

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8332 SENATE JUDICIARY**

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CS HB 109 (JUD)

Revision Date: 3/23/93 Dept. Affected: Health and Social Services  
 Title: Blood Tests for persons charged with sex offenses BRU: State Health Services  
 Component: Laboratories  
 Sponsor: Kott  
 Requestor: House Judiciary COMPONENT SERIAL NO. #291

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES	27.9	27.9	27.9	27.9	27.9	27.9
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>27.9</b>	<b>27.9</b>	<b>27.9</b>	<b>27.9</b>	<b>27.9</b>	<b>27.9</b>

CAPITAL						
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REVENUE FUND SOURCE						
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	27.9	27.9	27.9	27.9	27.9	27.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>27.9</b>	<b>27.9</b>	<b>27.9</b>	<b>27.9</b>	<b>27.9</b>	<b>27.9</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: None

**ANALYSIS:** (Attach a separate page if necessary)

This fiscal note is based on the costs for the laboratory testing alone. It does not take into account the costs of medical personnel to perform the requisite counseling and testing, travel for medical personnel to communities where qualified personnel are unavailable, shipment of specimens, cost to ensure chain of evidence, and documentation of procedures and test results.

In 1992, 339 charges were made for arrests for sex offenses. Using 350 as the base, the laboratory costs associated with HB 109 is as follows:

Prepared by: Peter M. Nakamura, MD, MPH  
 Division: Division of Public Health

Phone: (907) 465-3090  
 Date: \_\_\_\_\_

Approved by Commissioner: Theodore A. Mals, MD, MPH  
 Agency: Department of Health & Social Services

Date: 3/23/93

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## ANALYSIS (cont.):

Cost for initial HIV screening @ \$16.30/test	5,705
2. Assuming that 0.9% initially screened were positive, the cost for HIV Western blot for making a positive diagnosis is \$93.15/test	293
3. Cost for screening negative results after the six month window period for 347 @ \$16.30/test	5,656
4. Cost for Western Blot for the 0.9% of those persons which tested positive after the 6 month window period	293
5. Cost of Hepatitis B screening @ \$16.30/test	5,705
6. Cost of Hepatitis B testing on the 11.2% that will test positive @ \$114.10/test	4,473
7. Cost of RPR test for syphilis @ \$16.30/test	5,705
TOTAL	\$27,830

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CS HB109 (JUD)

Revision Date: 3/23/93 Dept. Affected: Health and Social Services  
 Title: Blood tests for persons charged with sex BRU: State Health Services  
 Offenses: \_\_\_\_\_ Component: Nursing  
 Sponsor: Kott  
 Requestor: House Judiciary COMPONENT SERIAL NO. #288

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	45.5	45.5	45.5	45.5	45.5	45.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>

CAPITAL						
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REVENUE FUND SOURCE						
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**FUNDING:**

(Thousands of Dollars)

FUNDING	FY94	FY95	FY96	FY97	FY98	FY99
1002 Federal Receipts						
1003 GF Match						
1004 GF	45.5	45.5	45.5	45.5	45.5	45.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: None

**ANALYSIS:** (Attach a separate page if necessary)

Assuming a base of 200 individuals who would need testing and counseling and who would be presenting themselves to the Public Health Center for referral for these services, the costs of this bill for the Nursing Component are as follows:

Line 300 Contractual Services	
200 draws & pre- & post-test counseling @ 1.5 hours x \$65/hr for initial tests	19,500
400 draws & pre- & post-test counseling @ 1.0 hr x \$65/hr follow-up testing	26,000
	45,500

Prepared by: Peter M. Nakamura, MD, MPH  
 Division: Division of Public Health

Phone: (907) 465-3090  
 Date: \_\_\_\_\_

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health & Social Services

Date: 3/23/93

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ANALYSIS (cont.):

This fiscal note assumes:

- 1) testing and counseling is for individuals who are not being detained by the Department of Corrections or the Division of Family and Youth Services; and
- 2) individuals will present themselves to a Public Health Center for testing and counseling either through a court order or voluntarily will be referred to private providers for counseling.

# FISCAL NOTE

No. 6

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Bill Version: CSHB 109 (JUD)

(H) Publish Date: 3/19/93

Effective Date: 2-22-93

Dept. Affected: Corrections

Title: "An Act relating to blood tests for persons charged with sex offenses...."

SRU: Statewide Programs

Sponsor: Rep. Kott

Component: Inmate Health Care

Requestor: House HESS Committee

COMPONENT SERIAL NO. 705

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

**ANALYSIS:**

(Attach a separate page if necessary)

This legislation does not have a fiscal impact on the Department of Corrections. The Department has staff who can draw the blood for the tests. Collecting the cost of the blood test from inmate earnings can be achieved without additional cost.

Prepared by: Dana LaTour, Special Assistant *D. LaTour*

Phone: 465-3376

Division: Office of the Commissioner

Date: 2-22-93

Approved by Commissioner: Lloyd G. Rupp *L. Rupp*

Date: 2-22-93

Agency: Department of Corrections

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NATE COMMITTEE REPORT

DATE: 4/12/93

FURTHER: FINANCE

DATE TURNED INTO OFFICE: 4/28/93

JUDICIARY Committee considered CS FOR HOUSE BILL NO. 109(JUD)

"An Act relating to blood tests for persons charged with sex offenses; and providing for an effective date."

and recommends:

- replace with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

- adopts \_\_\_\_\_ Letter of Intent
- further referral to the \_\_\_\_\_

- do pass
- do not pass
- no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
Corrections	2-27-93	✓	
Law	2-23-93	✓	
HESS	3-16-93		✓
HESS	3-23-93		✓

Appropriation No Fiscal Note

DO PASS:

Rick Heford

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OTHER RECOMMENDATIONS:

Com. to RSC

Suzanne R. Little No Rec

\_\_\_\_\_

\_\_\_\_\_

Adrian L. Taylor Do Pass

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P. O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 W. 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

March 10, 1993

The Honorable Pete Kott  
House of Representatives  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99801-1182

Re: CSHB 109(HES) (Relating to blood tests for persons charged with sex offenses)

Dear Representative Kott:

By letter dated February 26, 1993, you have asked us to review CSHB 109(HES), relating to blood tests for persons charged with sex offenses. In particular, you wish to know whether there are potential due process problems in allowing the court to order a blood test without holding a hearing on the matter at which the defendant may be present.

We do not believe that this provision presents any constitutional problems. Proposed AS 18.15.300(c) authorizes the superior court to order a defendant to provide a blood sample for testing if the court determines that there is probable cause to believe that the defendant committed one of the enumerated offenses and that sexual penetration with the victim took place.

The "probable cause" standard set forth in this bill is the same standard that is used for the issuance of search warrants. Search warrants are uniformly issued at ex parte proceedings; the defendant is neither present nor has any right to be heard before the warrant is issued and executed. Search warrants per force involve an invasion of the subject's privacy. The sufficiency of the probable cause standard to support search warrants is highly indicative of the sufficiency of that same standard for the issuance of an order requiring a charged defendant to submit a blood sample for testing. Similarly, the permissibility of obtaining search warrants in ex parte proceedings is highly indicative that an order requiring the production of a blood sample may be issued without providing the defendant an opportunity to be heard on the issue.

Proposed AS 18.15.300(c) further states: "In making the [probable cause] determination, the court may rely on the evidence presented at a grand jury proceeding or

preliminary hearing."<sup>1</sup> At a preliminary hearing, the prosecution bears the burden of establishing that there is probable cause to believe that the alleged offense was committed by the defendant. Criminal Rule 5.1(h). The defendant has the right to be present at this hearing and may cross-examine the witnesses against him. Criminal Rule 5.1(b). Thus, to the extent that the court relies upon evidence that was presented at a preliminary hearing, the defendant had the opportunities to be present and confront the evidence against him at that hearing; a second such opportunity need not be provided.

The defendant does not have the opportunity to be present at a grand jury proceeding. Our constitution, however, provides alternative safeguards to secure defendants' rights. Thus, a grand jury, which is comprised of eighteen persons, hears the evidence against the defendant and applies a standard at least as strict as the "probable cause" standard used in preliminary hearings (whether "all of the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant"). Criminal Rule 6(q). To the extent that this proceeding is sufficient to justify the maintenance of felony charges against the defendant, with the appreciable loss of liberty entailed throughout those proceedings, we believe that it is also sufficient to justify an order requiring the defendant to provide a blood sample for testing.

Finally, we note that proposed AS 18.15.310(f) specifies that "the results of tests ordered under AS 18.15.300 -- 18.15.330 are not admissible evidence in a criminal or juvenile proceeding." Although we do not believe that this provision is constitutionally required, it further reduces any concerns that may exist regarding the lack of a new evidentiary hearing on the issue of whether a blood test should be ordered. A defendant would have a greater interest in challenging an order to provide a blood sample if that sample could be used as evidence against him.<sup>2</sup>

In summary, we find no constitutional impediment to this bill's provision authorizing the court to rely upon a preliminary hearing and/or grand jury proceedings in making the factual determination that there is probable cause to believe that the defendant committed one of the enumerated offenses and that sexual penetration with the victim took place.

You also wish to know whether the defendant's privacy interests are sufficiently safeguarded by providing that unauthorized disclosure is punishable by contempt of court. We

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<sup>1</sup> We would like this sentence to be amended to explicitly acknowledge that the court may rely *exclusively* on such evidence.

