceases to be a general partner. Subsection (8) provides that a corporate general partner ceases to be a general partner upon "the filing of a certificate of dissolution or its equivalent . . ." It is possible for a corporation to dissolve without filing a certificate of dissolution or similar document, such as (i) automatically by expiration of a period of duration to which the corporation is limited by its articles of incorporation, or (ii) automatically for failure to file an annual report or pay the privilege fee. Accordingly, this subsection has been revised to provide that a corporate general partner ceases to be a general partner upon its dissolution.

Subsection (2) has been deleted to reflect the change in Section 702. Subsection (5) has been changed to make it conform more closely to the applicable provisions of the Revised Probate Code, MCLA 700.1, et seq. Subsection (10) has been added to reflect the change in Section 101(12). Subsection (11) has been added to allow partners to specify, in the partnership agreement, any additional events upon the happening of which a person ceases to be a general partner.

502:

This Section deals with a partner's obligation to the limited partnership to perform a promise to contribute cash or property or to perform services, as reflected in the certificate of limited partnership. Since Section 201(a) has been revised to delete the

requirement that the certificate of limited partnership set forth a description and statement of the agreed value of the contributions made and to be made by a general partner, subsections (a) and (b) of this Section have been revised to refer only to limited partners.

The second sentence in subsection (a) provides that if a limited partner who has promised to contribute property or to perform services does not perform his promise, the limited partnership has the right to require him to contribute cash equal to the value, as stated in the certificate of limited partnership, of the property or services that he has failed to contribute. Language has been added at the end of this sentence to make it clear that the right of the limited partnership to require the defaulting limited partner to contribute cash equal to the value of the property or services he has failed to contribute is in addition to any other rights that the limited partnership may have against such limited partner under the partnership agreement.

Subsection (c) has been added to cover the matter of the obligation of a general partner to a limited partnership with respect to contributions, and provides that the obligation of a general partner to a limited partnership to contribute cash or property or perform services shall be as provided in the partnership agreement.

#### 503 and 504:

These Sections deal with the allocation among the partners of the profits, losses and distributions of the partnership, and provide, in general, that profits, losses and distributions are to be allocated in the manner provided in the partnership agreement. These Sections also provide that if the partnership agreement is silent, profits, losses and distributions are to be allocated on the basis of the value "as stated in the certificate of limited partnership" of the contributions made by each partner. Since, as a result of the changes in Section

201(a), the certificate of limited partnership will not set forth the value of the contributions made by a general partner, Sections 503 and 504 have been changed to provide that the value of the contributions made by a general partner shall be as stated in the partnership agreement, and if the partnership agreement is silent, then as stated in the books and records of the partnership or determined by any other reasonable method.

601:

The first change in this Section is to make subsection (2) consistent with Section 201(a)(1), as changed. The second change is to correct a wrong section reference, i.e., the question of when a distribution constitutes a return of a capital contribution is dealt with in Section 608(c), not Section 608(b).

603:

The first change in this Section is intended to make express what is presently implied by the first sentence, i.e., that a limited partner may withdraw from a limited partnership at the time specified in the certificate of limited partnership, but not before.

The second change in this Section is also intended to express that which is implied: this Section provides that a limited partner may withdraw from a partnership at the time specified in the certificate, and if the certificate does not specify the time when he may withdraw or a definite time for the dissolution of the partnership, he may withdraw on six months' prior written notice. The implication is that if the certificate does not specify the time at which a limited partner may withdraw but does specify a definite time for dissolution of the partnership, the limited partner may not withdraw prior to the dissolution and winding up of the partnership. Language has been added to make this clear.

605:

The changes to this Section parallel the changes to Section 201(a).

608:

The changes to this Section parallel the changes to Section 201(a).

702:

This Section deals with the assignment of a partnership interest in a limited partnership. It contains four provisions, three of which are derived from Section 19 of the Existing Act and one of which is new. The three provisions which are derived from Section 19 of the Existing Act are set forth in the first three sentences of the Section, which provide that (i) except as provided in the partnership agreement, a partnership interest is assignable in whole or in part, (ii) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise the rights of a partner, and (iii) an assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. The new provision is set forth in the last sentence of the Section, which provides that "Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest."

The three provisions derived from the Existing Act are sensible. They permit a partner to assign his right to receive partnership distributions (as security for a loan, as a gift, or for any other purpose) without thereby dissolving the partnership, entitling an outsider to become involved in partnership affairs or in any other way adversely affecting the partnership or the other partners. The new provision is not sensible. It could result in the withdrawal of a partner who may not intend to withdraw, but



who may merely intend to assign his entire right to receive partnership distributions, e.g., as security for a loan. If the assigning partner is a general partner, his withdrawal could (and if he is the only general partner, his withdrawal would) result in the dissolution of the partnership. If he is a limited partner, the consequences of his withdrawal are unclear. For these reasons, the last sentence of Section 702 has been deleted.

705:

This Section deals with the power of the estate of a deceased or incompetent partner to deal with the partner's interest in the partnership. The changes in this Section are to make it conform more closely to the applicable provisions of the Revised Probate Code.

801:

The change in this Section is for clarification.

802:

This Section, which has no counterpart in the Existing Act, deals with the judicial dissolution of a limited partnership. The changes to this Section are derived from Section 825 of the Business Corporation Act, which deals with the judicial dissolution of a corporation.

803:

Unlike the Business Corporation Act with respect to a corporation, the Revised Act does not contain provisions authorizing an appropriate governmental official to bring an action to dissolve a limited partnership under appropriate circumstances. This Section, which is derived from Section 821 of the Business Corporation Act, has been added to remedy this omission.

804:

This Section provides that the court may wind up a limited partnership's affairs "upon application of any partner. . ." Since the general partners would normally have the right and the responsibility to wind up the affairs of a limited partnership, a partner should not have the right to obtain a court ordered winding up merely upon application, but should be required to show good cause for a court ordered winding up. This Section has been changed accordingly.

901 through 906:

Article 9 deals with foreign limited partnerships. Section 902, which deals with the registration of foreign limited partnerships, does not require a foreign limited partnership to attach a copy of its certificate of limited partnership to its application for registration, or to identify the governmental authorities in its state of organization from which a copy of its certificate may be obtained. Section 902(2) has been changed to remedy this omission, by requiring the foreign limited partnership to indicate, in its application for registration, the name and address of the governmental authorities in its state of organization with which its certificate of limited partnership is currently on file and from which copies may be obtained.

Section 902(5) provides that the administrator shall act as an agent for service of process on a foreign limited partnership under certain circumstances, but does not indicate to whom the administrator may forward copies of any process served on the administrator. Section 902(5) has been changed to remedy this omission.

The remaining changes in Sections 902 through 906 parallel the changes which were made in other Sections of the Revised Act dealing with domestic limited partnerships.

907:

This Section deals with a foreign limited partnership transacting business in Michigan without registering. The language added at the end of subsection (a) is derived from Section 1051(1) of the Business Corporation Act, which deals with a foreign corporation transacting business in Michigan without a certificate of authority.

908:

The reference to the attorney general is derived from Section 821 of the Business Corporation Act.

909:

This Section is derived from Section 1012 of the Business Corporation Act.

910:

This Section is derived from Section 1013 of the Business Corporation Act.

Article 10:

This Article deals with limited partnership derivative actions. The changes in the Sections of this Article are to make the provisions of these Sections conform more closely to the provisions of the parallel Sections (Sections 491, 492 and 493) of the Business Corporation Act.

1104:

This Section provides for two effective dates, a date on which the substantive provisions of the Revised Act are to become effective, and a subsequent date on which the central filing and certain related provisions are to become effective (referred to as the "extended effective date"). This Section has been revised to provide for one effective date, July 1, 1982, on which all of the provisions of the Revised Act become effective.

1105:

The Revised Act nowhere addresses the question of how existing limited partnerships are to be treated after the effective date of the Revised Act. This Section has been added to remedy this deficiency. It follows the approach of the Business Corporation Act and provides, in general, that the provisions of the Revised Act apply to existing limited partnerships and their partners in the same manner and to the same extent that they apply to limited partnerships formed under the Revised Act, except with respect to certain specifically enumerated matters. The partners of an existing limited partnership are not required to file a new certificate of limited partnership under the Revised Act in order to maintain the continued existence of the limited partnership as a limited partnership under Michigan law. Instead, the existing limited partnerships are brought into the central filing system created under the Revised Act by providing for the county clerk of each county to certify, and send to the Michigan Department of Commerce for filing, the certificate of limited partnership, as amended to date, of each existing limited partnership.

1107:

This Section, which is patterned after Section 1060 of the Business Corporation Act, sets forth the fees to be paid to the Michigan Department of Commerce with respect to the various certificates required or permitted to be filed under the Revised Act. The fees that are set forth in this Section are the same as the fees that are payable for the filing of similar certificates by corporations, and are also the same as the fees that are payable under the Existing Act for the filing of similar documents at the county level.

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III. CHANGES TO OTHER STATUTES THAT SHOULD BE MADE IF THE REVISED ACT IS ADOPTED:

The adoption of the Revised Act will require changes in (i) the assumed name statute, MCLA 445.1, et seq., since under the Revised Act, assumed name filings will be on a central, statewide basis, while under the assumed name statute assumed name filings are at the county level, and (ii) the revised Judicature Act, MCLA 600.101, et seq., to tie in the provisions of the revised Judicature Act relating to service of process on a limited partnership to the provisions of the Revised Act relating to the appointment of an agent for the service of process. Proposed changes to these statutes have been drafted, and a copy of each of the affected sections of the statutes, with the changes noted, is attached hereto, as follows:

<u>Section of the affected statute</u>	<u>Exhibit</u>
(1) Sec. 1 of the assumed name statute, MCLA 445.1	B
(2) Sec. 2 c. of the assumed name statute, MCLA 445.2 c	B
(3) Sec. 4 of the assumed name statute, MCLA 445.4	B
(4) Sec. 1917 of the revised Judicature Act, MCLA 600.1917	C
(5) Sec. 2582 of the revised Judicature Act, MCLA 600.2582	C

EXHIBIT A

**UNIFORM LIMITED PARTNERSHIP ACT  
(1976)**

*Drafted by the*  
**NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS**

*and by it*  
**APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES**

*at its*  
**ANNUAL CONFERENCE  
MEETING IN ITS EIGHTY-FIFTH YEAR  
AT ATLANTA, GEORGIA  
JULY 31 - AUGUST 6, 1976**

**WITH PREFATORY NOTE AND COMMENTS**

**APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS  
MEETING IN ATLANTA, GEORGIA, FEBRUARY 13, 1979**

## UNIFORM LIMITED PARTNERSHIP ACT (1976)

### PREFATORY NOTE

The Revised Uniform Limited Partnership Act adopted by the National Conference of Commissioners on Uniform State Laws in August, 1976, was intended to modernize the prior uniform law while retaining the special character of limited partnerships as compared with corporations. The draftsman of a limited partnership agreement has a degree of flexibility in defining the relations among the partners that is not available in the corporate form. Moreover, the relationship among partners is consensual, and requires a degree of privity that forces the general partner to seek approval of the partners (sometimes unanimous approval) under circumstances that corporate management would find unthinkable. The limited partnership was not intended to be an alternative in all cases where corporate form is undesirable for tax or other reasons, and the new Act was not intended to make it so. The new Act clarifies many ambiguities and fills interstices in the prior uniform law by adding more detailed language and mechanics. In addition, some important substantive changes and additions have been made.

Article 1 provides a list of all of the definitions used in the Act, integrates the use of limited partnership names with corporate names and provides for an office and agent for service of process in the state of organization. All of these provisions are new. Article 2 collects in one place all provisions dealing with execution and filing of certificates of limited partnership and certificates of amendment and cancellation. Articles 1 and 2 reflect an important change in the statutory scheme: recognition that the basic document in any partnership, including a limited partnership, is the partnership agreement. The certificate of limited partnership is not a constitutive document (except in the sense that it is a statutory prerequisite to creation of the limited partnership), and merely reflects matters as to which creditors should be put on notice.

Article 3 deals with the single most difficult issue facing lawyers who use the limited partnership form of organization: the powers and potential liabilities of limited partners. Section 303 lists a number of activities in which a limited partner may engage without being held to have so participated in the control of the business that he assumes the liability of a general partner. Moreover, it goes on to confine the liability of a limited

partner who merely steps over the line of participation in control to persons who actually know of that participation in control. General liability for partnership debts is imposed only on those limited partners who are, in effect, "silent general partners". With that exception, the provisions of the new Act that impose liability on a limited partner who has somehow permitted third parties to be misled to their detriment as to the limited partner's true status confine that liability to those who have actually been misled. The provisions relating to general partners are collected in Article 4.

Article 5, the finance section, makes some important changes from the prior uniform law. The contribution of services and promises to contribute cash, property or services are now explicitly permitted as contributions. And those who fail to perform promised services are required, in the absence of an agreement to the contrary, to pay the value of the services stated in the certificate of limited partnership.

A number of changes from the prior uniform law are made in Article 6, dealing with distributions from and the withdrawal of partners from the partnership. For example, Section 608 creates a statute of limitations on the right of a limited partnership to recover all or part of a contribution that has been returned to a limited partner, whether to satisfy creditors or otherwise.

The assignability of partnership interests is dealt with in considerable detail in Article 7. The provisions relating to dissolution appear in Article 8, which, among other things, imposes a new standard for seeking judicial dissolution of a limited partnership.

One of the thorniest questions for those who operate limited partnerships in more than one state has been the status of the partnership in a state other than the state of organization. Neither existing case law nor administrative practice makes it clear whether the limited partners continue to possess their limited liability and which law governs the partnership. Article 9 deals with this problem by providing for registration of foreign limited partnerships and specifying choice-of-law rules.

Finally, Article 10 of the new Act authorizes derivative actions to be brought by limited partners.



## UNIFORM LIMITED PARTNERSHIP ACT\* (1976)

### ARTICLE I

#### *General Provisions*

1 SECTION 101. [*Definitions.*] As used in this Act, unless  
2 the context otherwise requires:

3 (1) "Certificate of limited partnership" means the certifi-  
4 cate referred to in Section 201, and the certificate as  
5 amended.

6 (2) "Contribution" means any cash, property, services  
7 rendered, or a promissory note or other binding obligation  
8 to contribute cash or property or to perform services, which a  
9 partner contributes to a limited partnership in his capacity  
10 as a partner.

11 (3) "Event of withdrawal of a general partner" means an  
12 event that causes a person to cease to be a general partner as  
13 provided in Section 402.

14 (4) "Foreign limited partnership" means a partnership formed  
15 under the laws of any State other than this State and having  
16 as partners one or more general partners and one or more limited  
17 partners.

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

22 (6) "Limited partner" means a person who has been admitted  
23 to a limited partnership as a limited partner in accordance with  
24 the partnership agreement and named in the certificate of  
25 limited partnership as a limited partner.

26 (7) "Limited partnership" and "domestic limited partner-  
27 ship" mean a partnership formed by 2 or more persons under  
28 the laws of this State and having one or more general partners  
29 and one or more limited partners.

30 (8) "Partner" means a limited or general partner.

\*The Uniform Limited Partnership Act was approved by the Commissioners on Uniform State Laws in 1916 and has been adopted, subject to local modifications, in 45 states. A revised Uniform Limited Partnership Act was approved by the Commissioners on Uniform State Laws in 1976. In brief, it provides for the creation of a limited partnership by the filing of a certificate of limited partnership and describes the rights, powers and obligations of the general partners and the limited partners.

31 (9) "Partnership agreement" means any valid agreement,  
32 written or oral, of the partners as to the affairs of a limited  
33 partnership and the conduct of its business.

34 (10) "Partnership interest" means a partner's share of the  
35 profits and losses of a limited partnership and the right to  
36 receive distributions of partnership assets.

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

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

#### COMMENT

The definitions in this section clarify a number of uncertainties in existing law and make certain changes.

*Contribution:* this definition makes it clear that a present contribution of services and a promise to make a future payment of cash, contribution of property or performance of services are permissible forms for a contribution. Accordingly, the present services or promise must be accorded a value in the certificate of limited partnership (Section 201 (5)), and, in the case of a promise, that value may determine the liability of a partner who fails to honor his agreement (Section 502). Section 3 of the prior uniform law did not permit a limited partner's contribution to be in the form of services, although that inhibition did not apply to general partners.

*Foreign limited partnership:* the Act only deals with foreign limited partnerships formed under the laws of another "State" of the United States (see subdivision 12 of Section 101), and any adopting State that desires to deal by statute with the status of entities formed under the laws of foreign countries must make appropriate changes throughout the Act. The exclusion of such entities from the Act was not intended to suggest that their "limited partners" should not be accorded limited liability by the courts of a State adopting the Act. That question would be resolved by the choice-of-law rules of the forum State.

*General partner:* this definition recognizes the separate functions of the partnership agreement and the certificate of limited partnership. The partnership agreement establishes the basic grant of management power to the persons named as general partners; but because of the passive role played by the limited partners, the separate, formal step of embodying that grant of power in the certificate of limited partnership has been preserved to emphasize its importance.

*Limited partner:* as in the case of general partners, this definition provides for admission of limited partners through the partnership agreement and solemnization in the certificate of limited partnership. In addition, the definition makes it clear that being named in the certificate of limited partnership is a prerequisite to limited partner status. Failure to file does not, however, mean that the participant is a general partner or that he has general liability. See Sections 202 (e) and 303.