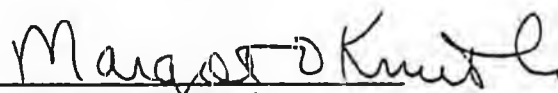
<sup>2</sup> We note that there is nothing in this bill that would prevent a prosecuting attorney from obtaining an independent order for the provision of a blood sample under Criminal Rule 16.

believe that this is sufficient. To the extent that the circumstances justify the invasion of the defendant's privacy rights in the first instance by requiring the production of a blood sample for testing, the defendant's additional privacy interests in restricting the disclosure of the test results are adequately protected by the provision in this bill prohibiting unauthorized disclosures. We do not believe that the defendant's right of privacy is appreciably affected by whether a violation of that prohibition is treated as contempt of court or is made a new criminal offense.

If you have further questions or if we may be of assistance in any other manner, please feel free to contact us.

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By:   
Margot O. Knuth  
Assistant Attorney General

cc: Charles Cole  
Attorney General

Deborah Behr  
Department of Law

Kris Lethin  
Legislative Liaison

Richard Burton, Commissioner  
Department of Public Safety

Dr. Ted Mala  
Commissioner  
Department of Health and Social Services

Lloyd Rupp  
Commissioner  
Department of Corrections

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

P.O. BOX 110610  
JUNEAU, ALASKA 99811-0610  
PHONE: (907) 465-3090

February 17, 1993

Honorable Pete Kott, Member  
House HESS Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99811

Dear Representative Kott,

At the House hearing of HB 109 (Blood testing on individuals accused of sexual assault) on 9/16/93 I made an error in a statement on the disease, Hepatitis B. I wish to take this opportunity to correct that misunderstanding and to apologize for any confusion that the statement may have created.

Contrary to my statement, although the primary method of transmission is through the blood route, Hepatitis B is considered to be a sexually transmitted disease.

Hepatitis B is a highly infectious virus that is very stable and can exist over a month in the dried state. It is not transferred in the fecal, oral route but is transmitted through blood and the sexual process. It can also be transmitted from an infected mother at the birthing and through the saliva of an infected person. The latter is considered one reason for the high incidence of hepatitis B in institutions that cared for children who were severely mentally retarded.

Hepatitis B immune globulin is available for those who have high risk exposures but the preventions of hepatitis B is not definite. A Hepatitis B vaccine is available for preventing the disease if given before exposure. The vaccine is given in combination with the globulin at times after the exposure to maximize the possibility of preventing the disease.

In view of the transmission of hepatitis B through sexual practices it would be reasonable that testing for this disease be included in the blood tests mandated under C.S. for H.B. 109.

Thank you for giving me the opportunity to correct any misinformation that may have been provided earlier.

Sincerely,



Peter M. Nakamura M.D., M.P.H.  
Director, Division of Public Health

3/15/93

BRIEFING PAPER  
FOR

CS HOUSE BILL NO. 109 (HES)

Prepared by Department of Public Safety

“An Act relating to blood tests for persons charged with sex offenses; and providing for an effective date.”

Since 1987, Alaska has received Drug Control And System Improvement Formula Grant Funds through the Office of Justice Programs, Bureau of Justice Assistance. The grant program is authorized by the Anti-Drug Abuse Act of 1988. The purpose of the funds is to provide assistance to the states for their law enforcement efforts to control the drug and violent crime problem. The allocation for each state and territory is primarily based on population.

For the first year, the allocation to Alaska was \$823,000. In 1993, the allocation is \$1,870,000.

Within the State, these funds are shared by state agencies and local units of government for the purpose of addressing the drug control problem through law enforcement, prosecution, and court system improvement programs.

In 1992, with federal allocation of \$1,852,000, there were 5 state agency projects and 9 local government projects funded. Through these projects the funds provided 14 law enforcement officers throughout the State, enforcing the State's controlled substance laws through multi-jurisdictional task force, street level enforcement, and financial investigation efforts. These funds provided for two prosecuting attorneys to specialize in the prosecution of individuals violating the State's controlled substance laws. In addition, the funds provided for timely court processing and the identification of individuals with prior drug offense incidents through improvement of the court and criminal history record systems.

Beginning October 1, 1993, the Crime Control Act of 1990 requires that in order for the states to continue to receive their identified Drug Control and System Improvement Grant allocation amount, the states must have laws in place related to HIV testing of individuals convicted of a sexual offense. The result of a state not having such legislation enacted will be a 10% reduction to the state's identified allocation amount. This amount then will be shared by those states which have enacted such legislation.

For the State of Alaska to continue to receive its entire Drug Control and System Improvement allocation, avoid reducing its current drug control effort, and avoid providing 10% of its allocation to other states, passage of HIV testing legislation is necessary this session.

With a reduction of ten percent, or \$187,000, to the State's annual grant revenue allocation, it will be necessary to fund ten percent of the law enforcement and prosecution effort currently addressing the State's drug control problem through State general funds and municipal revenues.

Bill No. CSHB.109(JUD)

Date: March 31, 1993

Contact: Joanne F. Lopez  
Executive Director  
465-4356

Title: "An Act relating to blood tests for persons charged with sex offenses..."

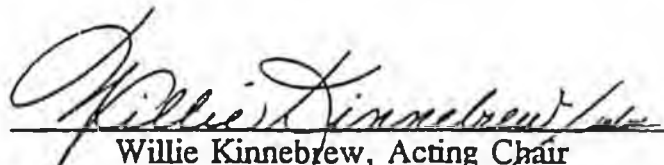
A total of 530 rapes were reported in 1991. Rapes account for 15.5% of all violent crimes. There are concerns for victims who may become infected with human immunodeficiency virus (HIV). Cases have been reported.

The Council on Domestic Violence and Sexual Assault supports the concept of a bill that would allow a victim of sexual assault to learn if her/his assailant is infected with HIV.

The Council recommends that the victim be informed that because the offender's blood test is negative, it does not mean that they are safe. The nature of HIV is such that there is an incubation/latency period of six to eight months during which a carrier's blood will not reveal the presence of HIV but they can transmit the virus. Victims need to be aware that they should be (re)tested six to eight months later. The Council would like to see funding for the Department of Health & Social Services to pay for victim testing.

The Council also believes that the legislation should specify how the information will be transmitted to the victim. The Council recommends that the information should be provided to the victim only if the victim (or the victim's legal custodian, if the victim is a minor) wants the information. The information should never be transmitted by letter and the victim, or victim's legal custodian if the victim is a minor, should be allowed to name a designee to receive the information if the victim doesn't want to learn of it directly.

The Council recommends that counseling of victims concerning the results of the alleged offender's blood test need to be handled sensitively. A counseling brochure does not meet this standard. A trained counselor or nurse or other appropriate service provider needs to be available to help the victim deal with the situation and to counsel the victim on safe sex and protection of their partner due to the potential exposure.



Willie Kinnebrew, Acting Chair  
Council on Domestic Violence & Sexual Assault

*Position Paper*

*Alaska Women's Commission  
Post Office Box 82977  
Fairbanks, Alaska 99708*

*Approval By Alaska Women's Commission  
House Bill 109*

*This bill would require blood tests from persons charged with sexual offenses and provide an avenue for victims of the sexual assault to receive the results of those tests.*

*HB 109 provides victims of sexual assault a means to determine whether they have been exposed to communicable diseases. At the present time privacy laws prohibit this testing of alleged perpetrators of sexual assault or disclosure of test results. Victims have no recourse to determine if they have contracted a sexually transmitted disease. This bill would provide that recourse.*

*The Alaska Women's Commission supports HB 109. Victims of sexual assault are innocent people whose person and whose own right to privacy have been violated. The statutes should provide them access to the medical information about their attacker necessary to determine any medical treatment needed to preserve their physical - and mental - health. Sexual assault victims need a great deal of help and support for recovery. HB 109 provides an important remedy without compromising legitimate protection of the alleged attacker's rights.*

*The proposed bill appears to adequately address both the necessary protections and practical means of achieving the desired results. The Alaska Women's Commission supports HB 109 as written.*

*Alaska Women's Commission*

*Barbara B. Tyndall*  
*Barbara B. Tyndall*  
*Chair*

WOMEN'S COMMISSION APPROVAL

**HB**

**112**

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

February 9, 1993

**SUBJECT:** Sectional analysis of HB 112

**TO:** Representative Carl Moses, Chair  
House Labor and Commerce Committee  
Attn: Tim

**FROM:** Theresa L. Bannister *TLB*  
Legislative Counsel

You have requested a sectional analysis of the above-described bill. As a preliminary matter, note that a sectional analysis of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 of the bill removes the requirement that two or more persons have to execute the certificate of limited partnership. Reduces the amount of information that must be provided in the certificate of limited partnership. This is the major change in the bill. The majority of the other changes in the bill reflect this change. The bill takes the approach of relying on a written partnership agreement or on the partnership records as the sources for the information deleted from the certificate.

Section 2 of the bill amends the section relating to the amendment of the certificate of limited partnership. Deletes partnership contribution changes from the list of events that require an amendment to the certificate of limited partnership. This reflects the deletion of contribution information from the information required to be in the certificate.

Section 3 amends the section on the execution of partnership certificates. Simplifies the execution requirements of certain partnership certificates by only requiring execution by the general partners. Deletes the reference to contributions. These changes are necessary because the certificate of limited partnership is no longer required to include information on limited partners and the contributions of the partners.

Section 4 of the bill allows a person to use an attorney-in-fact to sign original certificates of limited partnership, certificates of amendment, and certificates of

SECTIONAL

cancellation. Since the certificates are no longer required to contain information on limited partners or partnership contributions, the reference in this subsection to partners is limited to general partners, and the reference to contributions is deleted.

Section 5 of the bill changes the scope of the notice provided by a filed certificate of limited partnership. The certificate provides notice of who is a general partner, not who is a limited partner.

Section 6 of the bill changes the section on the admission of limited partners. The section is amended (1) to add subsection (a) and (2) to delete a subsection that provided that new limited partners are added by amending the certificate of limited partnership. These changes result from the changes made to the certificate of limited partnership. Under those changes, limited partners are no longer required to be identified in the certificate.

Section 7 of the bill indicates that a person who makes certain contributions to a limited partnership is liable as a general partner to certain third parties until either of two listed events occurs. Rewrites the second event to refer to general partners and not to limited partners, since the chapter no longer requires limited partners to be identified in the partnership certificates.

Section 8 of the bill addresses the enforceability and compromise of a partner's promise to contribute to the limited partnership. Adds a new subsection (a), and makes other changes to implement the fact that contribution information is no longer required to be included in the certificate of limited partnership.

Section 9 of the bill directs how profits and losses of a limited partnership are to be allocated among the partners. Substitutes a reference to the partnership records for the reference to the certificate of limited partnership, since information on the value of partnership contributions is no longer required to be contained in the certificate.

Section 10 of the bill directs how distributions are to be allocated among the partners. Substitutes a reference to the partnership records for the reference to the certificate of limited partnership, since information on the value of partnership contributions is no longer required to be contained in the certificate.

Section 11 of the bill states the extent and time when a partner is entitled to receive distributions from a limited partnership. The deletion of paragraph (2) reflects the changes made in sec. 1 of the bill to the information required to be in the certificate of limited partnership.

Section 12 of the bill establishes when a limited partner can withdraw from a limited partnership. Since under sec. 1 of the bill the certificate of limited partnership will contain less information, the section substitutes references to the partnership

agreement for the references to the certificate. Requires the time or events of withdrawal to be specified in written form in the agreement or the section takes over.

Section 13 of the bill makes changes to reflect the bill's general approach to require less information in the certificate of limited partnership and refers instead to a written partnership agreement.

Section 14 of the bill makes changes to reflect the bill's general approach to require less information in the certificate of limited partnership and refers instead to the records required under AS 32.11.840 as the source of the information.

Section 15 of the bill makes changes to reflect the bill's general approach to require less information in the certificate of limited partnership. Refers instead to the partnership agreement as the source of the authority for giving an assignee of a partnership interest the right to become a limited partner.

Section 16 deletes the reference to the certificate of limited partnership since, under sec. 1 of the bill, the certificate is no longer required to contain information from which liabilities of the limited partnership could be ascertained.

Section 17 of the bill makes changes to reflect the bill's general approach to require less information in the certificate of limited partnership. The section substitutes a written partnership agreement as a source for determining what events trigger the dissolution of the partnership.

Section 18 of the bill deletes paragraph (3) from the registration application for a foreign limited partnership. The same deletion was made for domestic limited partnerships. Requires the foreign limited partnership to include in its registration application the name and address of each general partner, the address where information on the limited partners is kept, and an undertaking by the partnership to maintain the records.

Section 19. The deletion of AS 32.11.810(3) reflects that information on the character of the limited partnership's business is no longer required to be included in the certificate of limited partnership.

Section 20 of the bill requires a limited partnership to maintain records containing some of the information that is no longer required to be included in the certificate of limited partnership.

Section 21 of the bill makes a deletion to reflect that the identity of the limited partners is no longer required to be included in the certificate of limited partnership.

Section 22 of the bill provides transition provisions for the bill.

Representative Carl Moses  
February 9, 1993  
Page 4

Section 23 of the Act makes its provisions retroactive to the desired effective date if the Act is not enacted by the effective date.

Section 24 of the bill provides that the Act takes effect on July 1, 1993, the date when AS 32.11, the chapter being amended, is scheduled to go into effect.

If I may be of further assistance, please advise.

TLB:glc  
93-110.glc

## REVISED UNIFORM LIMITED PARTNERSHIP ACT

The Uniform Limited Partnership Act (ULPA) was promulgated originally in 1916. It has been adopted in 45 jurisdictions and, with the Uniform Partnership Act, is the basis for law regulating partnerships in the United States. The limited partnership is distinguished from a general partnership by the existence of limited partners who invest in the partnership with liability limited to the amount invested. A general partner is liable individually for all the obligations of the partnership. In return for limited liability, the limited partner relinquishes any right of control or management of partnership affairs.

Limited partnerships have become, in 60 years, an important means of business organization and are used extensively. Over the 60 years of generally salubrious usage, this form of organization has encountered some problems. In 1976, a revision has been drafted, based on 60 years of extensive experience, to improve this method of organization even more.

The most important changes have been made in the scope of the limited partner's activities vis-a-vis the partnership. Under the original ULPA, a limited partner could not contribute services to the partnership. He had to contribute property or other valuable obligations to obtain his status. Under the revision, services may now be contributed, as well as property or valuable obligations.

The second change regards voting rights. The original ULPA did not deny voting rights to limited partners, but neither did it permit them. The revision allows limited partners to be granted voting rights in the partnership agreement. These two provisions both change and enhance a limited partner's status.

When a limited partner can vote and contribute services, the question of control or participation in management becomes more critical. The Revised Act, therefore, takes special care in distinguishing those acts which do not alone determine control. The question of control is to be answered in the light of all the facts and circumstances, but, if the limited partner does singly any of certain things, he or she is not by that fact liable as a general partner. These things include being a contractor for or agent of a general partner, consulting or advising a general partner with respect to partnership business, acting as a surety for the limited partnership, approving or disapproving an amendment to the partnership agreement, or voting on certain specific matters. The object of these specific enumerations is to prevent unreasonable determinations that a limited partner takes part in the control of the business.

The original ULPA provided only for a certificate of partnership. It made no mention of partnership agreements. The Revised Act changes the face of the partnership by changing the emphasis from the certificate to the agreement. Under the Revised Act, the certificate of limited partnership is confined principally to matters respecting the addition and withdrawal of partners and of capital. Other issues that are important are left to the agreement.

For example, a partner may lend money to and transact other business with a limited partnership as if the partner were a total outsider, except as otherwise provided in the partnership agreement. The partnership agreement determines the distribution of voting rights. The shares in profits and losses are decided in the partnership agreement. The partnership agreement becomes the important working document in the operation of the partnership.

There are other important changes, also, in the Revised Act. For example, a central registry is provided for limited partnerships. It is anticipated that the registrar for corporations and other business organizations, usually the Secretary of State, will also perform the function for a limited partnership.

Another important addition guarantees limited partners the right to partnership records, a right not before accorded. This permits a limited partner to protect his or her investment in the partnership by keeping better track of the business itself.

Also provided is a derivative action by limited partners against the partnership to redress mismanagement affecting a limited partner's interests. This would be very like a stockholder's derivative suit against a corporation. One of the historically apparent difficulties of limited partnerships has been protection of limited partner's rights. People have been induced to invest only to find that the investment has been squandered, and nothing could be done until general insolvency. These changes would curtail this problem.

Another significant, new contribution of the Revised Act is registration of foreign limited partnerships. Doing business interstate is a commonality for all business organizations, including limited partnerships. Therefore, the problems of jurisdiction and notice parallel those of corporations. Accordingly, a registration requirement for limited partnerships from other states doing business in an enacting state is established. This is required now in almost all jurisdictions for a foreign business corporation. The requirement recognizes the scope of the limited partnership as utilized in the United States today.

The 1916 ULPA has served well as the backbone of the law on limited partnerships. However, usages change, and new problems arise. The old Act is remarkably resilient, considering the historical record. Its revision now comes forward as a response to the changes that have occurred. It is the same business organization, but with characteristics for today's business. It should be good, at least, for another 60 years.

**A Few Facts About  
THE UNIFORM LIMITED PARTNERSHIP ACT**

**PURPOSE:** To provide a more flexible and stable basis for the organization of limited partnerships, and help states stimulate new limited partnership business ventures.

**ORIGIN:** Completed by the Uniform Law Commissioners in 1976, and amended in 1985. The original Limited Partnership Act was completed in 1916 and adopted in 49 states and the District of Columbia.

**APPROVED BY:** American Bar Association

**STATE  
ADOPTIONS OF  
ULPA (1976):**

Alabama	Maryland	New Jersey
Arizona	Michigan	Ohio
California	Montana	South Carolina
Connecticut	Missouri	Washington
Iowa	Nebraska	Wyoming

**STATE  
ADOPTIONS OF  
ULPA (1976)  
WITH 1985  
AMENDMENTS:**

Alaska	Kansas	Oklahoma
Arkansas	Kentucky	Oregon
Colorado	Massachusetts	Pennsylvania
Delaware	Minnesota	Rhode Island
District of Columbia	Mississippi	South Dakota
Florida	Nevada	Tennessee
Georgia	New Hampshire	Texas
Hawaii	New Mexico	Utah
Idaho	New York	Virginia
Illinois	North Carolina	West Virginia
Indiana	North Dakota	Wisconsin

**INTRODUCTIONS  
OF ULPA (1976)  
WITH 1985  
AMENDMENTS:**

**INTRODUCTIONS  
OF 1985  
AMENDMENTS  
ONLY:**

For any further information regarding the Uniform Limited Partnership Act (1976) with 1985 Amendments, please contact John McCabe or Katie Robinson at 312-915-0195.