*Partnership agreement:* the prior uniform law did not refer to the partnership agreement, assuming that all important matters affecting limited partners would be set forth in the certificate of limited partnership. Under modern practice, however, it has been common for the partners to enter into a comprehensive partnership agreement, only part of which was required to be included in the certificate of limited partnership. As reflected in Section 201, the certificate of limited partnership is confined principally to matters respecting the addition and withdrawal of partners and of capital, and other important issues are left to the partnership agreement.

*Partnership interest:* this definition is new and is intended to define what it is that is transferred when a partnership interest is assigned.

1 SECTION 102. [*Name.*] The name of each limited partner-  
2 ship as set forth in its certificate of limited partnership:  
3 (1) shall contain without abbreviation the words "limited  
4 partnership";  
5 (2) may not contain the name of a limited partner unless (i) it  
6 is also the name of a general partner or the corporate name  
7 of a corporate general partner, or (ii) the business of the  
8 limited partnership had been carried on under that name  
9 before the admission of that limited partner;  
10 (3) may not contain any word or phrase indicating or implying  
11 that it is organized other than for a purpose stated in its  
12 certificate of limited partnership;  
13 (4) may not be the same as, or deceptively similar to,  
14 the name of any corporation or limited partnership organized  
15 under the laws of this State or licensed or registered as a  
16 foreign corporation or limited partnership in this State; and  
17 (5) may not contain the following words [here insert  
18 prohibited words].

COMMENT

Subdivision (2) of Section 102 has been carried over from Section 5 of the prior uniform law with certain editorial changes. The remainder of Section 102 is new and primarily reflects the intention to integrate the registration of limited partnership names with that of corporate names. Accordingly, Section 201 provides for central, State-wide filing of certificates of limited partnership, and subdivisions (3), (4) and (5) of Section 102 contain standards to be applied by the filing officer in determining whether the certificate should be filed. Subdivision (1) requires that the proper name of a limited partnership contain the words "limited partnership" in full.

1 SECTION 103. [*Reservation of Name.*]  
2 (a) The exclusive right to the use of a name may be  
3 reserved by:  
4 (1) any person intending to organize a limited  
5 partnership under this Act and to adopt that name;  
6 (2) any domestic limited partnership or any foreign  
7 limited partnership registered in this State which, in either  
8 case, intends to adopt that name;  
9 (3) any foreign limited partnership intending to register  
10 in this State and adopt that name; and  
11 (4) any person intending to organize a foreign limited  
12 partnership and intending to have it register in this State  
13 and adopt that name.  
14 (b) The reservation shall be made by filing with the Sec-  
15 retary of State an application, executed by the applicant, to  
16 reserve a specified name. If the Secretary of State finds  
17 that the name is available for use by a domestic or foreign

18 limited partnership, he shall reserve the name for the exclusive  
19 use of the applicant for a period of 120 days. Once having  
20 so reserved a name, the same applicant may not again reserve  
21 the same name until more than 60 days after the expiration of  
22 the last 120-day period for which that applicant reserved that  
23 name. The right to the exclusive use of a reserved name may be  
24 transferred to any other person by filing in the office of the  
25 Secretary of State a notice of the transfer, executed by the  
26 applicant for whom the name was reserved and specifying  
27 the name and address of the transferee.

COMMENT

Section 103 is new. The prior uniform law did not provide for registration of names.

1 SECTION 104. [*Specified Office and Agent.*] Each limited  
2 partnership shall continuously maintain in this State:  
3 (1) an office, which may but need not be a place of its  
4 business in this State, at which shall be kept the records  
5 required by Section 105 to be maintained; and  
6 (2) an agent for service of process on the limited partner-  
7 ship, which agent must be an individual resident of this State,  
8 a domestic corporation, or a foreign corporation authorized  
9 to do business in this State.

COMMENT

Section 104 is new. It requires that a limited partnership have certain minimum contacts with its State of organization, *i.e.*, an office at which the constitutive documents and basic financial information is kept and an agent for service of process.

1 SECTION 105. [*Records to be Kept.*] Each limited part-  
2 nership shall keep at the office referred to in Section 104(1)  
3 the following: (1) a current list of the full name and last known  
4 business address of each partner set forth in alphabetical order,  
5 (2) a copy of the certificate of limited partnership and all  
6 certificates of amendment thereto, together with executed  
7 copies of any powers of attorney pursuant to which any certi-  
8 ficate has been executed, (3) copies of the limited partner-  
9 ship's federal, state and local income tax returns and reports,  
10 if any, for the 3 most recent years, and (4) copies of  
11 any then effective written partnership agreements and of any  
12 financial statements of the limited partnership for the 3  
13 most recent years. Those records are subject to inspection and  
14 copying at the reasonable request, and at the expense, of any  
15 partner during ordinary business hours.

COMMENT

Section 105 is new. In view of the passive nature of the limited partner's position, it has been widely felt that limited partners are entitled to access to certain basic documents, including the certificate of limited partnership and any partnership agreement. In view of the great diversity among limited partnerships, it was thought inappropriate to require a standard form of financial report, and Section 105 does no more than require retention of tax returns and any other financial statements that are prepared. The names and addresses of the partners are made available to the general public.

- 1 SECTION 106. [*Nature of Business.*] A limited partnership
- 2 may carry on any business that a partnership without limited part-
- 3 ners may carry on except [here designate prohibited activities].

COMMENT

Section 106 is identical to Section 3 of the prior uniform law. Many states require that certain regulated industries, such as banking, may be carried on only by entities organized pursuant to special statutes, and it is contemplated that the prohibited activities would be confined to the matters covered by those statutes.

- 1 SECTION 107. [*Business Transactions of Partner with Partner-*
- 2 *ship.*] Except as provided in the partnership agree-
- 3 ment, a partner may lend money to and transact other business
- 4 with the limited partnership and, subject to other applicable
- 5 law, has the same rights and obligations with respect there-
- 6 to as a person who is not a partner.

COMMENT

Section 107 makes a number of important changes in Section 13 of the prior uniform law. Section 13, in effect, created a special fraudulent conveyance provision applicable to the making of secured loans by limited partners and the repayment by limited partnerships of loans from limited partners. Section 107 leaves that question to a State's general fraudulent conveyance statute. In addition, Section 107 eliminates the prohibition in former Section 13 against a general partner (as opposed to a limited partner) sharing pro rata with general creditors in the case of an unsecured loan. Of course, other doctrines developed under bankruptcy and insolvency laws may require the subordination of loans by partners under appropriate circumstances.

ARTICLE 2

*Formation: Certificate of Limited Partnership*

- 1 SECTION 201. [*Certificate of Limited Partnership.*]
- 2 (a) In order to form a limited partnership two or more per-
- 3 sons must execute a certificate of limited partnership. The certi-
- 4 ficate shall be filed in the office of the Secretary of State
- 5 and set forth:

- 6 (1) the name of the limited partnership;
- 7 (2) the general character of its business;
- 8 (3) the address of the office and the name and address of
- 9 the agent for service of process required to be maintained by
- 10 Section 104;
- 11 (4) the name and the business address of each partner
- 12 (specifying separately the general partners and limited
- 13 partners);
- 14 (5) the amount of cash and a description and statement
- 15 of the agreed value of the other property or services contrib-
- 16 uted by each partner and which each partner has agreed to contrib-
- 17 ute in the future;
- 18 (6) the times at which or events on the happening of
- 19 which any additional contributions agreed to be made by each
- 20 partner are to be made;
- 21 (7) any power of a limited partner to grant the right to be-
- 22 come a limited partner to an assignee of any part of his part-
- 23 nership interest, and the terms and conditions of the power;
- 24 (8) if agreed upon, the time at which or the events on the
- 25 happening of which a partner may terminate his membership
- 26 in the limited partnership and the amount of, or the method
- 27 of determining, the distribution to which he may be entitled
- 28 respecting his partnership interest, and the terms and
- 29 conditions of the termination and distribution;
- 30 (9) any right of a partner to receive distributions of prop-
- 31 erty, including cash from the limited partnership;
- 32 (10) any right of a partner to receive, or of a general
- 33 partner to make, distributions to a partner which include a
- 34 return of all or any part of the partner's contribution;
- 35 (11) any time at which or events upon the happening of
- 36 which the limited partnership is to be dissolved and its affairs
- 37 wound up;
- 38 (12) any right of the remaining general partners to con-
- 39 tinue the business on the happening of an event of withdrawal
- 40 of a general partner; and
- 41 (13) any other matters the partners determine to include
- 42 therein.
- 43 (b) A limited partnership is formed at the time of the filing
- 44 of the certificate of limited partnership in the office of the
- 45 Secretary of State or at any later time specified in the certi-
- 46 ficate of limited partnership if, in either case, there has
- 47 been substantial compliance with the requirements of this
- 48 section.

COMMENT

The matters required to be set forth in the certificate of limited partnership are not dif-

ferent in kind from those required by Section 2 of the prior uniform law, although certain additions and deletions have been made and the description has been revised to conform with the rest of the Act. In general, the certificate is intended to serve two functions: first, to place creditors on notice of the facts concerning the capital of the partnership and the rules regarding additional contributions to and withdrawals from the partnership; second, to clearly delineate the time at which persons become general partners and limited partners. Subparagraph (b), which is based upon the prior uniform law, has been retained to make it clear that the existence of the limited partnership depends only upon compliance with this section. Its continued existence is not dependent upon compliance with other provisions of this Act.

1     **SECTION 202. [Amendment to Certificate.]**

2     (a) A certificate of limited partnership is amended by filing  
3 a certificate of amendment thereto in the office of the Secretary  
4 of State. The certificate shall set forth:

- 5         (1) the name of the limited partnership;  
6         (2) the date of filing the certificate; and  
7         (3) the amendment to the certificate.

8     (b) Within 30 days after the happening of any of the  
9 following events, an amendment to a certificate of limited part-  
10 nership reflecting the occurrence of the event or events shall be  
11 filed:

- 12         (1) a change in the amount or character of the contribu-  
13 tion of any partner, or in any partner's obligation to make a  
14 contribution;  
15         (2) the admission of a new partner;  
16         (3) the withdrawal of a partner; or  
17         (4) the continuation of the business under Section 801  
18 after an event of withdrawal of a general partner.

19     (c) A general partner who becomes aware that any state-  
20 ment in a certificate of limited partnership was false when  
21 made or that any arrangements or other facts described have  
22 changed, making the certificate inaccurate in any respect, shall  
23 promptly amend the certificate, but an amendment to show a  
24 change of address of a limited partner need be filed only once  
25 every 12 months.

26     (d) A certificate of limited partnership may be amended at  
27 any time for any other proper purpose the general partners de-  
28 termine.

29     (e) No person has any liability because an amendment  
30 to a certificate of limited partnership has not been filed to re-  
31 flect the occurrence of any event referred to in subsection (b)  
32 of this Section if the amendment is filed within the 30-day  
33 period specified in subsection (b).

**COMMENT**

Section 202 makes substantial changes in Section 24 of the prior uniform law. Paragraph (b) lists the basic events — the addition or withdrawal of partners or capital or capital

obligations — that are so central to the function of the certificate of limited partnership that they require prompt amendment. Paragraph (c) makes it clear, as it was not clear under subdivision (2) (g) of former Section 24, that the certificate of limited partnership is intended to be an accurate description of the facts to which it relates at all times and does not speak merely as of the date it is executed. Paragraph (e) provides a “safe harbor” against claims of creditors or others who assert that they have been misled by the failure to amend the certificate of limited partnership to reflect changes in any of the important facts referred to in paragraph (b); if the certificate of limited partnership is amended within 30 days of the occurrence of the event, no creditor or other person can recover for damages sustained during the interim. Additional protection is afforded by the provisions of Section 304.

- 1   SECTION 203. [*Cancellation of Certificate.*] A certifi-  
2   cate of limited partnership shall be cancelled upon the dissol-  
3   ution and the commencement of winding up of the partner-  
4   ship or at any other time there are no limited partners. A  
5   certificate of cancellation shall be filed in the office of the  
6   Secretary of State and set forth:  
7   (1) the name of the limited partnership;  
8   (2) the date of filing of its certificate of limited part-  
9   nership;  
10   (3) the reason for filing the certificate of cancellation;  
11   (4) the effective date (which shall be a date certain) of  
12   cancellation if it is not to be effective upon the filing of  
13   the certificate; and  
14   (5) any other information the general partners filing the  
15   certificate determine.

COMMENT

Section 203 changes Section 24 of the prior uniform law by making it clear that the certificate of cancellation should be filed upon the commencement of winding up of the limited partnership. Section 24 provided for cancellation “when the partnership is dissolved”.

- 1   SECTION 204. [*Execution of Certificates.*]  
2   (a) Each certificate required by this Article to be filed in  
3   the office of the Secretary of State shall be executed in the  
4   following manner:  
5   (1) an original certificate of limited partnership must  
6   be signed by all partners named therein;  
7   (2) a certificate of amendment must be signed by at least  
8   one general partner and by each other partner designated in  
9   the certificate as a new partner or whose contribution is de-  
10   scribed as having been increased; and  
11   (3) a certificate of cancellation must be signed by all  
12   general partners;  
13   (b) Any person may sign a certificate by an attorney-in-fact,  
14   but a power of attorney to sign a certificate relating to the  
15   admission, or increased contribution, of a partner must speci-



16 fically describe the admission or increase.

17 (c) The execution of a certificate by a general partner con-  
18 stitutes an affirmation under the penalties of perjury that the  
19 facts stated therein are true.

COMMENT

Section 204 collects in one place the formal requirements for the execution of certificates which were set forth in Sections 2 and 25 of the prior uniform law. Those sections required that each certificate be signed by all partners, and there developed an unnecessarily cumbersome practice of having each limited partner sign powers of attorney to authorize the general partners to execute certificates of amendment on their behalf. Section 204 insures that each partner must sign a certificate when he becomes a partner or when the certificates reflect any increase in his obligation to make contributions. Certificates of amendment are required to be signed by only one general partner and all general partners must sign certificates of cancellation. Section 204 prohibits blanket powers of attorney for the execution of certificates in many cases, since those conditions under which a partner is required to sign have been narrowed to circumstances of special importance to that partner. The former requirement that all certificates be sworn has been confined to statements by the general partners, recognizing that the limited partner's role is a limited one.

1 SECTION 205. [*Amendment or Cancellation by Judicial Act.*] If  
2 a person required by Section 204 to execute a certificate  
3 of amendment or cancellation fails or refuses to do so, any other  
4 partner, and any assignee of a partnership interest, who is  
5 adversely affected by the failure or refusal, may petition the  
6 [here designate the proper court] to direct the amend-  
7 ment or cancellation. If the court finds that the amendment or  
8 cancellation is proper and that any person so designated has failed  
9 or refused to execute the certificate, it shall order the Sec-  
10 retary of State to record an appropriate certificate of amend-  
11 ment or cancellation.

COMMENT

Section 205 changes subdivisions (3) and (4) of Section 25 of the prior uniform law by confining the persons who have standing to seek judicial intervention to partners and to those assignees who are adversely affected by the failure or refusal of the appropriate persons to file a certificate of amendment or cancellation.

1 SECTION 206. [*Filing in Office of Secretary of State.*]

2 (a) Two signed copies of the certificate of limited part-  
3 nership and of any certificates of amendment or cancellation  
4 (or of any judicial decree of amendment or cancellation) shall  
5 be delivered to the Secretary of State. A person who executes  
6 a certificate as an agent or fiduciary need not exhibit evidence  
7 of his authority as a prerequisite to filing. Unless the  
8 Secretary of State finds that any certificate does not conform  
9 to law, upon receipt of all filing fees required by law he shall:

10 (1) endorse on each duplicate original the word "Filed"  
11 and the day, month and year of the filing thereof;

12 (2) file one duplicate original in his office; and

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

15 (b) Upon the filing of a certificate of amendment (or judi-  
16 cial decree of amendment) in the office of the Secretary of State,  
17 the certificate of limited partnership shall be amended as set forth  
18 therein, and upon the effective date of a certificate of cancel-  
19 lation (or a judicial decree thereof), the certificate of limit-  
20 ed partnership is cancelled.

COMMENT

Section 206 is new. In addition to providing mechanics for the central filing system, the second sentence of this section does away with the requirement, formerly imposed by some local filing officers, that persons who have executed certificates under a power of attorney exhibit executed copies of the power of attorney itself. Paragraph (b) changes subdivision (5) of Section 25 of the prior uniform law by providing that certificates of cancellation are effective upon their effective date under Section 203.

1 SECTION 207. [*Liability for False Statement in Certificate.*]

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

6 (1) any person who executes the certificate, or causes an-  
7 other to execute it on his behalf, and knew, and any general  
8 partner who knew or should have known, the statement to be false  
9 at the time the certificate was executed; and

10 (2) any general partner who thereafter knows or should have  
11 known that any arrangement or other fact described in the cer-  
12 tificate has changed, making the statement inaccurate in any  
13 respect within a sufficient time before the statement was relied  
14 upon reasonably to have enabled that general partner to can-  
15 cel or amend the certificate, or to file a petition for its cancel-  
16 lation or amendment under Section 205.

COMMENT

Section 207 changes Section 6 of the prior uniform law by providing explicitly for the liability of persons who sign a certificate as agent under a power of attorney and by confining the obligation to amend a certificate of limited partnership in light of future events to general partners.

1 SECTION 208. [*Notice.*] The fact that a certificate of  
2 limited partnership is on file in the office of the Sec-  
3 retary of State is notice that the partnership is a limited part-  
4 nership and the persons designated therein as limited partners are  
5 limited partners, but it is not notice of any other fact.