(1/15/93)

# Alaska State Legislature

Representative Carl E. Moses



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## SPONSOR STATEMENT

HB 112 completes the upgrade of Alaska's Uniform Limited Partnership Act. With the adoption of this bill, Alaska limited partnership law will be brought into full conformance with recommended language of the National Conference of Commissioners on Uniform State Law. Thirty-three other states have already adopted this uniform language.

The remaining component of the upgrade which HB 112 satisfies is the form of certification. Under the old language, the "long" form is prescribed when registering or amending a certificate of limited partnership. This form, vintage 1916, requires the submission of a substantial amount of material and information, most of which is today cumbersome and unrealistic, given that modern partnerships may include hundreds of investing partners.

Section 1 of this bill provides for the "notice", or "short" form of certification. This simply requires less information be submitted when registering or amending a certificate, and fewer situations in which reporting is required. The bulk of reports involve change in partner status, ownership share, and other general information. ALL INFORMATION pertinent to a limited partnership will still be required to be retained by the partnership.

Last year's rewrite of Alaska's ULPA failed to address this certification question, only because the sponsor's conversion to the notice format came too late in the session to amend the bill in time for passage. Letters in your packet attest to the overwhelming response to the notice form over the long form.

The remaining sections of HB 112 provide for compatibility amendments. There are two zero fiscal notes (LAW & CED).

THE UNIFORM LIMITED PARTNERSHIP ACT (1976)  
WITH THE 1985 AMENDMENTS

SECTION BY SECTION ANALYSIS

Article 1: General Provisions

Section 101 contains definitions.

Section 102 provides what may and may not be included in the name of each limited partnership as set forth in its certificate. The name may not be similar to the name of any corporation or limited partnership both foreign and/or local; may not contain certain words; may not abbreviate "limited partnership"; and may not contain the name of a limited partner with exceptions.

Section 103 provides the procedure for reserving a partnership name.

Section 104 requires that a limited partnership maintain an office for keeping records and an agent for service of process.

Section 105 specifies the records that a limited partnership must keep. This includes names and addresses of each partner, and, a copy of the certificate, tax returns, and agreements. Such records are subject to inspection by partners during ordinary business hours.

Article 2: Formation

Section 201 establishes the requirements and procedure for forming a limited partnership. To form a limited partnership, a certificate containing the name of the limited partnership, the name and address of both the general partner(s) and the agent for service of process, date of dissolution, and other matters as desired, must be filed with the Secretary of State (or equivalent). A limited partnership is actually formed at the time the certificate is filed, or at any later time, if specified in the certificate.

Section 202 details the circumstances under which a certificate of limited partnership shall be amended as well as the requirements for amending it. In particular, a certificate of amendment must be filed with the Secretary of State upon the admission and/or withdrawal of a general partner.

Section 203 requires a certificate of cancellation to be filed with the Secretary of State when a limited partnership is dissolved. The certificate must contain the reasons for cancellation, the name of the limited partnership and the date the limited partnership was originally formed.

Section 204 requires original certificates and certificates of cancellation to be signed by all general partners. A certificate of

amendment must be signed by one general partner and any new general partner designated in the certificate of amendment.

Section 205 authorizes a court to order the execution of a certificate for any person adversely affected by the failure of execution, upon petition.

Section 206 establishes the procedure for filing a certificate of limited partnership (and any other of the certificates) in the Office of the Secretary of State (or equivalent).

Section 207 provides for damages when a person suffers loss based upon reliance on a false statement in a certificate.

Section 208 provides that a certificate of limited partnership filed with the Secretary of State (or equivalent) is notice that the listed general partners are general partners, and that the partnership is a limited partnership, and no other fact.

Section 209 requires the general partners to mail a copy of any certificate to each limited partner, after it is filed.

#### Article 3: Limited Partners

Section 301 establishes that a person becomes an original limited partner when the partnership is formed or at any later time specified in the partnership records. If the agreement does not specify when later joining limited partners become so, becoming one by acquiring a partnership interest (including assignment) requires written consent of all partners.

Section 304 provides a means for a person who believes in good faith that he or she is a limited partner to avoid liability as a general partner when that good faith belief is erroneous.

Section 305 gives limited partners the right to inspect the records that must be kept according to Section 105, and to have full information on the financial status of the partnership, copies of tax returns, and other information as is reasonable and just, upon reasonable demand.

#### Article 4: General Partners

Section 401 permits the agreement to control admission of additional general partners. If the agreement is silent, admission of additional general partners requires unanimous, written consent of all partners.

Section 402 indicates the types of events that constitute involuntary general partner withdrawal from a limited partnership. Such events include bankruptcy of the general partner, death of the general partner, and adjudicated incompetency of the general partner.

Section 403 establishes the general powers and general liability of a general partner - as if a partner in a partnership without limited partners.

Section 404 allows general partners to contribute to the partnership and to share in profits and losses both as general partners and limited partners.

Section 405 provides that general partner voting rights arise, if at all, in the partnership agreement.

#### Article 5: Finance

Section 501 provides that partner contributions may be in the form of cash, property, services rendered, promissory note, or an obligation to provide any of the same.

Section 502 permits the written agreement to control a partner's liability to the limited partnership for contributions. Unless the written agreement provides otherwise, a partner is liable to perform any promise to contribute. A limited partner's promise must be in writing to be enforceable. If promised contributions of property or services are not made, the partner can be obligated to contribute the cash equivalent at the partnership's option.

Section 503 permits the written agreement to control sharing in profits and losses. If the agreement is silent, allocations must be proportional to the value of contributions made.

Section 504 permits the written agreement to control allocation of distributions. If the agreement is silent, allocations must be proportional to the value of contributions made.

#### Article 6: Distributions and Withdrawal

Section 601 makes distributions to partners, except distributions at withdrawal from the partnership, or, the dissolution or winding up of the partnership, subject to and contingent upon the terms of the partnership agreement.

Section 602 governs the withdrawal of a general partner. A general partner can withdraw at any time, but may be liable for breach of the partnership agreement if the withdrawal violates it.

Section 603 subjects voluntary withdrawal of a limited partner from the partnership to the partnership agreement. If the agreement is silent, withdrawal can occur only upon 6 months notice to each general partner.

Section 604 permits the partnership agreement to determine a partner's distribution upon withdrawal from the partnership. If the agreement is silent, the basis for a distribution is the fair value of the partner's current interest in the partnership.

Section 605 provides that a distribution must be in cash, unless the written partnership agreement states otherwise. Unless the written agreement provides, no partner can demand a distribution in kind, nor be forced to accept such a distribution.

Section 606 grants a partner the status of a creditor of the limited partnership for any distribution to which he or she is entitled.

Section 607 prohibits any distribution to a partner that would make the liabilities of the limited partnership exceed the fair value of its assets.

Section 608 provides a statute of limitations for liability when a partner receives a return of contribution in part or in whole. If the return is rightful, there is limited liability to partnership creditors for one year after the return. A wrongful return extends liability for six years.

#### Article 7: Assignment of Partnership Interests

Section 701 establishes that a partnership interest is personal property.

Section 702 provides that assignment of a partnership interest includes any distribution rights to which an assignor would be entitled. Once an interest is assigned, the assignor ceases to be a partner.

Section 703 grants a judgment creditor the rights of an assignee.

Section 704 permits the partnership agreement to determine the terms and conditions for an assignee to become a limited partner. If the agreement is silent, an assignee becomes a limited partner only upon the consent of all partners. The assignor, however, remains liable to the limited partnership for any false statement under Section 207 and for contributions under Section 502, even after the assignee becomes a limited partner.

Section 705 allows a partner's representative to exercise a partner's rights in the event of the partner's death or incompetency, for the purposes of settling the estate or managing the property of the partner.

#### Article 8: Dissolution

Section 801 calls for the dissolution of the partnership when the agreement provides for termination of the partnership, when all partners consent, upon the withdrawal of the only general partner, or upon a decree of dissolution. Dissolution upon withdrawal of the only general partner is held in abeyance for 90 days, during which time the partners may unanimously consent to the continuation of the business and the appointment of a new general partner. If they do, the partnership is not dissolved.

Section 802 permits a partner to apply for judicial dissolution whenever a limited partnership cannot with reasonable practicability carry on business in conformity with the partnership agreement.

Section 803 gives general partners the priority for winding up partnership business upon dissolution. If there are no general partners able to conduct the winding up, limited partners can do it. A court can wind up the partnership upon application of any partner.

Section 804 governs the distribution of assets upon winding up the partnership affairs, and establishes priorities for taking distributions. Creditors are satisfied before the interest of any partner.

#### Article 9: Foreign Limited Partnerships

Section 901 states that the law of a foreign state governs the organization, internal affairs, and limited partner liabilities for limited partnerships formed in that state.

Section 902 requires registration of foreign limited partnerships before they can transact business, and sets out the contents of a petition for registration.

Section 903 requires the Secretary of State (or equivalent) to register any foreign limited partnership that lawfully applies for registration.

Section 904 states that a foreign limited partnership may register under any name the could be registered by a domestic limited partnership.