COMMENT

Section 208 is new. By stating that the filing of a certificate of limited partnership only

results in notice of the limited liability of the limited partners, it obviates the concern that third parties may be held to have notice of special provisions set forth in the certificate. While this section is designed to preserve the limited liability of limited partners, the notice provided is not intended to change any liability of a limited partner which may be created by his action or inaction under the law of estoppel, agency, fraud, or the like.

1   SECTION 209. [*Delivery of Certificates to Limited Partners.*]  
2   Upon the return by the Secretary of State pursuant to Section  
3   206 of a certificate marked "Filed", the general partners  
4   shall promptly deliver or mail a copy of the certificate of limit-  
5   ed partnership and each certificate to each limited partner  
6   unless the partnership agreement provides otherwise.

COMMENT

This section is new.

ARTICLE 3

*Limited Partners*

1   SECTION 301. [*Admission of Additional Limited Partners.*]  
2   (a) After the filing of a limited partnership's original  
3   certificate of limited partnership, a person may be admitted as an  
4   additional limited partner:  
5       (1) in the case of a person acquiring a partnership  
6   interest directly from the limited partnership, upon the com-  
7   pliance with the partnership agreement or, if the partnership-  
8   agreement does not so provide, upon the written consent of all  
9   partners; and  
10       (2) in the case of an assignee of a partnership interest  
11   of a partner who has the power, as provided in Section 704,  
12   to grant the assignee the right to become a limited partner,  
13   upon the exercise of that power and compliance with any conditions  
14   limiting the grant or exercise of the power.  
15   (b) In each case under subsection (a), the person acquiring  
16   the partnership interest becomes a limited partner only upon  
17   amendment of the certificate of limited partnership reflecting  
18   that fact.

COMMENT

Subdivision (1) of Section 301(a) adds to Section 8 of the prior uniform law an explicit recognition of the fact that unanimous consent of all partners is required for admission of new limited partners unless the partnership agreement provides otherwise. Subdivision (2) is derived from Section 19 of the prior uniform law but abandons the former terminology of "substituted limited partner".

1 SECTION 302. [*Voting.*] Subject to Section 303, the part-  
2 nership agreement may grant to all or a specified group of the  
3 limited partners the right to vote (on a per capita or other  
4 basis) upon any matter.

COMMENT

Section 302 is new, and must be read together with subdivision (b) (5) of Section 303. Although the prior uniform law did not speak specifically of the voting powers of limited partners, it is not uncommon for partnership agreements to grant such power to limited partners. Section 302 is designed only to make it clear that the partnership agreement may grant such power to limited partners. If such powers are granted to limited partners beyond the "safe harbor" of Section 303(b) (5), a court may hold that, under the circumstances, the limited partners have participated in "control of the business" within the meaning of Section 303(a). Section 303(c) simply means that the exercise of powers beyond the ambit of Section 303(b) is not ipso facto to be taken as taking part in the control of the business.

1 SECTION 303. [*Liability to Third Parties.*]

2 (a) Except as provided in subsection (d), a limited part-  
3 ner is not liable for the obligations of a limited partnership  
4 unless he is also a general partner or, in addition to the exercise of  
5 his rights and powers as a limited partner, he takes part in the  
6 control of the business. However, if the limited partner's parti-  
7 cipation in the control of the business is not substantially the  
8 same as the exercise of the powers of a general partner, he is  
9 liable only to persons who transact business with the limited  
10 partnership with actual knowledge of his participation in control.

11 (b) A limited partner does not participate in the con-  
12 trol of the business within the meaning of subsection (a) sole-  
13 ly by doing one or more of the following:

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

16 (2) consulting with and advising a general partner with re-  
17 spect to the business of the limited partnership;

18 (3) acting as surety for the limited partnership;

19 (4) approving or disapproving an amendment to the part-  
20 nership agreement; or

21 (5) voting on one or more of the following matters:

22 (i) the dissolution and winding up of the limited part-  
23 nership;

24 (ii) the sale, exchange, lease, mortgage, pledge, or other  
25 transfer of all or substantially all of the assets of the limit-  
26 ed partnership other than in the ordinary course of its business;

27 (iii) the incurrence of indebtedness by the limited part-  
28 nership other than in the ordinary course of its business;

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

30 (v) the removal of a general partner.

31 (c) The enumeration in subsection (b) does not mean that  
32 the possession or exercise of any other powers by a limited part-  
33 ner constitutes participation by him in the business of the limit-

34 ed partnership.

35 (d) A limited partner who knowingly permits his name to be  
36 used in the name of the limited partnership, except under circum-  
37 stances permitted by Section 102(2)(i), is liable to creditors  
38 who extend credit to the limited partnership without actual know-  
39 ledge that the limited partner is not a general partner.

COMMENT

Section 303 makes several important changes in Section 7 of the prior uniform law. The first sentence of Section 303 (a) carries over the basic test from former Section 7 — whether the limited partner “takes part in the control of the business” — in order to insure that judicial decisions under the prior uniform law remain applicable to the extent not expressly changed. The second sentence of Section 303 (a) reflects a wholly new concept. Because of the difficulty of determining when the “control” line has been overstepped, it was thought it unfair to impose general partner’s liability on a limited partner except to the extent that a third party had knowledge of his participation in control of the business. On the other hand, in order to avoid permitting a limited partner to exercise all of the powers of a general partner while avoiding any direct dealings with third parties, the “is not substantially the same as” test was introduced. Paragraph (b) is intended to provide a “safe harbor” by enumerating certain activities which a limited partner may carry on for the partnership without being deemed to have taken part in control of the business. Paragraph (d) is derived from Section 5 of the prior uniform law, but adds as a condition to the limited partner’s liability the fact that a limited partner must have knowingly permitted his name to be used in the name of the limited partnership.

1 SECTION 304. [*Person Erroneously Believing Himself Limited*  
2 *Partner.*]

3 (a) Except as provided in subsection (b), a person who makes  
4 a contribution to a business enterprise and erroneously but in  
5 good faith believes that he has become a limited partner in  
6 the enterprise is not a general partner in the enterprise and is  
7 not bound by its obligations by reason of making the contribution,  
8 receiving distributions from the enterprise, or exercising  
9 any rights of a limited partner, if, on ascertaining the mistake,  
10 he:

11 (1) causes an appropriate certificate of limited part-  
12 nership or a certificate of amendment to be executed and  
13 filed; or

14 (2) withdraws from future equity participation in the  
15 enterprise.

16 (b) A person who makes a contribution of the kind des-  
17 cribed in subsection (a) is liable as a general partner to any  
18 third party who transacts business with the enterprise (i) be-  
19 fore the person withdraws and an appropriate certificate is  
20 filed to show withdrawal, or (ii) before an appropriate cer-  
21 tificate is filed to show his status as a limited partner  
22 and, in the case of an amendment, after expiration of the 30-day  
23 period for filing an amendment relating to the person as a  
24 limited partner under Section 202, but in either case only if

25 the third party actually believed in good faith that the person was  
26 a general partner at the time of the transaction.

COMMENT

Section 304 is derived from Section 11 of the prior uniform law. The "good faith" requirement has been added in the first sentence of Section 304 (a). The provisions of subdivision (2) of Section 304 (a) are intended to clarify an ambiguity in the prior law by providing that a person who chooses to withdraw from the enterprise in order to protect himself from liability is not required to renounce any of his then current interest in the enterprise so long as he has no further participation as an equity participant. Paragraph (b) preserves the liability of the equity participant prior to withdrawal (and after the time for appropriate amendment in the case of a limited partnership) to any third party who has transacted business with the person believing in good faith that he was a general partner.

1 SECTION 305. [*Information.*] Each limited partner has the right  
2 to:  
3 (1) inspect and copy any of the partnership records re-  
4 quired to be maintained by Section 105; and  
5 (2) obtain from the general partners from time to time  
6 upon reasonable demand (i) true and full information regarding  
7 the state of the business and financial condition of the  
8 limited partnership, (ii) promptly after becoming available, a  
9 copy of the limited partnership's federal, state and local  
10 income tax returns for each year, and (iii) other information  
11 regarding the affairs of the limited partnership as is just and  
12 reasonable.

COMMENT

Section 305 changes and restates the rights of limited partners to information about the partnership formerly provided by Section 10 of the prior uniform law.

ARTICLE 4

*General Partners*

1 SECTION 401. [*Admission of Additional General Partners.*] Af-  
2 ter the filing of a limited partnership's original certificate  
3 of limited partnership, additional general partners may be admit-  
4 ted only with the specific written consent of each partner.

COMMENT

Section 401 is derived from Section 9 (1) (e) of the prior law and carries over the unwaivable requirement that all limited partners must consent to the admission of an additional general partner and that such consent must specifically identify the general partner involved.

1 SECTION 402. [*Events of Withdrawal.*] Except as approved by

2 the specific written consent of all partners at the time, a  
3 person ceases to be a general partner of a limited partnership  
4 upon the happening of any of the following events:

5 (1) the general partner withdraws from the limited part-  
6 nership as provided in Section 602;

7 (2) the general partner ceases to be a member of the limit-  
8 ed partnership as provided in Section 702;

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

11 (4) unless otherwise provided in the certificate of lim-  
12 ited partnership, the general partner: (i) makes an assignment  
13 for the benefit of creditors; (ii) files a voluntary petition  
14 in bankruptcy; (iii) is adjudicated a bankrupt or insolvent;  
15 (iv) files a petition or answer seeking for himself any re-  
16 organization, arrangement, composition, readjustment, liquid-  
17 ation, dissolution or similar relief under any statute, law, or  
18 regulation; (v) files an answer or other pleading admitting  
19 or failing to contest the material allegations of a petition  
20 filed against him in any proceeding of this nature; or (vi) seeks,  
21 consents to, or acquiesces in the appointment of a trustee,  
22 receiver, or liquidator of the general partner or of all or any  
23 substantial part of his properties;

24 (5) unless otherwise provided in the certificate of limit-  
25 ed partnership, [120] days after the commencement of any pro-  
26 ceeding against the general partner seeking reorganization,  
27 arrangement, composition, readjustment, liquidation, dissolution  
28 or similar relief under any statute, law, or regulation, the  
29 proceeding has not been dismissed, or if within [90] days after  
30 the appointment without his consent or acquiescence of a  
31 trustee, receiver, or liquidator of the general partner or of  
32 all or any substantial part of his properties, the appointment  
33 is not vacated or stayed or within [90] days after the expiration  
34 of any such stay, the appointment is not vacated;

35 (6) in the case of a general partner who is a natural person,

36 (i) his death; or

37 (ii) the entry by a court of competent jurisdiction ad-  
38 judicating him incompetent to manage his person or his estate;

39 (7) in the case of a general partner who is acting as a  
40 general partner by virtue of being a trustee of a trust, the termi-  
41 nation of the trust (but not merely the substitution of a new trustee);

42 (8) in the case of a general partner that is a separate part-  
43 nership, the dissolution and commencement of winding up of the  
44 separate partnership;

45 (9) in the case of a general partner that is a corporation,  
46 the filing of a certificate of dissolution, or its equivalent, for  
47 the corporation or the revocation of its charter; or

48 (10) in the case of an estate, the distribution by the fiduciary  
49 of the estate's entire interest in the partnership.

COMMENT

Section 402 expands considerably the provisions of Section 20 of the prior uniform law which provided for dissolution in the event of the retirement, death or insanity of a general partner. Subdivisions (1), (2) and (3) recognize that the general partner's agency relationship is terminable at will, although it may result in a breach of the partnership agreement giving rise to an action for damages. Subdivisions (4) and (5) reflect a judgment that, unless the limited partners agree otherwise, they ought to have the power to rid themselves of a general partner who is in such dire financial straits that he is the subject of proceedings under the National Bankruptcy Act or a similar provision of law. Subdivisions (6) through (10) simply elaborate on the notion of death in the case of a general partner who is not a natural person. ~~Of course, the addition of the words "and in the partnership agreement" was not intended to suggest that liabilities to third parties could be affected by provisions in the partnership agreement.~~

1 SECTION 403. [*General Powers and Liabilities.*] Except as pro-  
2 vided in this Act or in the partnership agreement, a general  
3 partner of a limited partnership has the rights and powers and  
4 is subject to the restrictions and liabilities of a partner in  
5 a partnership without limited partners.

COMMENT

Section 403 is derived from Section 9 (1) of the prior uniform law.

1 SECTION 404. [*Contributions by General Partner.*] A general  
2 partner of a limited partnership may make contributions to the part-  
3 nership and share in the profits and losses of, and in distri-  
4 butions from, the limited partnership as a general partner. A gen-  
5 eral partner also may make contributions to and share in pro-  
6 fits, losses, and distributions as a limited partner. A person  
7 who is both a general partner and a limited partner has the  
8 rights and powers, and is subject to the restrictions and li-  
9 abilities, of a general partner and, except as provided in the part-  
10 nership agreement, also has the powers, and is subject to the  
11 restrictions, of a limited partner to the extent of his parti-  
12 cipation in the partnership as a limited partner.

COMMENT

Section 404 is derived from Section 12 of the prior uniform law and makes clear that the partnership agreement may provide that a general partner who is also a limited partner may exercise all of the powers of a limited partner.

1 SECTION 405. [*Voting.*] The partnership agreement may grant  
2 to all or certain identified general partners the right to vote  
3 (on a per capita or any other basis), separately or with all or any  
4 class of the limited partners, on any matter.



Section 405 is new and is intended to make it clear that the Act does not require that the limited partners have any right to vote on matters as a separate class.

## ARTICLE 5

### *Finance*

1 SECTION 501. [*Form of Contribution.*] The contribution of  
2 a partner may be in cash, property, or services rendered, or  
3 a promissory note or other obligation to contribute cash or  
4 property or to perform services.

#### COMMENT

As noted in the comment to Section 101, the explicit permission to make contributions of services expands Section 4 of the prior uniform law.

1 SECTION 502. [*Liability for Contribution.*]  
2 (a) Except as provided in the certificate of limit-  
3 ed partnership, a partner is obligated to the limited part-  
4 nership to perform any promise to contribute cash or property  
5 or to perform services, even if he is unable to perform because  
6 of death, disability or any other reason. If a partner does  
7 not make the required contribution of property or services,  
8 he is obligated at the option of the limited partnership to  
9 contribute cash equal to that portion of the value (as stated  
10 in the certificate of limited partnership) of the stated con-  
11 tribution that has not been made.  
12 (b) Unless otherwise provided in the partnership agree-  
13 ment, the obligation of a partner to make a contribution  
14 or return money or other property paid or distributed in violation  
15 of this Act may be compromised only by consent of all the  
16 partners. Notwithstanding the compromise, a creditor of a limit-  
17 ed partnership who extends credit, or whose claim arises, after  
18 the filing of the certificate of limited partnership or an  
19 amendment thereto which, in either case, reflects the obligation,  
20 and before the amendment or cancellation thereof to reflect the  
21 compromise, may enforce the original obligation.

#### COMMENT

Although Section 17 (1) of the prior uniform law required a partner to fulfill his promise to make contributions, the addition of contributions in the form of a promise to render services means that a partner who is unable to perform those services because of death or disability as well as because of an intentional default is required to pay the cash value of the services unless the certificate of limited partnership provides otherwise. Subdivision (b) is derived from Section 17 (3) of the prior uniform law.

1 SECTION 503. [*Sharing of Profits and Losses.*] The profits

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

COMMENT

Section 503 is new. The prior uniform law did not provide for the basis on which partners share profits and losses in the absence of agreement.

1 SECTION 504. [*Sharing of Distributions.*] Distributions of  
2 cash or other assets of a limited partnership shall be  
3 allocated among the partners, and among classes of partners,  
4 in the manner provided in the partnership agreement. If the  
5 partnership agreement does not so provide, distributions shall be  
6 made on the basis of the value (as stated in the certificate  
7 of limited partnership) of the contributions made by each  
8 partner to the extent they have been received by the part-  
9 nership and have not been returned.

COMMENT

Section 504 is new. The prior uniform law did not provide for the basis on which partners share distributions in the absence of agreement. This section also recognizes that partners may choose to share in distribution on a different basis than they share in profits and losses.

ARTICLE 6

*Distributions and Withdrawal*

1 SECTION 601. [*Interim Distributions.*] Except as provided  
2 in this Article, a partner is entitled to receive distri-  
3 butions from a limited partnership before his withdrawal  
4 from the limited partnership and before the dissolution and  
5 winding up thereof:  
6 (1) to the extent and at the times or upon the happen-  
7 ing of the events specified in the partnership agreement; and  
8 (2) if any distribution constitutes a return of any  
9 part of his contribution under Section 608(c), to the extent  
10 and at the times or upon the happening of the events specified  
11 in the certificate of limited partnership.

COMMENT

Section 601 is new.

1 SECTION 602. [*Withdrawal of General Partner.*] A general  
2 partner may withdraw from a limited partnership at any time  
3 by giving written notice to the other partners, but if the  
4 withdrawal violates the partnership agreement, the limited part-  
5 nership may recover from the withdrawing general partner  
6 damages for breach of the partnership agreement and offset the  
7 damages against the amount otherwise distributable to him.

COMMENT

Section 602 is new but is generally derived from Section 38 of the Uniform Partnership Act.