Section 905 provides that a foreign limited partnership must correct any inaccuracies in its application for registration with an immediate filing of a certificate of amendment.

Section 906 provides the procedure for cancelling a registration of a foreign limited partnership.

Section 907 denies a foreign limited partnership access to the courts if the foreign limited partnership fails to register.

Section 908 allows an appropriate official to bring action to restrain a foreign limited partnership from transacting business if it fails to comply with Article 9.

#### Article 10: Derivative Actions

Section 1001 allows limited partners to bring action on behalf of the partnership if the general partners refuse to do so or it appears that they are unlikely to do so.

Section 1002 requires the plaintiff in a derivative action to be a partner when the litigated transaction was entered on behalf of the

partnership, or to be a person with authority from a partner at that time.

Section 1003 requires the plaintiff in a derivative action to set forth with particularity the efforts to get a general partner to initiate the action.

Section 1004 provides the court the discretion to award a successful plaintiff expenses and attorney's fees.

#### Article 11: Miscellaneous

Section 1101 establishes the scope of the Act.

Section 1102 is the title for citation purposes.

Section 1103 provides for severance of any provisions of the Act that are found unconstitutional.

Section 1104 provides for the effective date for this Act, and for the repeal of prior legislation. It specifically provides that limited partnerships formed under prior law shall remain subject to the prior law for specific aspects of partnership activity, and shall not be impaired by its repeal.

Section 1105 states that the Uniform Partnership Act governs any case not provided for in this Act.

Section 1106 is a savings clause.

UNIFORM LIMITED PARTNERSHIP ACT (1976)  
WITH 1985 AMENDMENTS

*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 NINETY-FOURTH YEAR  
IN MINNEAPOLIS, MINNESOTA  
AUGUST 2-9, 1985



WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association  
Baltimore, Maryland, February 11, 1986

UNIFORM LIMITED PARTNERSHIP ACT (1976)  
WITH 1985 AMENDMENTS

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Limited Partnership Act (1976) with 1985 Amendments was as follows:

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Final, approved copies of this Act  
and copies of all Uniform and Model Acts  
and other printed matter issued by the Conference  
may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
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Chicago, Illinois 60611  
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# UNIFORM LIMITED PARTNERSHIP ACT (1976) WITH 1985 AMENDMENTS

(Additions and Deletions in the Act  
are indicated by Underscore and Strikeout)

## PREFATORY NOTE

~~The Revised Uniform Limited Partnership Act adopted by the National Conference of Commissioners on Uniform State Laws in August, 1976~~ In 1976, the National Conference of Commissioners on Uniform State Laws adopted the first revision of the Uniform Limited Partnership Act, originally promulgated in 1916. The 1976 Act 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~~ under some circumstances may require a general partner to seek approval of the other 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 the corporate form is undesirable for tax or other reasons, and the ~~new~~ 1976 Act was not intended to make it so. The ~~new~~ 1976 Act ~~clarifies~~ clarified many ambiguities and ~~fills~~ filled interstices in the ~~prior uniform law~~ 1916 Act by adding more detailed language and mechanics. In addition, it effected some important substantive changes and additions ~~have been made from the prior uniform law.~~

The Uniform Limited Partnership Act (1976) with the 1985 Amendments (the 1985 Act) follows the 1976 Act very closely in most respects. It makes almost no change in the basic structure of the 1976 Act. It does, however, differ from the 1976 Act in certain significant respects for the purpose of more effectively modernizing, improving and establishing uniformity in the law of limited partnerships. The 1985 Act accomplishes this without impairing the basic philosophy or values underlying the 1976 Act, by incorporating into the structure, framework and text of the 1976 Act the best and most important improvements that have emerged in the limited partnership acts enacted recently by certain states. Most of those improvements were considered by the draftsmen of the 1976 Act but were not included in it because of uncertainties as to the possible consequences of such inclusion under applicable Federal income tax laws. Those uncertainties have since been resolved satisfactorily, and no impediment to incorporating them in the 1985 Act remains at this time.

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~~ were innovations in the 1976 Act and were carried over from the 1976 Act to the 1985 Act. Article 2 collects in one place all provisions dealing with execution and filing of certificates of limited partnership and certificates of amendment and cancellation. When adopted in 1976, Articles 1 and 2 reflected an important change in the prior 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 the most basic matters as to which government officials, creditors, and others dealing or considering dealing with the partnership should be put on notice. This principle is further implemented by the 1985 Act's elimination of the requirement, carried from the original 1916 Act into the 1976 Act, that the certificate of limited partnership set out the name, address and capital contribution of each limited partner and certain other details relating to the operation of the partnership and the respective rights of the partners. The former requirement served no significant practical purpose while it imposed on limited partnerships (particularly those having large numbers of partners or doing business in more than one state) inordinate administrative and logistical burdens and expenses connected with filing and amending their certificates of limited partnership. Many of the other changes made by the 1985 Act merely reflect the elimination of that requirement.

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 significantly participated in the control of the business that he ~~assumes~~ acquires 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~~ participates in control to situations in which persons who actually know of that participation in control are misled thereby to their detriment into reasonably believing the limited partner to be a general partner. ~~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. This "detrimental reliance" test, together with an expansion of the "laundry list" of specific activities in which limited partners may participate without incurring liability, are among the principal innovations in the 1985 Act.~~

The provisions relating to general partners are collected in Article 4. It differs little from the corresponding article in the 1976 Act, except that some of the 1976 Act's references to the certificate of limited partnership have been changed to refer instead to the partnership agreement. This is in recognition of the principle that the limited partnership agreement, not the certificate of limited partnership, is the primary constitutive, organizational and governing document of a limited partnership. Article 5, the dealing with finance, ~~section~~, differs in some important respects from Article 5 of the 1976 Act, which itself made ~~some~~ important changes from the ~~prior uniform law, 1916 Act.~~ The 1976 Act explicitly permitted contributions to the partnership to be made in the form of the contribution of services and promises to contribute cash, property or services, ~~are now explicitly permitted as contributions.~~ And provided that those who failed to perform promised services are ~~are~~ required, in the absence of an agreement to the contrary, to pay the value of the services as stated in the certificate of limited partnership. These important innovations of the 1976 Act are retained in substance in the 1985 Act. However, the 1985 Act substitutes the partnership agreement and the records of the limited partnership for the certificate of limited partnership as the place such agreements are to be set out and such information is to be kept.

~~A~~ Article 6 of the 1976 Act, dealing with distributions and with the withdrawal of partners from the partnership, made a number of changes from the ~~prior uniform law are made in Article 6, 1916 Act, dealing with distributions from and the withdrawal of partners from the partnership.~~ For example, Section 608 created a statute of limitations ~~on~~ applicable to the right of a limited partnership to recover all or part of a contribution that ~~had~~ been returned to a limited partner, whether to satisfy creditors or otherwise. The 1985 Act retains these features of the 1976 Act without substantive change.

In both the 1976 and the 1985 Acts, ~~the~~ assignability of partnership interests is dealt with in considerable detail in Article 7, and ~~the~~ provisions relating to dissolution appear in Article 8, ~~which, among other things, imposes~~ Article 8 of the 1976 Act established a new standard for seeking judicial dissolution of a limited partnership, which standard is carried forward into the 1985 Act.

Article 9 of the 1976 and 1985 Acts deals with ~~one~~ of the thorniest questions for those who operate limited partnerships in more than one state, ~~has been~~ i.e., the status of the partnership in a state other than the state of its organization. Neither ~~existing~~ case law under the 1916 Act nor administrative practice makes it clear which state's law governed the partnership or whether, in that other state, the limited partners continued to possess ~~their~~ limited liability, and which law governs the partnership. Article 9 of the 1976 Act dealt with this problem by providing for registration of foreign limited partnerships and specifying choice-of-law rules. Article 9 of the 1985 Act retains all of those basic provisions and innovations of the 1976 Act.

~~Finally~~ Article 10 of the ~~new~~ 1976 Act represented another significant innovation, by authorizing derivative actions to be brought by limited partners. The 1916 Act failed to address this entire concept. Article 10 of the 1985 Act clarifies certain provisions of the 1976 Act but does not make any substantive changes in the corresponding provisions of the 1976 Act.

Finally, Article 11 sets out a number of miscellaneous provisions, not the least of which are those dealing with the application of the new statute to limited partnerships in existence at the time of its enactment. Those provisions in the 1976 Act were expanded upon by the 1985 Act to give greater deference to the possible expectations, some of which may have constitutionally protected status, of partners in such limited partnerships concerning the continuing applicability to their partnerships of the law in effect when they were organized.

# LIMITED PARTNERSHIP ACT

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- 101. Definitions.
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## ARTICLE 3 LIMITED PARTNERS

- 301. Admission of Limited Partners.
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- 401. Admission of Additional General Partners.
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## ARTICLE 5 FINANCE

- 501. Form of Contribution.
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## ARTICLE 6 DISTRIBUTIONS AND WITHDRAWAL

- 601. Interim Distributions.
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- Section
- 605. Distribution in Kind.
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## Section

## ARTICLE 7 ASSIGNMENT OF PARTNERSHIP INTERESTS

- 701. Nature of Partnership Interest.
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## ARTICLE 8 DISSOLUTION

- 801. Nonjudicial Dissolution.
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## ARTICLE 10 DERIVATIVE ACTIONS

- 1001. Right of Action.
- 1002. Proper Plaintiff.
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## ARTICLE 11 MISCELLANEOUS

- 1101. Construction and Application.
- 1102. Short Title.
- 1103. Severability.
- 1104. Effective Date, Extended Effective Date and Repeal.
- 1105. Rules for Cases Not Provided for in This Act.
- 1106. Savings Clause.