1 SECTION 603. [*Withdrawal of Limited Partner.*] A limited  
2 partner may withdraw from a limited partnership at the time  
3 or upon the happening of events specified in the certificate  
4 of limited partnership and in accordance with the partner-  
5 ship agreement. If the certificate does not specify the time or the  
6 events upon the happening of which a limited partner may with-  
7 draw or a definite time for the dissolution and winding up  
8 of the limited partnership, a limited partner may withdraw  
9 upon not less than 6 months' prior written notice to each general  
10 partner at his address on the books of the limited part-  
11 nership at its office in this State.

COMMENT

Section 603 is derived from Section 16 (c) of the prior uniform law.

1 SECTION 604. [*Distribution Upon Withdrawal.*] Except as  
2 provided in this Article, upon withdrawal any withdrawing partner  
3 is entitled to receive any distribution to which he is entitled  
4 under the partnership agreement and, if not otherwise provided  
5 in the agreement, he is entitled to receive, within a reasonable  
6 time after withdrawal, the fair value of his interest in  
7 the limited partnership as of the date of withdrawal based  
8 upon his right to share in distributions from the limited  
9 partnership.

COMMENT

Section 604 is new. It fixes the distributive share of a withdrawing partner in the absence of an agreement among the partners.

1 SECTION 605. [*Distribution in Kind.*] Except as pro-  
2 vided in the certificate of limited partnership, a partner, regard-  
3 less of the nature of his contribution, has no right to demand  
4 and receive any distribution from a limited partnership in  
5 any form other than cash. Except as provided in the partnership  
6 agreement, a partner may not be compelled to accept a distri-

7 bution of any asset in kind from a limited partnership to the  
8 extent that the percentage of the asset distributed to him  
9 exceeds a percentage of that asset which is equal to the percent-  
10 age in which he shares in distributions from the limited  
11 partnership

COMMENT

The first sentence of Section 605 is derived from Section 16 (3) of the prior uniform law. The second sentence is new, and is intended to protect a limited partner (and the remaining partners) against a distribution in kind of more than his share of particular assets.

1 SECTION 606. [*Right to Distribution.*] At the time a partner  
2 becomes entitled to receive a distribution, he has the status of,  
3 and is entitled to all remedies available to, a creditor of the limit-  
4 ed partnership with respect to the distribution.

COMMENT

Section 606 is new and is intended to make it clear that the right of a partner to receive a distribution, as between the partners, is not subject to the equity risks of the enterprise. On the other hand, since partners entitled to distributions have creditor status, there did not seem to be a need for the extraordinary remedy of Section 16 (4) (a) of the prior uniform law, which granted a limited partner the right to seek dissolution of the partnership if he was unsuccessful in demanding the return of his contribution. It is more appropriate for the partner to simply sue as an ordinary creditor and obtain a judgment.

1 SECTION 607. [*Limitations on Distribution.*] A partner may  
2 not receive a distribution from a limited partnership to the  
3 extent that, after giving effect to the distribution, all liabilities  
4 of the limited partnership, other than liabilities to partners on  
5 account of their partnership interests, exceed the fair  
6 value of the partnership assets.

COMMENT

Section 607 is derived from Section 16 (1) (a) of the prior uniform law.

1 SECTION 608. [*Liability Upon Return of Contribution.*]  
2 (a) If a partner has received the return of any part  
3 of his contribution without violation of the partnership  
4 agreement or this Act, he is liable to the limited partnership  
5 for a period of one year thereafter for the amount of the  
6 returned contribution, but only to the extent necessary to  
7 discharge the limited partnership's liabilities to creditors  
8 who extended credit to the limited partnership during the period  
9 the contribution was held by the partnership.  
10 (b) If a partner has received the return of any part of  
11 his contribution in violation of the partnership agreement  
12 or this Act, he is liable to the limited partnership for a  
13 period of 6 years thereafter for the amount of the contribution

14 wrongfully returned.  
15 (c) A partner receives a return of his contribution  
16 to the extent that a distribution to him reduces his share of  
17 the fair value of the net assets of the limited partnership  
18 below the value (as set forth in the certificate of limited  
19 partnership) of his contribution which has not been distributed  
20 to him.

COMMENT

Paragraph (a) is derived from Section 17 (4) of the prior uniform law, but the one year statute of limitations has been added. Paragraph (b) is derived from Section 17 (2) (b) of the prior uniform law but, again, a statute of limitations has been added. Paragraph (c) is new. The provisions of former Section 17 (2) that referred to the partner holding as "trustee" any money or specific property wrongfully returned to him have been eliminated.

ARTICLE 7

*Assignment of Partnership Interests*

1 SECTION 701. [*Nature of Partnership Interest.*] A partnership  
2 interest is personal property.

COMMENT

This section is derived from Section 18 of the prior uniform law.

1 SECTION 702. [*Assignment of Partnership Interest.*] Except as  
2 provided in the partnership agreement, a partnership in-  
3 terest is assignable in whole or in part. An assignment of a part-  
4 nership interest does not dissolve a limited partnership or  
5 entitle the assignee to become or to exercise any rights of a  
6 partner. An assignment entitles the assignee to receive, to  
7 the extent assigned, only the distribution to which the assignor  
8 would be entitled. Except as provided in the partnership agree-  
9 ment, a partner ceases to be a partner upon assignment of  
10 all his partnership interest.

COMMENT

Section 19 (1) of the prior uniform law provided simply that "a limited partner's interest is assignable", raising a question whether any limitations on the right of assignment were permitted. While the first sentence of Section 702 recognizes that the power to assign may be restricted in the partnership agreement, there was no intention to affect in any way the usual rules regarding restraints on alienation of personal property. The second and third sentences of Section 702 are derived from Section 19 (3) of the prior uniform law. The last sentence is new.

1 SECTION 703. [*Rights of Creditor.*] On application to a court of

2 competent jurisdiction by any judgment creditor of a partner,  
3 the court may charge the partnership interest of the partner  
4 with payment of the unsatisfied amount of the judgment with  
5 interest. To the extent so charged, the judgment creditor  
6 has only the rights of an assignee of the partnership interest.  
7 This Act does not deprive any partner of the benefit of any  
8 exemption laws applicable to his partnership interest.

COMMENT

Section 703 is derived from Section 22 of the prior uniform law but has not carried over some provisions that were thought to be superfluous. For example, references in Section 22 (1) to specific remedies have been omitted, as has a prohibition in Section 22 (2) against discharge of the lien with partnership property. Ordinary rules governing the remedies available to a creditor and the fiduciary obligations of general partners will determine those matters.

1 SECTION 704. [*Right of Assignee to Become Limited Partner.*]

2 (a) An assignee of a partnership interest, including an  
3 assignee of a general partner, may become a limited partner  
4 if and to the extent that (1) the assignor gives the assignee that  
5 right in accordance with authority described in the certificate  
6 of limited partnership, or (2) all other partners consent.

7 (b) An assignee who has become a limited partner has, to  
8 the extent assigned, the rights and powers, and is subject to the  
9 restrictions and liabilities, of a limited partner under the  
10 partnership agreement and this Act. An assignee who becomes  
11 a limited partner also is liable for the obligations of his  
12 assignor to make and return contributions as provided in Article  
13 6. However, the assignee is not obligated for liabilities un-  
14 known to the assignee at the time he became a limited partner  
15 and which could not be ascertained from the certificate of  
16 limited partnership.

17 (c) If an assignee of a partnership interest becomes a  
18 limited partner, the assignor is not released from his liability  
19 to the limited partnership under Sections 207 and 502.

COMMENT

Section 704 is derived from Section 19 of the prior uniform law, but paragraph (b) defines more narrowly than Section 19 the obligations of the assignor that are automatically assumed by the assignee.

1 SECTION 705. [*Power of Estate of Deceased or Incompetent*  
2 *Partner.*] If a partner who is an individual dies or a court  
3 of competent jurisdiction adjudges him to be incompetent to man-  
4 age his person or his property, the partner's executor, administra-  
5 tor guardian, conservator, or other legal representative may  
6 exercise all the partner's rights for the purpose of set-  
7 tling his estate or administering his property, including any

8 power the partner had to give an assignee the right to become  
9 a limited partner. If a partner is a corporation, trust, or  
10 other entity and is dissolved or terminated, the powers of  
11 that partner may be exercised by its legal representative or  
12 successor.

COMMENT

Section 705 is derived from Section 21 (1) of the prior uniform law. Former Section 21 (2), making a deceased limited partner's estate liable for his liabilities as a limited partner was deleted as superfluous, with no intention of changing the liability of the estate.

ARTICLE 8

*Dissolution*

1 SECTION 801. [*Nonjudicial Dissolution.*] A limited part-  
2 nership is dissolved and its affairs shall be wound up upon the  
3 happening of the first to occur of the following:  
4 (1) at the time or upon the happening of events specified in  
5 the certificate of limited partnership;  
6 (2) written consent of all partners;  
7 (3) an event of withdrawal of a general partner un-  
8 less at the time there is at least one other general partner  
9 and the certificate of limited partnership permits the business  
10 of the limited partnership to be carried on by the remaining  
11 general partner and that partner does so, but the limit-  
12 ed partnership is not dissolved and is not required to be wound  
13 up by reason of any event of withdrawal, if, within 90 days after  
14 the withdrawal, all partners agree in writing to continue the  
15 business of the limited partnership and to the appointment of  
16 one or more additional general partners if necessary or desired; or  
17 (4) entry of a decree of judicial dissolution under Sec-  
18 tion 802.

COMMENT

Section 801 merely collects in one place all of the events causing dissolution. Paragraph (3) is derived from Sections 9 (1) (g) and 20 of the prior uniform law, but adds the 90-day grace period.

1 SECTION 802. [*Judicial Dissolution.*] On application by or  
2 for a partner the [here designate the proper court] court  
3 may decree dissolution of a limited partnership whenever it is  
4 not reasonably practicable to carry on the business in con-  
5 formity with the partnership agreement.

COMMENT

Section 802 is new.

1 SECTION 803. [*Winding Up.*] Except as provided in  
2 the partnership agreement, the general partners who have not  
3 wrongfully dissolved a limited partnership or, if none, the lim-  
4 ited partners, may wind up the limited partnership's affairs; but  
5 the [here designate the proper court] court may wind  
6 up the limited partnership's affairs upon application of any part-  
7 ner, his legal representative, or assignee.

COMMENT

Section 803 is new and is derived in part from Section 37 of the Uniform General Partnership Act.

1 SECTION 804. [*Distribution of Assets.*] Upon the winding up  
2 of a limited partnership, the assets shall be distributed as  
3 follows:  
4 (1) to creditors, including partners who are creditors, to the  
5 extent permitted by law, in satisfaction of liabilities of the  
6 limited partnership other than liabilities for distributions  
7 to partners under Section 601 or 604;  
8 (2) except as provided in the partnership agreement, to  
9 partners and former partners in satisfaction of liabilities for  
10 distributions under Section 601 or 604; and  
11 (3) except as provided in the partnership agreement, to part-  
12 ners *first* for the return of their contributions and  
13 *secondly* respecting their partnership interests, in the pro-  
14 portions in which the partners share in distributions.

COMMENT

Section 804 revises Section 23 of the prior uniform law by providing that (1) to the extent partners are also creditors, other than in respect of their interests in the partnership, they share with other creditors, (2) once the partnership's obligation to make a distribution accrues, it must be paid before any other distributions of an "equity" nature are made, and (3) general and limited partners rank on the same level except as otherwise provided in the partnership agreement.

ARTICLE 9

*Foreign Limited Partnerships*

1 SECTION 901. [*Law Governing.*] Subject to the Consti-  
2 tution of this State, (1) the laws of the state under which  
3 a foreign limited partnership is organized govern its organi-  
4 zation and internal affairs and the liability of its limited



5 partners, and (2) a foreign limited partnership may not be  
6 denied registration by reason of any difference between those  
7 laws and the laws of this State.

COMMENT

Section 901 is new.

1 SECTION 902. [*Registration.*] Before transacting busi-  
2 ness in this State, a foreign limited partnership shall reg-  
3 ister with the Secretary of State. In order to register, a  
4 foreign limited partnership shall submit to the Secretary of  
5 State, in duplicate, an application for registration as a for-  
6 eign limited partnership, signed and sworn to by a general part-  
7 ner and setting forth:

8 (1) the name of the foreign limited partnership and,  
9 if different, the name under which it proposes to register  
10 and transact business in this State;

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

12 (3) the general character of the business it proposes to  
13 transact in this State;

14 (4) the name and address of any agent for service of  
15 process on the foreign limited partnership whom the foreign  
16 limited partnership elects to appoint; the agent must be an  
17 individual resident of this state, a domestic corporation, or  
18 a foreign corporation having a place of business in,  
19 and authorized to do business in, this State;

20 (5) a statement that the Secretary of State is appoint-  
21 ed the agent of the foreign limited partnership for service  
22 of process if no agent has been appointed under paragraph  
23 (4) or, if appointed, the agent's authority has been revoked  
24 or if the agent cannot be found or served with the exercise  
25 of reasonable diligence;

26 (6) the address of the office required to be main-  
27 tained in the State of its organization by the laws of  
28 that State or, if not so required, of the principal office  
29 of the foreign limited partnership; and

30 (7) if the certificate of limited partnership filed in  
31 the foreign limited partnership's state of organization is  
32 not required to include the names and business addresses of  
33 the partners, a list of the names and addresses.

COMMENT

Section 902 is new. It was thought that requiring a full copy of the certificate of limited partnership and all amendments thereto to be filed in each state in which the partnership does business would impose an unreasonable burden on interstate limited partnerships and that the information on file was sufficient to tell interested persons where they could write to obtain copies of those basic documents.

1 SECTION 903. [*Issuance of Registration.*]

2 (a) If the Secretary of State finds that an application  
3 for registration conforms to law and all requisite fees  
4 have been paid, he shall:

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

7 (2) file in his office a duplicate original of the appli-  
8 cation; and

9 (3) issue a certificate of registration to transact  
10 business in this State.

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

1 SECTION 904. [*Name.*] A foreign limited partnership  
2 may register with the Secretary of State under any name  
3 (whether or not it is the name under which it is registered  
4 in its state of organization) that includes without abbreviation  
5 the words "limited partnership" and that could be registered  
6 by a domestic limited partnership.

COMMENT

Section 904 is new.

1 SECTION 905. [*Changes and Amendments.*] If any  
2 statement in the application for registration of a foreign  
3 limited partnership was false when made or any arrangements  
4 or other facts described have changed, making the application  
5 inaccurate in any respect, the foreign limited partnership  
6 shall promptly file in the office of the Secretary of State  
7 a certificate, signed and sworn to by a general partner, correct-  
8 ing such statement.

COMMENT

Section 905 is new.

1 SECTION 906. [*Cancellation of Registration.*] A  
2 foreign limited partnership may cancel its registration  
3 by filing with the Secretary of State a certificate  
4 of cancellation signed and sworn to by a general partner.  
5 A cancellation does not terminate the authority of the  
6 Secretary of State to accept service of process on the  
7 foreign limited partnership with respect to [claims for  
8 relief] [causes of action] arising out of the trans-  
9 actions of business in this State.

COMMENT

Section 906 is new.

1 SECTION 907. [*Transaction of Business Without Registra-*  
2 *tion.*]

3 (a) A foreign limited partnership transacting business in  
4 this State may not maintain any action, suit, or proceeding  
5 in any court of this State until it has registered in this  
6 State.

7 (b) The failure of a foreign limited partnership to regis-  
8 ter in this State does not impair the validity of any contract or  
9 act of the foreign limited partnership or prevent the for-  
10 eign limited partnership from defending any action, suit, or  
11 proceeding in any court of this State.

12 (c) A limited partner of a foreign limited partnership is not  
13 liable as a general partner of the foreign limited partnership  
14 solely by reason of having transacted business in this State  
15 without registration.

16 (d) A foreign limited partnership, by transacting business  
17 in this State without registration, appoints the Secretary of  
18 State as its agent for service of process with respect to  
19 [claims for relief] [causes of action] arising out of the  
20 transaction of business in this State.

COMMENT

Section 907 is new.

1 SECTION 908. [*Action by [Appropriate Official].*]  
2 The [appropriate official] may bring an action to restrain  
3 a foreign limited partnership from transacting business in  
4 this State in violation of this Article.

COMMENT

Section 908 is new.

ARTICLE 10

*Derivative Actions*

1 SECTION 1001. [*Right of Action.*] A limited partner  
2 may bring an action in the right of a limited partnership to  
3 recover a judgment in its favor if general partners with author-  
4 ity to do so have refused to bring the action or if an effort  
5 to cause those general partners to bring the action is not  
6 likely to succeed.

COMMENT

Section 1001 is new.

1 SECTION 1002. [*Proper Plaintiff.*] In a derivative  
2 action, the plaintiff must be a partner at the time of bring-  
3 ing the action and (1) at the time of the transaction of which  
4 he complains or (2) his status as a partner had devolved upon  
5 him by operation of law or pursuant to the terms of the part-  
6 nership agreement from a person who was a partner at the time  
7 of the transaction.

COMMENT

Section 1002 is new.

1 SECTION 1003. [*Pleading.*] In a derivative action,  
2 the complaint shall set forth with particularity the effort  
3 of the plaintiff to secure initiation of the action by a gen-  
4 eral partner or the reasons for not making the effort.

COMMENT

Section 1003 is new.

1 SECTION 1004. [*Expenses.*] If a derivative action  
2 is successful, in whole or in part, or if anything  
3 is received by the plaintiff as a result of a judgment,  
4 compromise or settlement of an action or claim, the  
5 court may award the plaintiff reasonable expenses, in-  
6 cluding reasonable attorney's fees, and shall direct him  
7 to remit to the limited partnership the remainder of those  
8 proceeds received by him.

COMMENT

Section 1004 is new.

ARTICLE 11  
*Miscellaneous*

1 SECTION 1101. [*Construction and Application.*] This Act  
2 shall be so applied and construed to effectuate its general pur-  
3 pose to make uniform the law with respect to the subject of  
4 this Act among states enacting it.

1 SECTION 1102. [*Short Title.*] This Act may be cited as the  
2 Uniform Limited Partnership Act.

1 SECTION 1103. [*Severability.*] If any provision of this Act

2 or its application to any person or circumstance is held  
3 invalid, the invalidity does not affect other provisions  
4 or applications of the Act which can be given effect  
5 without the invalid provision or application, and to this  
6 end the provisions of this Act are severable.

1 SECTION 1104 [*Effective Date, Extended Effective Date*  
2 *and Repeal.*] Except as set forth below, the effective date of  
3 this Act is and the following Acts [list prior limited part-  
4 nership acts] are hereby repealed:

5 (1) The existing provisions for execution and filing of  
6 certificates of limited partnerships and amendments thereunder  
7 and cancellations thereof continue in effect until [specify  
8 time required to create central filing system], the  
9 extended effective date, and Sections 102, 103, 104, 105,  
10 201, 202, 203, 204 and 206 are not effective until the extended  
11 effective date.

12 (2) Section 402, specifying the conditions under which a  
13 general partner ceases to be a member of a limited partnership,  
14 is not effective until the extended effective date, and the  
15 applicable provisions of existing law continue to govern until  
16 the extended effective date.

17 (3) Sections 501, 502 and 608 apply only to contributions  
18 and distributions made after the effective date of this Act.

19 (4) Section 704 applies only to assignments made after the  
20 effective date of this Act.

21 (5) Article 9, dealing with registration of foreign limited  
22 partnerships, is not effective until the extended effective  
23 date.

1 SECTION 1105. [*Rules for Cases Not Provided for in This*  
2 *Act.*] In any case not provided for in this Act the provisions of  
3 the Uniform Partnership Act govern.

EXHIBIT A-1

UNIFORM LIMITED PARTNERSHIP ACT\* (1976)

ARTICLE I

General Provisions

(1) "Administrator" means the chief officer of the Michigan Department of Commerce or his designated representative.

- 1 SECTION 101. [Definitions.] As used in this Act, unless  
2 the context otherwise requires:
- 3 ~~(1)~~ "Certificate of limited partnership" means the certi-  
4 cate referred to in Section 201, and the certificate as  
5 amended, or restated. (2)
- 6 ~~(2)~~ "Contribution" means any cash, property, services (3)  
7 rendered, or a promissory note or other binding obligation  
8 to contribute cash or property or to perform services, which a  
9 partner contributes to a limited partnership in his capacity  
10 as a partner.
- 11 ~~(3)~~ "Event of withdrawal of a general partner" means an (4)  
12 event that causes a person to cease to be a general partner as  
13 provided in Section 402.
- 14 ~~(4)~~ "Foreign limited partnership" means a partnership formed (5)  
15 under the laws of any State other than this State and having  
16 as partners one or more general partners and one or more limited  
17 partners.
- 18 ~~(5)~~ "General partner" means a person who has been admitted (6)  
19 to a limited partnership as a general partner in accordance  
20 with the partnership agreement and named in the certificate  
21 of limited partnership as a general partner.
- 22 ~~(6)~~ "Limited partner" means a person who has been admitted (7)  
23 to a limited partnership as a limited partner in accordance with  
24 the partnership agreement and named in the certificate of  
25 limited partnership as a limited partner.
- 26 ~~(7)~~ "Limited partnership" and "domestic limited partner- (8)  
27 ship" mean a partnership formed by 2 or more persons under  
28 the laws of this State and having one or more general partners  
29 and one or more limited partners.
- 30 ~~(8)~~ "Partner" means a limited or general partner. (9)
- 31 ~~(9)~~ "Partnership agreement" means any valid agreement, (10)  
32 written or oral, of the partners as to the affairs of a limited  
33 partnership and the conduct of its business.
- 34 ~~(10)~~ "Partnership interest" means a partner's share of the (11)  
35 profits and losses of a limited partnership and the right to  
36 receive distributions of partnership assets.
- 37 ~~(11)~~ "Person" means a natural person, partnership, limited (12)  
38 partnership (domestic or foreign), trust, estate, association,  
39 corporation, or any other legal entity.
- 40 ~~(12)~~ "State" means a state, territory, or possession of the (13)  
41 United States, the District of Columbia, or the Commonwealth of  
42 Puerto Rico.

1 SECTION 102. [Name.] The name of each limited partner-  
2 ship as set forth in its certificate of limited partnership;

3 (1) shall contain without abbreviation the words "limited  
4 partnership";

5 (2) may not contain the name of a limited partner unless (i) it  
6 is also the name of a general partner or the corporate name  
7 of a corporate general partner, or (ii) the business of the  
8 limited partnership had been carried on under that name  
9 before the admission of that limited partner;

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

13 (4) ~~may not be the same as, or deceptively similar to,~~  
14 the name of any corporation or limited partnership organized  
15 under the laws of this State or licensed or registered as a  
16 foreign corporation or limited partnership in this State; and

17 (5) ~~may not contain the following words [here insert~~  
18 ~~prohibited words].~~

See attachment #1,  
next page.

(5) may not contain the words "corporation" or  
"incorporated" or any abbreviation or derivative  
thereof.

1 SECTION 103. [Reservation of Name.]

2 (a) The exclusive right to the use of a name may be  
3 reserved by:

4 (1) any person intending to organize a limited  
5 partnership under this Act and to adopt that name;

6 (2) any domestic limited partnership or any foreign  
7 limited partnership registered in this State which, in either  
8 case, intends to adopt that name;

9 (3) any foreign limited partnership intending to register  
10 in this State and adopt that name; and

11 (4) any person intending to organize a foreign limited  
12 partnership and intending to have it register in this State  
13 and adopt that name.

14 (b) The reservation shall be made by filing with the ~~See~~ administrator,  
15 ~~Secretary of State~~ an application, executed by the applicant, to  
16 reserve a specified name. If the ~~Secretary of State~~ finds administrator  
17 that the name is available for use by a domestic or foreign

18 limited partnership, ~~he shall reserve the name for the exclusive~~  
19 ~~use of the applicant for a period of 120 days. Once having~~  
20 ~~so reserved a name, the same applicant may not again reserve~~  
21 ~~the same name until more than 60 days after the expiration of~~  
22 ~~the last 120-day period for which that applicant reserved that~~  
23 ~~name.~~ The right to the exclusive use of a reserved name may be  
24 transferred to any other person by filing in the office of the  
25 ~~Secretary of State~~ a notice of the transfer, executed by the  
26 applicant for whom the name was reserved and specifying  
27 the name and address of the transferee.

and all filing fees required  
by law have been paid,

expiring at the end of the  
fourth full calendar month  
following the month in which  
the application was filed.  
The administrator, for good  
cause shown, may extend the  
reservation for periods of not  
not more than 2 calendar  
months each. Not more than  
2 extensions shall be  
granted.

administrator

ATTACHMENT #1

SECTION 102. [Name.]

. . .  
(4) shall be such as to distinguish it upon the records in the office of the administrator from (i) the name of each other domestic limited partnership, (ii) the name of each foreign limited partnership authorized to transact business in this State and the name under which each such foreign limited partnership has registered in this State, (iii) each name currently reserved under Section 103 or assumed under Section 104, (iv) the name of each domestic corporation and each foreign corporation authorized to transact business in this State, and (v) each corporate name currently reserved or registered under the business corporation act or a predecessor act and each corporate name assumed under section 217 of the business corporation act; and



SECTION 104. [Transacting Business Under Assumed Name; Certificate.]  
See attachment #2, next page.

105  
1 SECTION 104. [Specified Office and Agent] Each limited partnership shall continuously maintain in this State; Resignation of Agent.  
2 (1) an office, which may but need not be a place of its (a)  
3 business in this State, at which shall be kept the records  
4 required by Section 105 to be maintained; and 106  
5 (2) an agent for service of process on the limited partnership, which agent must be an individual resident of this State,  
6 a domestic corporation, or a foreign corporation authorized  
7 to do business in this State.

(b) See attachment #3, next page.

106  
1 SECTION 105. [Records to be Kept.] Each limited partnership shall keep at the office referred to in Section 104(a)(1)  
2 the following: (1) a current list of the full name and last known or residence  
3 business address of each partner, set forth in alphabetical order within each category,  
4 (2) a copy of the certificate of limited partnership and all  
5 certificates of amendment thereto, together with executed  
6 copies of any powers of attorney pursuant to which any certificate has been executed, (3) copies of the limited partnership's federal, state and local income tax returns and reports, restated certificates of limited  
7 if any, for the 3 most recent years, and (4) copies of partnership and certificates filed  
8 any then effective written partnership agreements and of any pursuant to Section 104(a),  
9 financial statements of the limited partnership for the 3  
10 most recent years. Those records are subject to inspection and such  
11 copying at the reasonable request, and at the expense, of any  
12 partner, during ordinary business hours, by any partner or his designated  
13 representative during ordinary  
14 business hours,  
15 , specifying separately the general partners and limited partners and

107  
1 SECTION 106. [Nature of Business.] A limited partnership may carry on any business that a partnership without limited partners may carry on except as otherwise provided by law.  
2 (There designate prohibited activities.)

108  
1 SECTION 107. [Business Transactions of Partner with Partnership.] Except as provided in the partnership agreement, a partner may lend money to and transact other business  
2 with the limited partnership and, subject to other applicable  
3 law, has the same rights and obligations with respect thereto as a person who is not a partner.  
4  
5  
6

SECTION 109. [Agreement to Pay Interest in Excess of Legal Rate; Defense of Usury Prohibited.] A domestic or foreign limited partnership, whether or not formed at the request of a lender, may by agreement in writing, and not otherwise, agree to pay a rate of interest in excess of the legal rate (including, without limitation, a rate of interest in excess of the rate set forth in Act No. 259 of the Public Acts of 1968, being sections 438.41 and 438.42 of the Michigan Compiled Laws) and in such case the defense of usury is prohibited.

ATTACHMENT #2

SECTION 104. [Transacting Business Under Assumed Name; Certificate.]

(a) A domestic limited partnership may transact its business under any assumed name or names other than its name as set forth in its certificate of limited partnership and a foreign limited partnership may transact its business under any assumed name or names other than the name under which it has registered in this State if not precluded from use by Section 102(2), (3), (4) or (5), and the same name may be assumed by 2 or more domestic or foreign limited partnerships participating together in any partnership or joint venture by filing with the administrator a certificate stating the name as set forth in the certificate of limited partnership, in the case of a domestic limited partnership, or under which it has registered in this State, in the case of a foreign limited partnership, and the assumed name under which the business is to be transacted. Such certificate shall be effective for a period expiring on December 31 of the fifth full calendar year following the year in which it was filed, unless sooner terminated by the filing with the administrator of a certificate of termination of assumed name or by the dissolution and the commencement of winding up of a domestic or foreign limited partnership or the filing with the administrator of a certificate of cancellation of registration of a foreign limited partnership. It may be extended for additional consecutive periods of 5 full calendar years each by the filing with the administrator of similar certificates not earlier than 90 days preceding the expiration of any such period. The administrator shall notify the limited partnership of the impending expiration of the certificate of assumed name no later than 90 days before the initial or subsequent 5-year period will expire. This Section does not create substantive rights to the use of a particular assumed name.

(b) Each certificate filed pursuant to Section 104(a) shall be executed by at least one general partner.

ATTACHMENT #3

SECTION 105. [Specified Office and Agent; Resignation of Agent.]

. . . .

(b) An agent for service of process on a domestic or foreign limited partnership may resign by filing a written notice thereof with a general partner of such domestic or foreign limited partnership and with the administrator. The general partners shall promptly appoint a successor agent and shall promptly cause the certificate of limited partnership to be amended, in the case of a domestic limited partnership, or a certificate pursuant to Section 905 to be filed, in the case of a foreign limited partnership, to reflect such appointment. The appointment of the resigning agent terminates upon the (i) appointment of a successor and the filing of a certificate of amendment or restated certificate of limited partnership, in the case of a domestic limited partnership, or a certificate pursuant to Section 905, in the case of a foreign limited partnership, reflecting such appointment, or (ii) expiration of 30 days after receipt of the notice by the administrator, whichever first occurs.

ARTICLE 2

Formation: Certificate of Limited Partnership

SECTION 201. [Certificate of Limited Partnership.]

(a) In order to form a limited partnership two or more persons must execute a certificate of limited partnership. The certificate shall be filed in the office of the ~~Secretary of State~~ administrator and set forth:

(1) the name of the limited partnership;

(2) the general character of its business;

(3) the address of the office and the name and address of the agent for service of process required to be maintained by

Section 104; \_\_\_\_\_ 105(a)

(4) the name and the business address of each partner (specifying separately the general partners and limited partners); \_\_\_\_\_ or residence

(5) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future; \_\_\_\_\_ limited

(6) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made; \_\_\_\_\_ limited

(7) any power of a limited partner to grant the right to become a limited partner to an assignee of any part of his partnership interest, and the terms and conditions of the power;

(8) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of, or the method of determining, the distribution to which he may be entitled respecting his partnership interest, and the terms and conditions of the termination and distribution; \_\_\_\_\_, in the case of a limited partner,

(9) any right of a partner to receive distributions of property, including cash from the limited partnership; \_\_\_\_\_ limited

(10) any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; \_\_\_\_\_ limited, distributions

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

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

(13) any other matters the partners determine to include therein.

(b) A limited partnership is formed ~~at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section~~ on the effective date as provided in section 206.

SECTION 202. [Amendment to Certificate.]

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the ~~Secretary of State~~ administrator. The certificate shall set forth:

- (1) the name of the limited partnership; of its original
- (2) the date of filing the certificate and of limited partnership
- (3) the amendment to the certificate or amendments

(b) Within ~~30~~ days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

- (1) a change in the amount or character of the contribution of any partner, or in any partner's obligation to make a limited contribution; limited
- (2) the admission of a new partner;
- (3) the withdrawal of a partner; or
- (4) the continuation of the business under Section 801 after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, but an amendment to show a change of address of a limited partner need be filed only once every 12 months.

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

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this Section if the amendment is filed within the ~~30~~ day period specified in subsection (b).

See attachment #4, next page.

SECTION 203. [Cancellation of Certificate.] (a)

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the ~~Secretary of State~~ administrator and set forth:

- (1) the name of the limited partnership;
- (2) the date of filing of its certificate of limited partnership; original
- (3) the reason for filing the certificate of cancellation; and

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

~~(5) any other information the general partners filing the certificate determine.~~

~~(4)~~

(b) The certificate of limited partnership is cancelled on the effective date of the certificate of cancellation as provided in Section 206.

ATTACHMENT #4

(f) The provisions of a limited partnership's certificate of limited partnership which are then in effect and operative, as theretofore amended, may be integrated into a single instrument, and at the same time its certificate of limited partnership may also be further amended by the execution and filing of a restated certificate of limited partnership. An amendment effected in connection with the restatement and integration of the certificate of limited partnership is subject to any other provision of this Act, not inconsistent with this subsection which would apply if a certificate of amendment were filed to effect such amendment. A restated certificate of limited partnership shall be specifically designated as such in the heading thereof and shall state, either in the heading or in an introductory paragraph, the limited partnership's present name, and, if it has been changed, all of its former names and the date of filing of its original certificate of limited partnership.

(g) The certificate of limited partnership is amended on the effective date of the certificate of amendment or restated certificate of limited partnership effecting an amendment as provided in Section 206.

SECTION 204. [Execution of Certificates.]

- (a) Each certificate required by this Article to be filed in the office of the ~~Secretary of State~~ shall be executed in the following manner:
- (1) an original certificate of limited partnership must be signed by all partners named therein;
  - (2) a certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new partner or whose contribution is described as having been increased; and
  - (3) a certificate of cancellation must be signed by ~~all~~ general partners;
- (b) Any person may sign a ~~certificate~~ by an attorney-in-fact, ~~but a power of attorney to sign a certificate relating to the admission, or increased contribution, of a partner must specifically describe the admission or increase.~~ any required or permitted to be filed under this Act
- (c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

SECTION 205. [Amendment or Cancellation by Judicial Act.] If

- a person required by Section 204 to execute a certificate of amendment ~~or~~ cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, who is adversely affected by the failure or refusal, may petition the ~~here designate the proper court~~ to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the ~~Secretary of State~~ to record an appropriate certificate of amendment or cancellation.

SECTION 206. [Filing in Office of ~~Secretary of State~~.]

- ~~(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he shall:~~
- ~~(1) endorse on each duplicate original the word "Filed" and the day, month and year of the filing thereof;~~
  - ~~(2) file one duplicate original in his office; and~~
  - ~~(3) return the other duplicate original to the person who filed it or his representative.~~
- ~~(b) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the Secretary of State, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is cancelled.~~

ATTACHMENT #5

SECTION 206. [Filing in Office of Administrator.]