## ARTICLE 1

## GENERAL PROVISIONS

## § 101. Definitions

As used in this [Act], unless the context otherwise requires:

- (1) "Certificate of limited partnership" means the certificate referred to in Section 201 and the certificate as amended or restated.
- (2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.
- (3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 402.
- (4) "Foreign limited partnership" means a partnership formed under the laws of any ~~State~~ state other than this State and having as partners one or more general partners and one or more limited partners.
- (5) "General partner" means a person who has been admitted to a limited partnership ~~as a~~ general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.
- (6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement ~~and named in the certificate of limited partnership as a limited partner.~~
- (7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.
- (8) "Partner" means a limited or general partner.
- (9) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.
- (10) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.
- (11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.
- (12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

## COMMENT

The definitions in this section clarify a number of uncertainties in the law existing ~~law~~ prior to the 1976 Act, and also make certain changes in such prior law. The 1985 Act makes very few additional changes in Section 101.

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. Section 502 of the 1985 Act provides that a limited partner's promise to make a contribution is enforceable only when set out in a writing signed by the limited partner. (This result is not dissimilar from that under the 1976 Act, which required all promises of future contributions to be described in the certificate of limited partnership, which was to be signed by, among others, the partners making such promises.) ~~Accordingly,~~ The present property or services contributed presently or promised to be contributed in the future must be accorded a value in the partnership agreement or the partnership records required to be kept pursuant to Section 105, ~~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~~ 1916 Act 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 memorializing that grant of power in the certificate of limited partnership has been preserved to emphasize its importance and to provide notice of the identity of the partnership's general partners to persons dealing with the partnership.

Limited partner: ~~as in~~ unlike the case of definition 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 203(c) and 303 alone and does not require identification of any limited partner in the certificate of limited partnership (Section 201). Under the 1916 and the 1976 Acts, being named as a limited partner in the certificate of limited partnership was a statutory requirement and, in most if not all cases, probably also a prerequisite to limited partner status. By eliminating the requirement that the certificate of limited partnership contain the name, address, and capital contribution of each limited partner, the 1985 Act all but eliminates any risk that a person intended to be a limited partner may be exposed to liability as a general partner as a result of the inadvertent omission of any of that information from the certificate of limited partnership, and also dispenses with the need to amend the certificate of limited partnership upon the admission or withdrawal of, transfer of an interest by, or change in the address or capital contribution of, any limited partner.~~

Partnership agreement: the ~~prior uniform law~~ 1916 Act 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 or summarized in the certificate of limited partnership. As reflected in Section 201 of the 1985 Act, the certificate of limited partnership is confined principally to matters respecting the partnership itself and the ~~addition and withdrawal~~ identity of general partners, ~~and of capital~~, and other important issues are left to the partnership agreement. Most of the information formerly provided by, but no longer required to be included in, the certificate of limited partnership is now required to be kept in the partnership records (Section 105).

Partnership interest: this definition ~~is now~~ first appeared in the 1976 Act and is intended to define what it is that is transferred when a partnership interest is assigned.

#### § 102. Name

The name of each limited partnership as set forth in its certificate of limited partnership:

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

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

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

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

(5) (4) may not contain the following words [here insert prohibited words].

#### COMMENT

Subdivision (2) of Section 102 has been carried over from Section 5 of the ~~prior uniform law 1916 Act~~ with certain editorial changes. The remainder of Section 102 ~~is new~~ first appeared in the 1976 Act 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~~ state-wide filing of certificates of limited partnership, and subdivisions (3), ~~and (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. Subdivision (3) of the 1976 Act has been deleted, to reflect the deletion from Section 201 of any requirement that the certificate of limited partnership describe the partnership's purposes or the character of its business.

#### § 103. Reservation of Name

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

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

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

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

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

(b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, he [or she] shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may not again reserve the same name until more than 60 days after the expiration of the last 120-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

#### COMMENT

Section 103 ~~is new~~ first appeared in the 1976 Act. The ~~prior uniform law 1916 Act~~ did not provide for registration of names.

#### § 104. Specified Office and Agent

Each limited partnership shall continuously maintain in this State:

(1) an office, which may but need not be a place of its business in this State, at which shall be kept the records required by Section 105 to be maintained; and

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

## COMMENT

Section 104 ~~is now~~ first appeared in the 1976 Act. 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.

## § 105. Records to be Kept

(a) Each limited partnership shall keep at the office referred to in Section 104(1) the following:

(1) a current list of the full name and last known business address of each partner ~~set forth, separately identifying the general partners (in alphabetical order) and the limited partners (in alphabetical order);~~

(2) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed 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, if any, for the three most recent years; ~~and;~~

(4) copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years; ~~and~~

(5) unless contained in a written partnership agreement, a writing setting out:

(i) 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;

(ii) 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;

(iii) 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; ~~and~~

(iv) any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) ~~These records~~ Records kept under this section are subject to inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

## COMMENT

Section 105 ~~is now~~ first appeared in the 1976 Act. 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 and information, including the certificate of limited partnership ~~and, any partnership agreement and a writing setting out certain important matters which, under the 1916 and 1976 Acts, were required to be set out in the certificate of limited partnership.~~ 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 general partners are made available to the general public in the certificate of limited partnership.

## § 106. Nature of Business

A limited partnership may carry on any business that a partnership without limited partners may carry on except [here designate prohibited activities].

## COMMENT

Section 106 is identical to Section 3 of the ~~prior uniform law,~~ 1916 Act. 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.

## § 107. Business Transactions of Partner with Partnership

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto 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, 1916 Act.~~ 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's ~~use~~ ~~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

## § 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~~ must be executed and filed in the office of the Secretary of State, and The certificate shall set forth:

- (1) the name of the limited partnership;
- ~~(2) the general character of its business;~~
- ~~(3) (2) the address of the office and the name and address of the agent for service of process required to be maintained by Section 104;~~
- ~~(4) (3) the name and the business address of each general partner (specifying separately the general partners and limited partners);~~
- ~~(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;~~
- ~~(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;~~
- ~~(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;~~
- ~~(9) any right of a partner to receive distributions of property, including cash from the limited partnership;~~
- ~~(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;~~
- ~~(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~~
- ~~(4) the latest date upon which the limited partnership is to dissolve; and~~
- ~~(13) (5) any other matters the general 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.

## COMMENT

The 1985 Act requires far fewer matters required to be set forth in the certificate of limited partnership ~~are not different in kind from those than did require~~ by Section 2 of the prior uniform law 1916 Act and Section 201 of the 1976 Act, ~~although certain additions and deletions have been made and the description has been revised to conform with the rest of the Act.~~ This is in recognition of the fact that the partnership agreement, not the certificate of limited partnership, has become the authoritative and comprehensive document for most limited partnerships, and that creditors and potential creditors of the partnership do and should refer to the partnership agreement and to other information furnished to them directly by the partnership and by others, not to the certificate of limited partnership, to obtain ~~in general, the certificate is intended to serve two functions, first, to place creditors on notice of the facts concerning the capital and finances of the partnership and other matters of concern 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, 1916 Act, has been retained to make it clear that 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.

## § 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. The certificate shall set forth:

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

(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 contribution;~~
- (2) (1) the admission of a new general partner;
- (3) (2) the withdrawal of a general partner; or
- (4) (3) 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~~ section if the amendment is filed within the 30-day period specified in subsection (b).

(f) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

## COMMENT

Section 202 makes of the 1976 Act made substantial changes in Section 24 of the ~~prior uniform law~~ 1916 Act. Further changes in this section are made by the 1985 Act. Paragraph (b) lists the basic events—the addition or withdrawal of ~~partners or capital or capital obligations~~ a general partner—that are so central to the function of the certificate of limited partnership that they require prompt amendment. With the elimination of the requirement that the certificate of limited partnership include the names of all limited partners and the amount and character of all capital contributions, the requirement of the 1916 and 1976 Acts that the certificate be amended upon the admission or withdrawal of limited partners or on any change in the partnership capital must also be eliminated. This change should greatly reduce the frequency and complexity of amendments to the certificate of limited partnership. Paragraph (c) makes it clear, as it was not clear under ~~subdivision (2)(g) of former~~ Section 24(2)(g) of the 1916 Act, 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. The elimination of the requirement that the certificate of limited partnership identify all limited partners and their respective capital contributions may have rendered paragraph (e) an obsolete and unnecessary vestige. The principal, if not the sole, purpose of paragraph (e) in the 1976 Act was to protect limited partners newly admitted to a partnership from being held liable as general partners when an amendment to the certificate identifying them as limited partners and describing their contributions was not filed contemporaneously with their admission to the partnership. Such liability cannot arise under the 1985 Act because such information is not required to be stated in the certificate. Nevertheless, the 1985 Act retains paragraph (e) because it is protective of partners, shielding them from liability to the extent its provisions apply, and does not create or impose any liability.

Paragraph (f) is added in the 1985 Act to provide explicit statutory recognition of the common practice of restating an amended certificate of limited partnership. While a limited partnership seeking to amend its certificate of limited partnership may do so by recording a restated certificate which incorporates the amendment, that is by no means the only purpose or function of a restated certificate, which may be filed for the sole purpose of restating in a single integrated instrument all the provisions of a limited partnership's certificate of limited partnership which are then in effect.