(a) A document required or permitted to be filed under this Act shall be filed by delivering the document to the administrator together with the fees and accompanying documents required by law. A person who executes a certificate as an attorney-in-fact, agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. If the document substantially conforms to the requirements of this Act, the administrator shall endorse upon it the word "filed" with his official title and the dates of receipt and of filing thereof, and shall file and index the document or a microfilm or other reproduced copy thereof in his office. If so requested at the time of the delivery of the document to his office, the administrator shall include the hour of filing in his endorsement thereon. The administrator shall prepare and return a true copy of the document, or at his discretion the original thereof, to the person who submitted it for filing showing the filing date thereof. The records and files of the administrator relating to limited partnerships shall be open to reasonable inspection by the public. The records or files may, at the discretion of the administrator, be maintained either in their original form or in microfilm or other reproduced form. The administrator may make copies of all documents filed under this Act, or any predecessor Act, by microfilm or other process and may destroy the originals of the documents so copied.

(b) The document is effective at the time it is endorsed unless a subsequent effective time is set forth in the document which shall not be later than 90 days after the date of delivery.

(c) The administrator may, at his discretion, require that a document required or permitted to be filed under this Act be on a form prescribed by the administrator.



1 SECTION 207. [*Liability for False Statement in Certificate.*]

2 If any certificate of limited partnership or certificate of amend-  
3 ment ~~for cancellation~~ contains a false statement, one who  
4 suffers loss by reliance on the statement may recover damages for  
5 the loss from:

6 (1) any person who executes the certificate, or causes an-  
7 other to execute it on his behalf, and knew, ~~and any general~~  
8 ~~partner who knew or should have known~~, the statement to be false  
9 at the time the certificate was executed; and

10 (2) any general partner who thereafter knows ~~or should have~~  
11 ~~known~~ that any arrangement or other fact described in the cer-  
12 tificate has changed, making the statement inaccurate in any  
13 respect within a sufficient time before the statement was relied  
14 upon reasonably to have enabled that general partner to can-  
15 cel or amend the certificate, or to file a petition for its cancel-  
16 lation or amendment under Section 205;

, restated certificate of  
limited partnership  
certificate of

; provided, however, the  
provisions of this sub-  
section are subject in all  
respects to the provisions  
of Section 202(e).

1 SECTION 208. [*Notice.*] The fact that a certificate of

2 limited partnership is on file in the office of the ~~See~~  
3 ~~Secretary of State~~ is notice that the partnership is a limited part-  
4 nership and the persons designated therein as limited partners are  
5 limited partners, but it is not notice of any other fact.

administrator

1 SECTION 209. [*Delivery of Certificates to Limited Partners.*]

2 Upon the return by the ~~Secretary of State~~ pursuant to Section  
3 206 of a certificate ~~marked "Filed"~~, the general partners  
4 shall promptly deliver or mail a copy of the certificate ~~of limit-~~  
5 ~~ed partnership and each certificate~~ to each limited partner  
6 unless the partnership agreement provides otherwise.

and is notice of the matters  
included therein that are  
specified in Sections 201(a)  
(1) through (12) or that are  
included therein pursuant to  
any other section of this Act,

administor

of limited partnership,  
certificate of amendment,  
restated certificate of  
limited partnership or  
certificate of cancella-  
tion,

ARTICLE 3  
*Limited Partners*

1 SECTION 301. [*Admission of Additional Limited Partners.*]

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

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

10 (2) in the case of an assignee of a partnership interest  
11 of a partner who has the power, as provided in Section 704,  
12 to grant the assignee the right to become a limited partner,  
13 upon the exercise of that power and compliance with any conditions  
14 limiting the grant or exercise of the power.

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

true copy or original of a

1 SECTION 302. [Voting.] Subject to Section 303, the part-  
2 nership agreement may grant to all or a specified group of the  
3 limited partners the right to vote ~~(on a per capita or other~~ with or without the  
4 basis) upon any matter. concurrence of general  
partners,

1 SECTION 303. [Liability to Third Parties.]

2 (a) Except as provided in subsection (d), a limited part-  
3 ner is not liable for the obligations of a limited partnership  
4 unless he is also a general partner or, in addition to the exercise of  
5 his rights and powers as a limited partner, he takes part in the  
6 control of the business. However, if the limited partner's parti-  
7 cipation in the control of the business is not substantially the  
8 same as the exercise of the powers of a general partner, he is  
9 liable only to persons who transact business with the limited  
10 partnership with actual knowledge of his participation in control.

11 (b) A limited partner does not participate in the con-  
12 trol of the business within the meaning of subsection (a) sole-  
13 ly by doing one or more of the following:

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

16 (2) consulting with and advising a general partner with re-  
17 spect to the business of the limited partnership;

18 (3) acting as surety for the limited partnership;

19 (4) approving or disapproving an amendment to the part-  
20 nership agreement;

21 ~~(5)~~ voting on one or more of the following matters:

22 (i) the dissolution and winding up of the limited part-  
23 nership;

24 (ii) the sale, exchange, lease, mortgage, pledge, or other  
25 transfer of all or substantially all of the assets of the limit-  
26 ed partnership other than in the ordinary course of its business;

27 (iii) the incurrence of indebtedness by the limited part-  
28 nership other than in the ordinary course of its business;

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

30 (v) the removal of a general partner.

31 (c) The enumeration in subsection (b) does not mean that  
32 the possession or exercise of any other powers by a limited part-  
33 ner constitutes participation by him in the business of the limit-  
34 ed partnership.

35 (d) A limited partner who knowingly permits his name to be  
36 used in the name of the limited partnership, except under circum-  
37 stances permitted by Section 102(2)(i), is liable to creditors  
38 who extend credit to the limited partnership without actual know-  
39 ledge that the limited partner is not a general partner.

(5) approving or disapprov-  
ing a transaction in-  
volving an actual or  
potential conflict of  
interest between a  
general partner and the  
limited partnership;

(6) requesting or attending  
a meeting or partners;  
or

(7)

1 SECTION 304. [*Person Erroneously Believing Himself Limited*  
2 *Partner.*]

3 (a) Except as provided in subsection (b), a person who makes  
4 a contribution to a business enterprise and erroneously but in  
5 good faith believes that he has become a limited partner in  
6 the enterprise is not a general partner in the enterprise and is  
7 not bound by its obligations by reason of making the contribution,  
8 receiving distributions from the enterprise, or exercising  
9 any rights of a limited partner, if, on ascertaining the mistake,  
10 he:

11 (1) causes an appropriate certificate of limited part-  
12 nership/~~or a certificate of amendment~~ to be executed and ~~or~~ restated certificate  
13 filed; or of limited partnership

14 (2) withdraws from future equity participation in the  
15 enterprise.

16 (b) A person who makes a contribution of the kind des-  
17 cribed in subsection (a) is liable as a general partner to any  
18 third party who transacts business with the enterprise (i) be-  
19 fore the person withdraws and an appropriate certificate is  
20 filed to show withdrawal, or (ii) before an appropriate cer-  
21 tificate is filed to show his status as a limited partner  
22 and, in the case of an amendment, after expiration of the 30-day  
23 period for filing an amendment relating to the person as a  
24 limited partner under Section 202, but in either case only if

25 the third party actually believed in good faith that the person was  
26 a general partner at the time of the transaction.

1 SECTION 305. [*Information.*] Each limited partner has the right  
2 to:

3 (1) inspect and copy any of the partnership records re-  
4 quired to be maintained by Section 105, and

or have his designated  
representative inspect  
and copy

5 (2) obtain from the general partners from time to time  
6 upon reasonable demand (i) true and full information regarding  
7 the state of the business and financial condition of the  
8 limited partnership, (ii) promptly after becoming available, a  
9 copy of the limited partnership's federal, state and local  
10 income tax returns for each year, and (iii) other information  
11 regarding the affairs of the limited partnership as is just and  
12 reasonable.

106;

ARTICLE 4

*General Partners*

1 SECTION 401. [*Admission of Additional General Partners.*] Af-  
2 ter the filing of a limited partnership's original certificate  
3 of limited partnership, additional general partners may be admit-  
4 ted ~~only with the specific written consent of each partner~~

as provided in the  
partnership agreement  
or, if the partner-  
ship agreement does  
not so provide, upon  
the written consent  
of all partners.

1 SECTION 402. [Events of Withdrawal.] Except as approved by  
2 the specific written consent of all partners at the time, a  
3 person ceases to be a general partner of a limited partnership  
4 upon the happening of any of the following events:

5 (1) the general partner withdraws from the limited part-  
6 nership as provided in Section 602;

7 ~~(2) the general partner ceases to be a member of the limit-~~  
8 ~~ed partnership as provided in Section 702;~~

9 ~~(3) the general partner is removed as a general partner~~ (2)  
10 ~~in accordance with the partnership agreement;~~

11 ~~(4) unless otherwise provided in the certificate of lim-~~ (3)  
12 ~~ited partnership, the general partner: (i) makes an assignment~~  
13 ~~for the benefit of creditors; (ii) files a voluntary petition~~  
14 ~~in bankruptcy; (iii) is adjudicated a bankrupt or insolvent;~~  
15 ~~(iv) files a petition or answer seeking for himself any re-~~  
16 ~~organization, arrangement, composition, readjustment, liquid-~~  
17 ~~ation, dissolution or similar relief under any statute, law, or~~  
18 ~~regulation; (v) files an answer or other pleading admitting~~  
19 ~~or failing to contest the material allegations of a petition~~  
20 ~~filed against him in any proceeding of this nature; or (vi) seeks,~~  
21 ~~consents to, or acquiesces in the appointment of a trustee,~~  
22 ~~receiver, or liquidator of the general partner or of all or any~~  
23 ~~substantial part of his properties;~~

24 ~~(5) unless otherwise provided in the certificate of limit-~~ (4)  
25 ~~ed partnership, [120] days after the commencement of any pro-~~  
26 ~~ceeding against the general partner seeking reorganization,~~  
27 ~~arrangement, composition, readjustment, liquidation, dissolution~~  
28 ~~or similar relief under any statute, law, or regulation, the~~  
29 ~~proceeding has not been dismissed, or if within [90] days after~~  
30 ~~the appointment without his consent or acquiescence of a~~  
31 ~~trustee, receiver, or liquidator of the general partner or of~~  
32 ~~all or any substantial part of his properties, the appointment~~  
33 ~~is not vacated or stayed or within [90] days after the expiration~~  
34 ~~of any such stay, the appointment is not vacated;~~

35 ~~(6) in the case of a general partner who is a natural person,~~ (5)

36 (i) his death; or  
37 (ii) the entry by a court of competent jurisdiction ad- of an order  
38 judicating him incompetent to manage his person or his estate; to be legally incapacitated  
39 or unable or

40 ~~(7) in the case of a general partner who is acting as a~~ (6)  
41 ~~general partner by virtue of being a trustee of a trust, the termi-~~  
42 ~~nation of the trust (but not merely the substitution of a new trustee);~~

43 ~~(8) in the case of a general partner that is a separate part-~~ (7)  
44 ~~nership, the dissolution and commencement of winding up of the~~  
45 ~~separate partnership;~~

46 ~~(9) in the case of a general partner that is a corporation,~~ (8)  
47 ~~the filing of a certificate of dissolution, or its equivalent, for~~  
48 ~~the corporation or the revocation of its charter;~~ of

49 ~~(10) in the case of an estate, the distribution by the fiduciary~~ (9)  
of the estate's entire interest in the partnership.

(10) in the case of a general partner  
that is any other legal entity,  
the cessation of the legal  
existence of the legal entity; or

(11) any event specified in the partner  
ship agreement as resulting in a  
person ceasing to be a general  
partner.

1 SECTION 403. [*General Powers and Liabilities.*] Except as pro-  
2 vided in this Act or in the partnership agreement, a general  
3 partner of a limited partnership has the rights and powers and  
4 is subject to the restrictions and liabilities of a partner in  
5 a partnership without limited partners.

1 SECTION 404. [*Contributions by General Partner.*] A general  
2 partner of a limited partnership may make contributions to the part-  
3 nership and share in the profits and losses of, and in distri-  
4 butions from, the limited partnership as a general partner. A gen-  
5 eral partner also may make contributions to and share in pro-  
6 fits, losses, and distributions as a limited partner. A person  
7 who is both a general partner and a limited partner has the  
8 rights and powers, and is subject to the restrictions and li-  
9 abilities, of a general partner and, except as provided in the part-  
10 nership agreement, also has the powers, and is subject to the  
11 restrictions, of a limited partner to the extent of his parti-  
12 cipation in the partnership as a limited partner.

1 SECTION 405. [*Voting.*] The partnership agreement may grant  
2 to all or certain identified general partners the right to vote  
3 (on a per capita or any other basis), separately or with all or any  
4 class of the limited partners, on any matter.

## ARTICLE 5

### Finance

1 SECTION 501. [*Form of Contribution.*] The contribution of  
2 a partner may be in cash, property, or services rendered, or  
3 a promissory note or other obligation to contribute cash or  
4 property or to perform services.

1 SECTION 502. [*Liability for Contribution.*]  
2 (a) Except as provided in the certificate of limit-  
3 ed partnership, a partner is obligated to the limited part-  
4 nership to perform any promise to contribute cash or property  
5 or to perform services, even if he is unable to perform because  
6 of death, disability or any other reason. If a partner does  
7 not make the required contribution of property or services,  
8 he is obligated at the option of the limited partnership to  
9 contribute cash equal to that portion of the value (as stated  
10 in the certificate of limited partnership) of the stated con-  
11 tribution that has not been made.

12 (b) Unless otherwise provided in the partnership agree-  
13 ment, the obligation of a partner to make a contribution  
14 or return money or other property paid or distributed in violation  
15 of this Act may be compromised only by consent of all the  
16 partners. Notwithstanding the compromise, a creditor of a limit-  
17 ed partnership who extends credit, or whose claim arises, after  
18 the filing of the certificate of limited partnership or an  
19 amendment thereto which, in either case, reflects the obligation,  
20 and before the amendment or cancellation thereof to reflect the  
21 compromise, may enforce the original obligation.

limited

, in addition to any other  
rights that the limited  
partnership may have against  
such limited partner under  
the partnership agreement  
or applicable law.

limited

(c) The obligation of a  
general partner to the  
limited partnership to  
contribute cash or  
property or perform  
services shall be as  
provided in the partner-  
ship agreement.

1 SECTION 503. [*Sharing of Profits and Losses.*] The profits  
2 and losses of a limited partnership shall be allocated  
3 among the partners, and among classes of partners, in the manner  
4 provided in the partnership agreement. If the partnership  
5 agreement does not so provide, profits and losses shall be allo-  
6 cated on the basis of the value ~~(as stated in the certificate~~  
7 ~~of limited partnership)~~ of the contributions made by  
8 each partner to the extent they have been received by the partner-  
9 ship and have not been returned.

1 SECTION 504. [*Sharing of Distributions.*] Distributions of  
2 cash or other assets of a limited partnership shall be  
3 allocated among the partners, and among classes of partners,  
4 in the manner provided in the partnership agreement. If the  
5 partnership agreement does not so provide, distributions shall be  
6 made on the basis of the value ~~(as stated in the certificate~~  
7 ~~of limited partnership)~~ of the contributions made by each  
8 partner to the extent they have been received by the part-  
9 nership and have not been returned.

For purposes of this Section, the value of the contributions made by each limited partner shall be as stated in the certificate of limited partnership, and the value of the contributions made by each general partner shall be as stated in the partnership agreement, and if the partnership agreement does not so state, the value of the contributions made by each general partner shall be as stated in the books and records of the partnership or determined by any other reasonable method.

## ARTICLE 6

### *Distributions and Withdrawal*

1 SECTION 601. [*Interim Distributions.*] Except as provided  
2 in this Article, a partner is entitled to receive distri-  
3 butions from a limited partnership before his withdrawal  
4 from the limited partnership and before the dissolution and  
5 winding up thereof:

6 (1) to the extent and at the times or upon the happen-  
7 ing of the events specified in the partnership agreement; and

8 (2) if any distribution constitutes a return of any to a limited partner  
9 part of his contribution under Section 608(b), to the extent (c)  
10 and at the times or upon the happening of the events specified  
11 in the certificate of limited partnership.

1 SECTION 602. [*Withdrawal of General Partner.*] A general  
2 partner may withdraw from a limited partnership at any time  
3 by giving written notice to the other partners, but if the  
4 withdrawal violates the partnership agreement, the limited part-  
5 nership may recover from the withdrawing general partner  
6 damages for breach of the partnership agreement and offset the  
7 damages against the amount otherwise distributable to him.

1 SECTION 603. [*Withdrawal of Limited Partner.*] A limited  
2 partner may withdraw from a limited partnership at the time  
3 or upon the happening of events specified in the certificate  
4 of limited partnership and in accordance with the partner-  
5 ship agreement. If the certificate does not specify the time or the  
6 events upon the happening of which a limited partner may with-  
7 draw or a definite time for the dissolution and winding up  
8 of the limited partnership, a limited partner may withdraw  
9 upon not less than 6 months' prior written notice to each general  
10 partner at his address on the books of the limited part-  
11 nership at its office in this State.

(but not before)

If the certificate does not specify the time or the events upon the happening of which a limited partner may withdraw but does specify a definite time for the dissolution and winding up of the limited partnership, a limited partner may not withdraw prior to the dissolution and winding up of the limited partnership.

1 SECTION 604. [*Distribution Upon Withdrawal.*] Except as  
2 provided in this Article, upon withdrawal any withdrawing partner  
3 is entitled to receive any distribution to which he is entitled  
4 under the partnership agreement and, if not otherwise provided  
5 in the agreement, he is entitled to receive, within a reasonable  
6 time after withdrawal, the fair value of his interest in  
7 the limited partnership as of the date of withdrawal based  
8 upon his right to share in distributions from the limited  
9 partnership.