## § 203. Cancellation of Certificate

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 and set forth:

- (1) the name of the limited partnership;
- (2) the date of filing of its certificate of limited partnership;
- (3) the reason for filing the certificate of cancellation;
- (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.

## COMMENT

Section 203 changes Section 24 of the ~~prior uniform law~~ 1916 Act 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".

## § 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 general partners named therein;

(2) a certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general 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 general partner must specifically describe the admission ~~or increase~~.

(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.

## 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~~ 1916 Act. 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. The 1976 Act, while simplifying the execution requirements, nevertheless required that an original certificate of limited partnership be signed by all partners and a certificate of amendment by all new partners being admitted to the limited partnership. However the certificate of limited partnership is no longer required to include the name or capital contribution of any limited partner. Therefore, while the 1985 Act still requires all general partners to sign the original certificate of limited partnership, no limited partner is required to sign any certificate. 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 in the 1916 Act that all certificates be sworn by was deleted in the 1976 and 1985 Acts as potentially an unfair trap for the unwary (see, e.g., *Wisniewski v. Johnson*, 223 Va. 141, 286 S.E.2d 223 [1982]); in its place, paragraph (c) now provides, as a matter of law, that the execution of a certificate by a general partner subjects him to the penalties of perjury for inaccuracies in the certificate. ~~has been confined to statements by the general partners, recognizing that the limited partner's role is a limited one.~~

§ 205. ~~Amendment or Cancellation~~ Execution by Judicial Act

If a person required by Section 204 to execute a any certificate of amendment or cancellation fails or refuses to do so, any other partner, ~~and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the [designate the appropriate court] to direct the ~~amendment or cancellation~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper~~ it is proper for the certificate to be executed 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~~.

## COMMENT

Section 205 of the 1976 Act changed subdivisions (3) and (4) of Section 25 of the ~~1916 Act~~ ~~prior uniform law~~ by confining the persons who have standing to seek judicial intervention to partners and to those assignees who were ~~are~~ adversely affected by the failure or refusal of the appropriate persons to file a certificate of amendment or cancellation. Section 205 of the 1985 Act reverses that

restriction, and provides that any person adversely affected by a failure or refusal to file any certificate (not only a certificate of cancellation or amendment) has standing to seek judicial intervention.

#### § 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 [or her] 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 [or she] 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 [or her] office; and
- (3) return the other duplicate original to the person who filed it or his [or her] 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.

#### COMMENT

Section 206 ~~is new~~, first appeared in the 1976 Act. 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~~ 1916 Act by providing that certificates of cancellation are effective upon their effective date under Section 203.

#### § 207. Liability for False Statement in Certificate

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

- (1) any person who executes the certificate, 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; and
- (2) any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under Section 205.

#### COMMENT

Section 207 changes Section 6 of the ~~prior uniform law~~ 1916 Act 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.

#### § 208. Scope of Notice

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated therein as ~~limited~~ general partners are ~~limited~~ general partners, but it is not notice of any other fact.

## COMMENT

Section 208 ~~is now~~ first appeared in the 1976 Act, and referred to the certificate's providing constructive notice of the status as limited partners of those so identified therein. The 1985 Act's deletion of any requirement that the certificate name limited partners requires that Section 208 be modified accordingly.

By stating that the filing of a certificate of limited partnership only results in notice of the general limited liability of the general limited partners, ~~it~~ Section 208 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 by implication the limited liability of limited partners, the ~~new~~ implicit protection 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.

## § 209. Delivery of Certificates to Limited Partners

Upon the return by the Secretary of State pursuant to Section 206 of a certificate marked "Filed," the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

## COMMENT

This section ~~is new,~~ first appeared in the 1976 Act.

## ARTICLE 3

## LIMITED PARTNERS

## § 301. Admission of Additional Limited Partners

## (a) A person becomes a limited partner:

- (1) at the time the limited partnership is formed; or
- (2) at any later time specified in the records of the limited partnership for becoming a limited partner.

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

- (1) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and
- (2) in the case of an assignee of a partnership interest of a partner who has the power, as provided in Section 704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

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

## COMMENT

Section 301(a) is new; no counterpart was found in the 1916 or 1976 Acts. This section imposes on the partnership an obligation to maintain in its records the date each limited partner becomes a limited partner. Under the 1976 Act, one could not become a limited partner until an appropriate certificate reflecting his status as such was filed with the Secretary of State. Because the 1985 Act eliminates the need to name limited partners in the certificate of limited partnership, an alternative mechanism had to be established to evidence the fact and date of a limited partner's admission. The partnership records required to be maintained under Section 105 now serve that function, subject to the limitation that no person may become a limited partner before the partnership is formed (Section 201(b)).

Subdivision (1) of Section ~~301(a)~~ 301(b) adds to Section 8 of the ~~prior uniform law 1916 Act~~ 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 11 of the ~~prior uniform law 1916 Act~~ but abandons the former terminology of "substituted limited partner."

### § 302. Voting

Subject to Section 303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

#### COMMENT

Section 302 is ~~new~~ first appeared in the 1976 Act, and must be read together with subdivision (b)(5)(6) of Section 303. Although the ~~prior uniform law 1916 Act~~ did not speak specifically of the voting powers of limited partners, it was is not uncommon for partnership agreements to grant such powers 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 subdivision (6) or (8) of Section 303(b)(5), a court may (but of course need not) 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~~ makes clear 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.

### § 303. Liability to Third Parties

(a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless he [or she] is also a general partner or, in addition to the exercise of his [or her] rights and powers as a limited partner, he [or she] ~~takes part~~ participates in the control of the business. However, if the limited ~~partner's~~ partner participates in the control of the business ~~is not substantially the same as the exercise of the powers of a general partner~~, he [or she] is liable only to persons who transact business with the limited partnership ~~with actual knowledge of his participation in control~~ reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(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 or being an officer, director, or shareholder of a general partner that is a corporation;

(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 or guaranteeing or assuming one or more specific obligations of the limited partnership;

(4) approving or disapproving an amendment to the partnership agreement taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership; or

~~(5) voting on one or more of the following matters;~~

~~(5) requesting or attending a meeting of partners;~~

(6) proposing, approving, or disapproving, by voting or otherwise, 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 admission or removal of a general partner;
- (vi) the admission or removal of a limited partner;
- (vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;
- (viii) an amendment to the partnership agreement or certificate of limited partnership; or
- (ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (b), which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;
- (7) winding up the limited partnership pursuant to Section 803; or
- (8) exercising any right or power permitted to limited partners under this [Act] and not specifically enumerated in this subsection (b).

(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 [or her] in the business of the limited partnership.

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

#### COMMENT

Section 303 makes several important changes in Section 7 of the ~~prior uniform law~~ 1916 Act. The first sentence of Section 303(a) ~~carries over the basic text 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~~ differs from the text of Section 7 of the 1916 Act in that it speaks of participating (rather than taking part) in the control of the business; this was done for the sake of consistency with the second sentence of Section 303(a), not to change the meaning of the text. It is intended that judicial decisions interpreting the phrase "takes part in the control of the business" under the prior uniform law will remain applicable to the extent that a different result is not called for by other provisions of Section 303 and other provisions of the Act. The second sentence of Section 303(a) reflects a wholly new concept. ~~Because in the 1976 Act that has been further modified in the 1985 Act. It was adopted partly 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 but also (and more importantly) because of a determination that it is not sound public policy to hold a limited partner who is not also a general partner liable for the obligations of the partnership except to persons who have done business with the limited partnership reasonably believing, based on the limited partner's conduct, that he is a general partner.~~ 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. This "safe harbor" list has been expanded beyond that set out in the 1976 Act to reflect case law and statutory developments and more clearly to assure that limited partners are not subjected to general liability where such liability is inappropriate. Paragraph (d) is derived from Section 5 of the ~~prior uniform law~~ 1916 Act, but adds as a condition to the limited partner's liability the fact requirement that a limited partner must have knowingly permitted his name to be used in the name of the limited partnership.

#### § 304. Person Erroneously Believing Himself [or Herself] Limited Partner

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he [or she] has become

a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he [or she]:

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

(2) withdraws from future equity participation in the enterprise by executing and filing in the office of the Secretary of State a certificate declaring withdrawal under this section.

(b) A person who makes a contribution of the kind described in subsection (a) is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (ii) before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under Section 202 that he [or she] is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

#### COMMENT

Section 304 is derived from Section 11 of the ~~prior uniform law, 1916 Act~~. 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~~ by such person from the limited partnership or amendment to the certificate demonstrating that such person is not a general partner to any third party who has transacted business with the person believing in good faith that he was a general partner.

Evidence strongly suggests that Section 11 of the 1916 Act and Section 304 of the 1976 Act were rarely used, and one might expect that Section 304 of the 1985 Act may never have to be used. Section 11 of the 1916 Act and Section 304 of the 1976 Act could have been used by a person who invested in a limited partnership believing he would be a limited partner but who was not identified as a limited partner in the certificate of limited partnership. However, because the 1985 Act does not require limited partners to be named in the certificate, the only situation to which Section 304 would now appear to be applicable is one in which a person intending to be a limited partner was erroneously identified as a general partner in the certificate.