1 SECTION 605. [*Distribution in Kind.*] Except as pro-  
2 vided in the certificate of limited partnership, a partner, regard-  
3 less of the nature of his contribution, has no right to demand  
4 and receive any distribution from a limited partnership in  
5 any form other than cash. Except as provided in the partnership  
6 agreement, a partner may not be compelled to  
7 accept a distri-  
8 bution of any asset in kind from a limited partnership to the  
9 extent that the percentage of the asset distributed to him  
10 exceeds a percentage of that asset which is equal to the percent-  
11 age in which he shares in distributions from the limited  
partnership

limited

and except as provided in the partnership agreement, a general partner,

1 SECTION 606. [*Right to Distribution.*] At the time a partner  
2 becomes entitled to receive a distribution, he has the status of,  
3 and is entitled to all remedies available to, a creditor of the limit-  
4 ed partnership with respect to the distribution.

1 SECTION 607. [*Limitations on Distribution.*] A partner may  
2 not receive a distribution from a limited partnership to the  
3 extent that, after giving effect to the distribution, all liabilities  
4 of the limited partnership, other than liabilities to partners on  
5 account of their partnership interests, exceed the fair  
6 value of the partnership assets.

1 SECTION 608. [*Liability Upon Return of Contribution.*]

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

10 (b) If a partner has received the return of any part of limited  
11 his contribution in violation of the partnership agreement  
12 or this Act, he is liable to the limited partnership for a  
13 period of 6 years thereafter for the amount of the contribution  
14 wrongfully returned.

15 (c) A partner receives a return of his contribution limited  
16 to the extent that a distribution to him reduces his share of  
17 the fair value of the net assets of the limited partnership  
18 below the value (as set forth in the certificate of limited  
19 partnership) of his contribution which has not been distributed  
20 to him.

ARTICLE 7

*Assignment of Partnership Interests*

1 SECTION 701. [*Nature of Partnership Interest.*] A partnership  
2 interest is personal property.

COMMENT

This section is derived from Section 18 of the prior uniform law.

1 SECTION 702. [*Assignment of Partnership Interest.*] Except as  
2 provided in the partnership agreement, a partnership in-  
3 terest is assignable in whole or in part. An assignment of a part-  
4 nership interest does not dissolve a limited partnership or  
5 entitle the assignee to become or to exercise any rights of a  
6 partner. An assignment entitles the assignee to receive, to  
7 the extent assigned, only the distribution to which the assignor  
8 would be entitled. ~~Except as provided in the partnership agree-~~  
9 ~~ment, a partner ceases to be a partner upon assignment of~~  
10 ~~all his partnership interest.~~

1 SECTION 703. [*Rights of Creditor.*] On application to a court of  
2 competent jurisdiction by any judgment creditor of a partner,  
3 the court may charge the partnership interest of the partner  
4 with payment of the unsatisfied amount of the judgment with  
5 interest. To the extent so charged, the judgment creditor  
6 has only the rights of an assignee of the partnership interest.  
7 This Act does not deprive any partner of the benefit of any  
8 exemption laws applicable to his partnership interest.



SECTION 704. [*Right of Assignee to Become Limited Partner.*]

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership, or (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Act. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Article 6. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the certificate of limited partnership.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Sections 207 and 502.

SECTION 705. [*Power of Estate of Deceased or Incompetent Partner.*]

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

unable to manage his  
property or incompetent  
personal representative,

ARTICLE 8  
*Dissolution*

SECTION 801. [*Nonjudicial Dissolution.*] A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

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

(2) written consent of all partners;

(3) an event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within 90 days after the withdrawal, all partners agree in writing to continue the

remaining

business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or

(4) entry of a decree of judicial dissolution under Section 802 or 803.

1 SECTION 802. *[Judicial Dissolution.]* On application by or  
2 for a partner ~~the [here designate the proper court] court~~  
3 may decree dissolution of a limited partnership whenever it is  
4 ~~not reasonably practicable to carry on the business in con-~~  
5 ~~formity with the partnership agreement.~~

the circuit court of the  
county in which the office  
referred to in Section  
105(a)(1) is located

SECTION 804. See attachment #6, next page.

established that the acts of  
the general partners or those  
of the general partners in  
control of the limited  
partnership are illegal,  
fraudulent or willfully un-

fair and oppressive to the  
limited partnership or to

such partner. On application  
by or for a partner to dis-

solve a limited partnership;  
on a ground enumerated in

this Section, the court upon  
establishment of such ground

may make such order or grant  
such relief, other than dis-

solution, as it deems  
appropriate. A copy of a

judicial order of dissolution  
shall be forwarded promptly

to the administrator by the  
person designated by the court.

circuit court of the county  
in which the office referred  
to in Section 105(a)(1) is

located

, and good cause shown by,

804.  
1 SECTION ~~803.~~ *[Winding Up.]* Except as provided in  
2 the partnership agreement, the general partners who have not  
3 wrongfully dissolved a limited partnership or, if none, the lim-  
4 ited partners, may wind up the limited partnership's affairs; but  
5 the ~~[here designate the proper court] court~~ may wind  
6 up the limited partnership's affairs upon application of any part-  
7 ner, his legal representative, or assignee.

805.  
1 SECTION ~~804.~~ *[Distribution of Assets.]* Upon the winding up  
2 of a limited partnership, the assets shall be distributed as  
3 follows:

4 (1) to creditors, including partners who are creditors, to the  
5 extent permitted by law, in satisfaction of liabilities of the  
6 limited partnership other than liabilities for distributions  
7 to partners under Section 601 or 604;

8 (2) except as provided in the partnership agreement, to  
9 partners and former partners in satisfaction of liabilities for  
10 distributions under Section 601 or 604; and

11 (3) except as provided in the partnership agreement, to part-  
12 ners *first* for the return of their contributions and  
13 *secondly* respecting their partnership interests, in the pro-  
14 portions in which the partners share in distributions.

## ARTICLE 9

### *Foreign Limited Partnerships*

1 SECTION 901. *[Law Governing.]* Subject to the Consti-  
2 tution of this State, (1) the laws of the state under which  
3 a foreign limited partnership is organized govern its organi-  
4 zation and internal affairs and the liability of its limited  
5 partners, and (2) a foreign limited partnership may not be  
6 denied registration by reason of any difference between those  
7 laws and the laws of this State.

ATTACHMENT #6

SECTION 803. [Action by attorney general for dissolution.]

(a) The attorney general may bring an action in the circuit court of the county in which the office referred to in Section 105(a)(1) is located for dissolution of a limited partnership upon the ground that the limited partnership has committed any of the following acts:

- (1) procured its organization through fraud;
- (2) repeatedly and wilfully exceeded the authority conferred upon it by law; or
- (3) repeatedly and wilfully conducted its business in an unlawful manner.

(b) The enumeration in this Section of grounds for dissolution does not exclude any other statutory or common law action by the attorney general for dissolution of a limited partnership.

1 SECTION 902. [Registration.] Before transacting busi-  
2 ness in this State, a foreign limited partnership shall reg-  
3 ister with the ~~Secretary of State~~. In order to register, a  
4 foreign limited partnership shall submit to the ~~Secretary of~~  
5 ~~State, in duplicate,~~ an application for registration as a for-  
6 eign limited partnership, signed and sworn to by a general part-  
7 ner and setting forth:

administrator

administrator

8 (1) the name of the foreign limited partnership and,  
9 if different, the name under which it proposes to register  
10 and transact business in this State;

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

12 (3) the general character of the business it proposes to  
13 transact in this State;

14 (4) the name and address of any agent for service of  
15 process on the foreign limited partnership whom the foreign  
16 limited partnership elects to appoint; the agent must be an  
17 individual resident of this state, a domestic corporation, or  
18 a foreign corporation having a place of business in,  
19 and authorized to do business in, this State;

and the name and address of the  
governmental departments, agencies  
or authorities in such state with  
which its certificate of limited  
partnership is currently on file  
and from which copies may be  
obtained;

20 (5) a statement that the ~~Secretary of State~~ is appoint-  
21 ed the agent of the foreign limited partnership for service  
22 of process if no agent has been appointed under paragraph

administrator

23 (4) or, if appointed, the agent's authority has been revoked  
24 or if the agent cannot be found or served with the exercise  
25 of reasonable diligence;

the agent has resigned or

26 (6) the address of the office required to be main-  
27 tained in the State of its organization by the laws of  
28 that State or, if not so required, of the principal office  
29 of the foreign limited partnership; and

, and the name and business or  
residence address of a general  
partner to whom the administrator  
is to send copies of

30 (7) if the certificate of limited partnership filed in  
31 the foreign limited partnership's state of organization is  
32 not required to include the names and business addresses of  
33 the partners, a list of the names and addresses.

served on the administrator;

or residence

1 SECTION 903. [Issuance of Registration.]

2 (a) If the ~~Secretary of State~~ finds that an application  
3 for registration conforms to law and all requisite fees  
4 have been paid, he shall

administrator

5 ~~(1) endorse on the application the word "Filed", and~~  
6 ~~the month, day and year of the filing thereof.~~

7 ~~(2) file in his office a duplicate original of the appli-~~  
8 ~~cation and~~

9 ~~(3) issue a certificate of registration to transact~~  
10 ~~business in this State.~~

11 (b) The certificate of registration, together with a  
12 ~~duplicate original~~ of the application, shall be returned to the  
13 person who filed the application or his representative.

true copy

or the original thereof,

1 SECTION 904. [Name.] A foreign limited partnership  
2 may register with the ~~Secretary of State~~ under any name  
3 (whether or not it is the name under which it is registered  
4 in its state of organization) ~~that includes without abbreviation~~  
5 ~~the words "limited partnership" and that could be registered~~  
6 ~~by a domestic limited partnership.~~

administrator

formed under this Act.

1 SECTION 905. [*Changes and Amendments.*] If any  
2 statement in the application for registration of a foreign  
3 limited partnership was false when made or any arrangements  
4 or other facts described have changed, making the application  
5 inaccurate in any respect, the foreign limited partnership  
6 shall promptly file in the office of the Secretary of State administrator,  
7 a certificate, signed and sworn to by a general partner, correct-  
8 ing such statement.

1 SECTION 906. [*Cancellation of Registration.*] A  
2 foreign limited partnership may cancel its registration  
3 by filing with the Secretary of State a certificate administrator,  
4 of cancellation signed and sworn to by a general partner.  
5 A cancellation does not terminate the authority of the administrator  
6 Secretary of State to accept service of process on the  
7 foreign limited partnership with respect to [claims for  
8 relief] [causes of action] arising out of the trans-  
9 actions of business in this State.

1 SECTION 907. [*Transaction of Business Without Registra-*  
2 *tion.*]

3 (a) A foreign limited partnership transacting business in  
4 this State may not maintain any action, suit, or proceeding  
5 in any court of this State until it has registered in this  
6 State.

7 (b) The failure of a foreign limited partnership to regis-  
8 ter in this State does not impair the validity of any contract or  
9 act of the foreign limited partnership or prevent the for-  
10 eign limited partnership from defending any action, suit, or  
11 proceeding in any court of this State.

12 (c) A limited partner of a foreign limited partnership is not  
13 liable as a general partner of the foreign limited partnership  
14 solely by reason of having transacted business in this State  
15 without registration.

16 (d) A foreign limited partnership, by transacting business  
17 in this State without registration, appoints the Secretary of  
18 State as its agent for service of process with respect to  
19 [claims for relief] [causes of action] arising out of the  
20 transaction of business in this State.

An action commenced by a foreign limited partnership which has not registered in this State shall not be dismissed if it registers before the order of dismissal. This prohibition applies to:

(1) A successor in interest of the foreign limited partnership, except a receiver, trustee in bankruptcy or other representative of creditors of the foreign limited partnership, and

(2) An assignee of the foreign limited partnership, except an assignee for value who accepts an assignment without knowledge that the foreign limited partnership should have but has not registered in this State.

1 SECTION 908. [*Action by [Appropriate Official.]*]  
2 The [appropriate official] may bring an action to restrain  
3 a foreign limited partnership from transacting business in  
4 this State in violation of this Article.

administrator

SECTION 909. [*Activities not Constituting Transaction of Business; Exception.*] See attachment #7, next page.

SECTION 910. [*Loans.*] See attachment #8, next page.

attorney general

ATTACHMENT #7

SECTION 909. [Activities not constituting transaction of business; exception.]

(a) Without excluding other activities which may not constitute transacting business in this State, a foreign limited partnership is not considered to be transacting business in this State, for the purposes of this Act, solely because it is carrying on in this State any 1 or more of the following activities:

(1) maintaining or defending an action or suit or an administrative or arbitral proceeding, or effecting the settlement thereof or the settlement of a claim or dispute;

(2) holding meetings of its partners or carrying on any other activities concerning its internal affairs;

(3) maintaining a bank account;

(4) maintaining an office or agency for the transfer, exchange, and registration of its securities, or appointing and maintaining a trustee or depository with relation to its securities;

(5) effecting sales through an independent contractor;

(6) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts;

(7) borrowing money, with or without security;

(8) securing or collecting debts or enforcing any right in property securing the same;

(9) transacting any business in interstate commerce; or

(10) conducting an isolated transaction not in the course of a number of repeated transactions of like nature.

(b) This Section does not apply in determining the contacts or activities which may subject a foreign limited partnership to service of process or taxation in this State or to regulation under any other act of this State.

ATTACHMENT #8

SECTION 910. [Loans.] A foreign limited partnership may acquire or, through another person entitled to transact business in this State, may make loans, or participations or interests therein, insured or guaranteed in whole or in part by the federal housing administration or the veterans' administration or a successor or similar agency of the federal government, which are secured in whole or in part by mortgages of real property located in this State, and a foreign limited partnership may purchase a loan, or participation or interest therein, secured in whole or in part by a mortgage of real property located in this State, without registering in this State. The failure, heretofore or hereafter, of such foreign limited partnership to register in this State shall not affect or impair its ownership of such loans or participations or interests therein, whether heretofore or hereafter made or acquired, or its right to collect and service the same through another person entitled to transact business in this State, or its right to enforce the same or to acquire, hold, protect, convey, lease and otherwise contract and deal with respect to the property mortgaged as security therefor.

ARTICLE 10

*Derivative Actions*

1 SECTION 1001. [*Right of Action.*] A limited partner  
2 may bring an action in the right of a limited partnership to  
3 recover a judgment in its favor if general partners with author-  
4 ity to do so have refused to bring the action or if an effort  
5 to cause those general partners to bring the action is not  
6 likely to succeed.

1 SECTION 1002. [*Proper Plaintiff.*] In a derivative  
2 action, the plaintiff must be a partner at the time of bring-  
3 ing the action and (1) at the time of the transaction of which  
4 he complains or (2) his status as a partner had devolved upon  
5 him by operation of law or pursuant to the terms of the part-  
6 nership agreement from a person who was a partner at the time  
7 of the transaction.

1 SECTION 1003. [*Pleading.*] In a derivative action,  
2 the complaint shall set forth with particularity the effort  
3 of the plaintiff to secure initiation of the action by a gen-  
4 eral partner or the reasons for not making the effort.

SECTION 1004. [Discontinu-  
ance, Compromise or Settlement  
of Derivative Action.] See  
attachment #9, next page.

1 SECTION <sup>1005</sup>~~1004~~. [*Expenses.*] If a derivative action  
2 is successful, in whole or in part, or if anything  
3 is received by the plaintiff as a result of a judgment,  
4 compromise or settlement of an action or claim, the  
5 court may award the plaintiff reasonable expenses, in-  
6 cluding reasonable attorney's fees, and shall direct him  
7 to remit to the limited partnership the remainder of those  
8 proceeds received by him.

(a)

This subsection does not apply  
to a judgment rendered for the  
benefit of an injured limited  
partner only and limited to a  
recovery of the loss or damages  
sustained by him.

(b) See attachment #10, next  
page.

ARTICLE 11  
*Miscellaneous*

1 SECTION 1101. [*Construction and Application.*] This Act  
2 shall be so applied and construed to effectuate its general pur-  
3 pose to make uniform the law with respect to the subject of  
4 this Act among states enacting it.

1 SECTION 1102. [*Short Title.*] This Act may be cited as the Michigan Revised  
2 Uniform Limited Partnership Act.

1 SECTION 1103. [*Severability.*] If any provision of this Act  
2 or its application to any person or circumstance is held  
3 invalid, the invalidity does not affect other provisions  
4 or applications of the Act which can be given effect  
5 without the invalid provision or application, and to this  
6 end the provisions of this Act are severable.



ATTACHMENT #9

SECTION 1004. [Discontinuance, Compromise, or Settlement of Derivative Action.] An action authorized by Section 1001 shall not be discontinued, compromised or settled without approval by the court having jurisdiction of the action. If the court determines that the interest of the limited partners or of any class thereof will be substantially affected by the discontinuance, compromise or settlement, the court may direct that notice, by publication or otherwise, be given to the limited partners or any class thereof whose interests it determines will be so affected. If notice is so directed to be given, the court may determine which 1 or more of the parties to the action shall bear the expense of giving the notice, in such amount as the court determines and finds to be reasonable in the circumstances. The amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

ATTACHMENT #10

SECTION 1005. [Expenses.]

(b) In an action brought in the right of the limited partnership by a limited partner of the limited partnership, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff to pay to the parties named as defendants the reasonable expenses, including fees of attorneys, incurred by them in the defense of the action.

1 SECTION 1104 [Effective Date, ~~Extended Effective Date~~  
2 and Repeal.] ~~Except as set forth below, the effective date of~~  
3 this Act is and the following Acts [list prior limited part  
4 nership acts] are hereby repealed:

See attachment #11,  
next page

5 (1) The existing provisions for execution and filing of  
6 certificates of limited partnerships and amendments thereunder  
7 and cancellations thereof continue in effect until [specify  
8 time required to create central filing system], the  
9 extended effective date, and Sections 102, 103, 104, 105,  
10 201, 202, 203, 204 and 206 are not effective until the extended  
11 effective date.

12 (2) Section 402, specifying the conditions under which a  
13 general partner ceases to be a member of a limited partnership,  
14 is not effective until the extended effective date, and the  
15 applicable provisions of existing law continue to govern until  
16 the extended effective date.

17 (3) Sections 501, 502 and 608 apply only to contributions  
18 and distributions made after the effective date of this Act.

19 (4) Section 704 applies only to assignments made after the  
20 effective date of this Act.

21 (5) Article 9, dealing with registration of foreign limited  
22 partnerships, is not effective until the extended effective  
23 ~~date~~.

SECTION 1105. [Existing Limited  
Partnerships; Saving Clause.]  
See attachment #12, next page.

1 SECTION ~~1105~~. ~~[Rules for Cases Not Provided for in This~~  
2 ~~Act.]~~ In any case not provided for in this Act the provisions of  
3 the Uniform Partnership Act govern.

1106

SECTION 1107. [Fees.]  
See attachment #13,  
following #12.

ATTACHMENT #11

SECTION 1104. [Effective Date and Repeal.] The effective date of this Act is July 1, 1982 and, except as otherwise provided in Section 1005, chapter 33 of the Revised Statutes of 1846, as amended, being sections 9885 to 9908 of the Compiled Laws of 1929, and Act No. 110 of the Public Acts of 1931, as amended, being sections 449.201 to 449.231 of the Compiled Laws of 1970, are hereby repealed.

ATTACHMENT #12

SECTION 1105. [Existing Limited Partnerships; Savings Clause.]

(a) A limited partnership formed under any statute of this State and in existence on the effective date of this Act shall not dissolve and its legal existence shall not cease as a result of the repeal of the statute under which it was formed or the enactment of this Act. A limited partnership formed under any other statute of this State and in existence on the effective date of this Act and the partners thereof shall be governed by the provisions of this Act and an existing limited partnership and its partners shall have the same rights and be subject to the same limitations, restrictions and liabilities as a limited partnership formed under this Act and its partners, except as follows:

(1) The partners of an existing limited partnership shall not be required to execute and file a certificate of limited partnership under this Act in order to maintain the continued existence of the limited partnership as a limited partnership under the laws of this State; and, as used in this Act with respect to an existing limited partnership, unless the context otherwise requires, "certificate of limited partnership" means the certificate of limited partnership of the limited partnership executed and filed pursuant to and in accordance with the provisions of the statute under which such limited partnership was formed, and the certificate as amended or restated;

(2) an existing limited partnership shall not be subject to the provisions of Section 102(1), (3) or (4) with respect to its name as set forth in its certificate of limited partnership on the effective date of this Act, but it shall become subject to such provisions if, and at the time, any change in its name is made after the effective date of this Act;

(3) an existing limited partnership may continue to transact its business under an assumed name or names with respect to which there is on file on the effective date of this Act a certificate pursuant to Act No. 101 of the Public Acts of 1907, as amended, being Sections 445.1 through 445.5, inclusive, of the Michigan Compiled Laws, by the filing of the certificate referred to in Section 104(a), provided that such assumed name or names are not precluded from use by Section 102(2) or (5);

(4) an existing limited partnership shall not be subject to the provisions of Section 105(a)(2) until the execution and filing of the restated certificate of limited partnership referred to in subsection (5) below, at which time the general partners of an existing limited partnership shall have the obligation, and the right and power, to appoint and thereafter continuously maintain an agent for service of process as required by Section 105(a)(2), anything contained in the partnership agreement to the contrary notwithstanding;

(5) the provisions of this Act relating to the events requiring, and the methods of effecting, an amendment or cancellation of a certificate of limited partnership shall apply to an existing limited partnership to the same extent and in the same way that such provisions apply to a limited partnership formed under this Act, provided, however, the first amendment of the certificate of limited partnership of an existing limited partnership made after the effective date of this Act shall be effected by the execution and filing of a restated certificate of limited partnership setting forth all of the information specified in Section 201(a), including, but not limited to, the name and address of the agent for service of process required to be maintained by Section 105(a)(2), which information shall be current as of the date of the execution and filing of such restated certificate of limited partnership; and the execution and filing of such restated certificate of limited partnership shall not result in the dissolution, or in any way adversely affect the continued existence of the existing limited partnership;

(6) the references in Sections 202(a)(2), 202(f) and 203(2) to the date of the filing of a limited partnership's certificate of limited partnership mean, with respect to an existing limited partnership, the date on which the limited partnership's original certificate of limited partnership was filed pursuant to and in accordance with the provisions of the statute under which it was formed;

(7) a certificate of amendment, a restated certificate of limited partnership and a certificate of cancellation with respect to an existing limited partnership, in addition to setting forth the information specified in Sections 202(a), 202(f) and 203, shall state the place where the original certificate of limited partnership was filed;

(8) Sections 501, 502 and 608 apply only to contributions and distributions made after the effective date of this Act; and

(9) Section 704 applies only to assignments made after the effective date of this Act.

(b) Within 30 days after the effective date of this Act, the county clerk of each county shall certify and send to the administrator, for filing, the certificate of limited partnership, as amended or restated, of each existing limited partnership which is on file in the office of the county clerk on the effective date of this Act. From and after the effective date of this Act, (i) all amendments to and restatements of, and a cancellation of, the certificate of limited partnership of an existing limited partnership shall be filed with the administrator and shall be executed and filed in accordance with, and shall otherwise comply, with all of the requirements of this Act, and (ii) no such amendment, restatement or cancellation shall be filed in the office of the county clerk of any county of this State. At the time that the county clerk of each county certifies and sends to the administrator, for filing, the certificate of limited partnership, as amended or restated, of each existing limited partnership which is on file in the office of the county clerk on the effective date of this Act, the county clerk shall mail to a general partner of each limited partnership, at his address as set forth in the certificate of limited partnership of the limited partnership, as amended or restated, written notice that the certificate of limited partnership of the limited partnership, as amended or restated, has been sent to the administrator for filing, and that from and after the effective date of this Act (i) all amendments to and restatements of, and a cancellation of, the certificate of limited partnership of the limited partnership must be filed with the administrator and comply with all of the requirements of this Act, and (ii) no such amendment, restatement or cancellation may be filed in the office of the county clerk.

(c) This Act does not affect a cause of action, liability, penalty or action or special proceeding, which on the effective date of this Act is accrued, existing, incurred or pending, but the same may be asserted, enforced, prosecuted or defended as if this Act had not been enacted.

#### ATTACHMENT #13

#### SECTION 1107. [Fees.]

(a) The fees to be paid to the administrator with respect to a limited partnership, for the purposes specified in this Section, shall be as follows:

(1) examining, filing and copying a certificate of limited partnership, \$10; provided, however, no fee shall be payable for examining and filing a certified copy of a certificate of limited partnership sent to the administrator by a county clerk pursuant to the provisions of Section 1105(b);

(2) examining, filing and copying a certificate of amendment to a certificate of limited partnership, \$10;

(3) examining, filing and copying a restated certificate of limited partnership, \$10;

(4) examining, filing and copying a certificate of cancellation of a certificate of limited partnership, \$10;

(5) examining, filing and copying an application for registration as a foreign limited partnership and issuance of a certificate of registration to transact business in this State, \$10;

(6) examining, filing and copying a certificate correcting a statement contained in an application for registration of a foreign limited partnership, \$10;

(7) examining, filing and copying a certificate of cancellation of the registration of a foreign limited partnership, \$10;

(8) examining, filing and copying an application for reservation of a name, \$10; and

(9) examining, filing and copying a certificate of assumed name or certificate of termination of assumed name, \$10.

(b) These fees shall be paid to the administrator at the time of filing or when the service is rendered by the administrator.

(c) A minimum charge of \$1 for each certificate and 50¢ per folio shall be paid to the administrator for certifying a part of a file or record pertaining to a domestic limited partnership or a foreign limited partnership for which provision for payment is not set forth in subsection (a) of this Section 1107. The administrator may furnish copies of documents, reports and papers required or permitted by law to be filed with the administrator, and shall charge for those copies pursuant to a schedule of fees which the administrator shall adopt with the approval of the state administrative board.

(d) The administrator shall retain the revenue to be collected under this subsection to be used by the corporation and securities bureau to defray the costs of the services described in this Section.

EXHIBIT B

AMENDMENT OF SECTIONS 1, 2 AND 4 OF THE ASSUMED NAME STATUTE, M.C.L.

§§ 445.1, 445.2c, 445.4

445.1 Business name; certificate, filing, contents, filing fee;  
sales by sample, traveling agents, or mail orders;  
duplicate certificate; definitions

Sec. 1. (1) A person shall not carry on or conduct or transact business in this state under an assumed name, or under a designation, name, or style other than the real name of the person owning, conducting, or transacting that business, unless the person files in duplicate in the office of the clerk of the county or counties in which the person owns, conducts, or transacts, or intends to own, conduct, or transact business, or maintains an office or place of business, a certificate on a form furnished by the county clerk setting forth the name under which the business owned is, or is to be conducted or transacted, and the true or real full name of the person owning, conducting, or transacting the same, with the address of the person, at which time the person shall pay the clerk a filing fee of \$6.00. The certificate shall be executed and duly acknowledged by the person owning, conducting, or intending to conduct the business.

(2) The selling of goods by sample or through a traveling agent or traveling salesperson or by means of orders forwarded by the purchaser through the mails, shall not be construed for the purpose of this act as conducting or transacting business so as to require the filing of the certificates.

(3) The county clerk shall certify the duplicate and return it to the applicant.

(4) As used in this act:

(a) "Person" means 1 or more individuals, partnerships, ~~limited partnerships~~, trusts, fiduciaries, or other entities capable of contracting, EXCEPT CORPORATIONS AND LIMITED PARTNERSHIPS.

(b) "Address" means the residence or principal business address of the person.

445.2c Same; fee for certified copy

Sec. 2c. The clerk, upon request, ~~of any person,~~ shall supply certified copies of the original or renewal certificates upon payment of a fee of \$2.00 per copy.

445.4 Same; certificate, contents

Sec. 4. The certificate referred to in section 1, in the case of any person named therein other than an individual, shall state the nature of the entity; the statutory law, if any, pursuant to which it was organized; the place and the date of filing with any governmental authority, identifying it, of any documents, describing them, required to be filed in order to accomplish or complete the organization of the entity and to entitle it to operate or transact business under the laws of this state and; if organized elsewhere, of the state or country where organized; and, if a fiduciary, the date of the last will and testament or trust agreement and the court, place and date of admission to probate of the will or the names and addresses of the parties to the trust agreement, and the name and address of each fiduciary; and, if a partnership ~~or limited partnership~~, the name and address of each partner. This act shall in no way affect or apply to any corporation OR LIMITED PARTNERSHIP organized under the laws of this state, or to any corporation OR LIMITED PARTNERSHIP organized under the laws of any other state and lawfully doing business in the state, except as otherwise provided by Act No. 192 of the Public Acts of 1962, as amended.



AMENDMENTS OF SECTIONS 1917 AND 2582 OF THE REVISED JUDICATURE ACT,  
M.C.L. §§600.1917, 600.2582

600.1917 Same; service on partnership or limited partnership

Sec. 1917. (1) Service of process upon a partnership, ~~or a limited partnership~~, OTHER THAN A LIMITED PARTNERSHIP, may be made by

(a) leaving a summons and a copy of the complaint with any ~~general~~ partner personally, or

(b) leaving a summons and a copy of the complaint with a person in charge of a partnership office or business establishment at such office or place of business and sending a summons and a copy of the complaint by registered mail, addressed to any ~~general~~ partner AT HIS ADDRESS AS SET FORTH IN THE CERTIFICATE OF CO-PARTNERSHIP FILED WITH RESPECT TO SUCH PARTNERSHIP OR at his usual place of abode or last known address.

(2) SERVICE OF PROCESS UPON A LIMITED PARTNERSHIP, WHETHER DOMESTIC OR FOREIGN, MAY BE MADE BY

(A) LEAVING A SUMMONS AND A COPY OF THE COMPLAINT WITH ANY GENERAL PARTNER OR THE AGENT FOR SERVICE OF PROCESS, OR

(B) LEAVING A SUMMONS AND A COPY OF THE COMPLAINT WITH A PERSON IN CHARGE OF ANY PARTNERSHIP OFFICE OR BUSINESS ESTABLISHMENT AND SENDING A SUMMONS AND A COPY OF THE COMPLAINT BY REGISTERED MAIL, ADDRESSED (i) TO ANY GENERAL PARTNER AT HIS ADDRESS AS SET FORTH IN THE CERTIFICATE OF LIMITED PARTNERSHIP FILED WITH RESPECT TO SUCH LIMITED PARTNERSHIP OR AT HIS USUAL PLACE OF ABODE OR LAST KNOWN ADDRESS, OR (ii) TO THE OFFICE OF THE PARTNERSHIP, AS SET FORTH IN ITS CERTIFICATE OF LIMITED PARTNERSHIP IN THE CASE OF A DOMESTIC LIMITED PARTNERSHIP OR AS SET FORTH IN ITS APPLICATION FOR REGISTRATION AS A FOREIGN LIMITED PARTNERSHIP IN THE CASE OF A FOREIGN LIMITED PARTNERSHIP, OR

(C) MAILING A SUMMONS AND A COPY OF THE COMPLAINT BY REGISTERED MAIL TO THE LIMITED PARTNERSHIP OR A GENERAL PARTNER AND TO THE MICHIGAN CORPORATION AND SECURITIES COMMISSION, IF THE LIMITED PARTNERSHIP IS REQUIRED BY LAW, BUT HAS FAILED, TO APPOINT AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS OR TO FILE ANY CERTIFICATE WITH RESPECT THERETO.

600.2582 . Service on corporation and securities commission; fee

Sec. 2582. If service on a corporation OR LIMITED PARTNERSHIP is made by service on the corporation and securities commission, there shall be paid to the corporation and securities commission at the time of such service a fee of \$3.00, which sum may be taxed as costs to the plaintiff, in case he the plaintiff prevails in the proceedings.

EXHIBIT D

ATTORNEY GENERAL'S OPINION CONCERNING LIMITATIONS ON  
DEMOCRATIC RIGHTS OF LIMITED PARTNERSHIPS  
(November 5, 1979)

Mr. William F. McLaughlin, Director  
Michigan Department of Commerce  
P.O. Box 30004  
Law Building  
Lansing, Michigan 48909

Dear Mr. McLaughlin:

You have requested my opinion as to whether a limited partnership agreement may provide that the holders of a majority of outstanding units of limited partnership interests may, without the necessity for concurrence by the general partner, vote to (a) amend the limited partnership agreement; (b) dissolve the limited partnership; (c) remove the general partner; (d) elect a new general partner if the general partner voluntarily withdraws from the partnership; (e) approve or disapprove of the sale of all or substantially all of the assets of the limited partnership; and (f) cancel any contract for services between the general partner or any affiliate of the general partner, without penalty upon 60-days notice.\*

The relationship between general partners and limited partners is governed by the Uniform Limited Partnership Act, 1931 PA 110, MCLA 449.201 et seq; MSA 20.51 et seq. 1931 PA 110, supra, § 1 defines a limited partnership as:

" . . . a partnership formed by 2 or more persons . . . having as members 1 or more general partners and 1 or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership."

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\* The reason for the question was apparently prompted by the fact that a voluntary association known as North American Securities Administrators Association has recommended adoption of guidelines calling for such requirements in limited partnership agreements.

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1931 PA 110, supra, § 7 further provides:

"A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business."

Particularly revelant is 1931 PA 110, supra, § 9 which deals with the rights, powers and liabilities of the general partner in a limited partnership. This section provides that:

"A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to

"(a) Do any act in contravention of the certificate.

"(b) Do any act which would make it impossible to carry on the ordinary business of the partnership.

"(c) Confess a judgment against the partnership.

"(d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

"(e) Admit a person as a general partner.

"(f) Admit a person as a limited partner, unless the right so to do is given in the certificate.

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"(g) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate." [Emphasis added]

The rights and duties of partners are set forth in section 18 of the Uniform Partnership Act, 1917, § 18, MCLA 449.18; MSA 20.18, which, in pertinent part, provides:

"The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

\* \* \*

"(e) All partners have equal rights in the management and conduct of the partnership business;

\* \* \*

"(g) No person can become a member of a partnership without the consent of all partners;

"(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the parties."

Also pertinent is section 10 of the Uniform Limited Partnership Act, 1931 PA 110, supra, which delineates the rights of the limited partner. This section provides that the limited partner shall have the same rights as the general partner to perform certain acts, these being, in part:

"(1) A limited partner shall have the same rights as a general partner to

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"(a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them,

"(b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

"(c) Have dissolution and winding up by decree of court."

These statutory provisions governing the relationship between limited partners and general partners make it abundantly clear that Michigan law does not permit a limited partnership agreement which contains a provision allowing limited partners to take action without concurrence by the general partner. A fortiori, persons who wish to organize a limited partnership may not be compelled by any state agency to include such a provision in the partnership agreement.

Very truly yours,

FRANK J. KELLEY  
Attorney General