#### § 305. Information

Each limited partner has the right to:

(1) inspect and copy any of the partnership records required to be maintained by Section 105; and

(2) obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and 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, 1916 Act~~. Its importance has increased as a result of the 1985 Act's substituting the records of the partnership for the certificate of limited partnership as the place where certain categories of information are to be kept.

Section 305, which should be read together with Section 105(b), provides a mechanism for limited partners to obtain information about the partnership useful to them in making decisions concerning the partnership and their investments in it. Its purpose is not to provide a mechanism for competitors of the partnership or others having interests or agendas adverse to the partnership's to subvert the partnership's business. It is assumed that courts will protect limited partnerships from abuses and attempts to misuse Section 305 for improper purposes.

## ARTICLE 4

## GENERAL PARTNERS

## § 401. Admission of Additional General Partners

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted ~~only~~ as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the specific written consent of each partner all partners.

## COMMENT

Section 401 is derived from, but represents a significant departure from, Section 9(1)(e) of the prior uniform law 1916 Act and Section 401 of the 1976 Act, which required, and carries over the unworkable requirements that all limited partners must consent as a condition to the admission of an additional general partner, that all limited partners consent and that such consent must specifically identify the general partner involved. Section 401 of the 1985 Act provides that the written partnership agreement determines the procedure for authorizing the admission of additional general partners, and that the written consent of all partners is required only when the partnership agreement fails to address the question.

## § 402. Events of Withdrawal

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

- (1) the general partner withdraws from the limited partnership as provided in Section 602;
- (2) the general partner ceases to be a member of the limited partnership as provided in Section 702;
- (3) the general partner is removed as a general partner in accordance with the partnership agreement;
- (4) unless otherwise provided in writing in the ~~certificate of limited partnership agreement~~, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself [or herself] any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him [or her] in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his [or her] properties;
- (5) unless otherwise provided in writing in the ~~certificate of limited partnership agreement~~, [120] days after the commencement of any proceeding against the general partner

seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within [90] days after the appointment without his [or her] consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his [or her] properties, the appointment is not vacated or stayed or within [90] days after the expiration of any such stay, the appointment is not vacated;

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

(i) his [or her] death; or

(ii) the entry of an order by a court of competent jurisdiction adjudicating him [or her] incompetent to manage his [or her] person or his [or her] estate;

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

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

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

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

#### COMMENT

Section 402 expands considerably the provisions of Section 20 of the ~~prior uniform law~~ 1916 Act, 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 Code 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. Subdivisions (4) and (5) differ from their counterparts in the 1976 Act, reflecting the policy underlying the 1985 revision of Section 201, that the partnership agreement, not the certificate of limited partnership, is the appropriate document for setting out most provisions relating to the respective powers, rights and obligations of the partners inter se. Although the partnership agreement need not be written, the 1985 Act provides that, to protect the partners from fraud, these and certain other particularly significant provisions must be set out in a written partnership agreement to be effective for the purposes described in the Act.~~

#### § 403. General Powers and Liabilities

(a) Except as provided in this [Act] or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided in this [Act], a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this [Act] or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

#### COMMENT

Section 403 is derived from Section 9(1) of the ~~prior uniform law~~, 1916 Act.

#### § 404. Contributions by General Partner

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his [or her] participation in the partnership as a limited partner.

#### COMMENT

Section 404 is derived from Section 12 of the ~~prior uniform law~~ 1916 Act 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.

#### § 405. Voting

The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

#### COMMENT

Section 405 ~~is new~~ first appeared in the 1976 Act 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

#### § 501. Form of Contribution

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or 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~~, 1916 Act.

#### § 502. Liability for Contribution

(a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

~~(b)~~ Except as provided in the ~~certificate of limited partnership agreement~~, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he [or she] is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he [or she] is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the ~~certificate of limited partnership records~~ required to be kept pursuant to Section 105, of the stated contribution which has not been made.

~~(c)~~ Unless otherwise provided in the partnership agreement, the obligation of a 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 partners. Notwith-

standing the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, otherwise acts in reliance on that obligation after the filing of the certificate of limited partnership or an amendment thereto partner signs a writing which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

## COMMENT

Section 502(a) is new: it has no counterpart in the 1916 or 1976 Act. Because, unlike the prior uniform acts, the 1985 Act does not require that promises to contribute cash, property, or services be described in the limited partnership certificate, to protect against fraud it requires instead that such important promises be in a signed writing.

Although Section 17(1) of the ~~prior uniform law~~ 1916 Act 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~~ partnership agreement provides otherwise.

Subdivision ~~(b)~~ (c) is derived from, but expands upon, Section 17(3) of the ~~prior uniform law~~ 1916 Act.

## § 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 writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to Section 105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

## COMMENT

Section 503 is new first appeared in the 1976 Act. The prior uniform law 1916 Act did not provide for the basis on which partners would share profits and losses in the absence of agreement. The 1985 Act differs from its counterpart in the 1976 Act by requiring that, to be effective, the partnership agreement provisions concerning allocation of profits and losses be in writing, and by its reference to records required to be kept pursuant to Section 105, the latter reflecting the 1985 changes in Section 201.

## § 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 writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to Section 105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

## COMMENT

Section 504 is new first appeared in the 1976 Act. The prior uniform law 1916 Act did not provide for the basis on which partners would share distributions in the absence of agreement. Section 504 also differs from its counterpart in the 1976 Act by requiring that, to be effective, the partnership agreement provisions concerning allocation of distributions be in writing, and in its reference to records required to be kept pursuant to Section 105, the latter reflecting the 1985 changes in Section 201. This section also recognizes that partners may choose to share in distributions on a different basis than different from that on which they share in profits and losses.

## ARTICLE 6

## DISTRIBUTIONS AND WITHDRAWAL

## § 601. Interim Distributions

Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership before his [or her] withdrawal from the limited partnership and before the dissolution and winding up thereof:

(1) to the extent and at the times or upon the happening of the events specified in the partnership agreement; ~~and~~

~~(2) if any distribution constitutes a return of any part of his contribution under Section 603(c), to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.~~

## COMMENT

Section 601 is now first appeared in the 1976 Act. The 1976 Act provisions have been modified to reflect the 1985 changes made in Section 201.

## § 602. Withdrawal of General Partner

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him [or her].

## COMMENT

Section 602 is now first appeared in the 1976 Act, but is generally derived from Section 38 of the Uniform Partnership Act.

## § 603. Withdrawal of Limited Partner

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified ~~in the certificate of limited partnership and in accordance with~~ in writing in the partnership agreement. If the ~~certificate agreement~~ agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his [other] address on the books of the limited partnership at its office in this State.

## COMMENT

Section 603 is derived from Section 16(a) of the ~~prior uniform law~~ 1916 Act. The 1976 Act provision has been modified to reflect the 1985 changes made in Section 201. This section additionally reflects the policy determination, also embodied in certain other sections of the 1985 Act, that to avoid fraud, agreements concerning certain matters of substantial importance to the partners will be enforceable only if in writing. If the partnership agreement does provide, in writing, whether a limited partner may withdraw and, if he may, when and on what terms and conditions, those provisions will control.

## § 604. Distribution Upon Withdrawal

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he [or she] is entitled under the partnership agreement and, if not otherwise provided in the agreement, he [or she] is entitled to receive, within a reasonable time after withdrawal, the fair value of his [or her] interest in the limited partnership as of the date of withdrawal based upon his [or her] right to share in distributions from the limited partnership.

## COMMENT

Section 604 ~~is new~~ first appeared in the 1976 Act. It fixes the distributive share of a withdrawing partner in the absence of an agreement among the partners.

## § 605. Distribution in Kind

Except as provided in writing in the ~~certificate of limited partnership agreement~~, a partner, regardless of the nature of his [or her] contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him [or her] exceeds a percentage of that asset which is equal to the percentage in which he [or she] shares in distributions from the limited partnership.

## COMMENT

The first sentence of Section 605 is derived from Section 16(3) of the ~~prior uniform law, 1916 Act~~; it also differs from its counterpart in the 1976 Act, reflecting the 1985 changes made in Section 201. The second sentence first appeared in the 1976 Act, ~~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.

## § 606. Right to Distribution

At the time a partner becomes entitled to receive a distribution, he [or she] has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

## COMMENT

Section 606 ~~is new~~ first appeared in the 1976 Act, 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, 1916 Act~~, 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.

## § 607. Limitations on Distribution

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

## COMMENT

Section 607 is derived from Section 16(1)(a) of the ~~prior uniform law, 1916 Act~~.

## § 608. Liability Upon Return of Contribution

(a) If a partner has received the return of any part of his [or her] contribution without violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of his [or her] contribution in violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his [or her] contribution to the extent that a distribution to him [or her] reduces his [or her] share of the fair value of the net assets of the limited partnership below the value, as set forth in the ~~certificate of limited partnership records~~ records required to be kept pursuant to Section 105, of his contribution which has not been distributed to him [or her].

## COMMENT

Paragraph (a) is derived from Section 17(4) of the ~~prior uniform law~~ 1916 Act, but the one year statute of limitations has been added. Paragraph (b) is derived from Section 17(2)(b) of the ~~prior uniform law~~ 1916 Act but, again, a statute of limitations has been added.

Paragraph (c) ~~is new~~, first appeared in the 1976 Act. 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. Paragraph (c) in the 1985 Act also differs from its counterpart in the 1976 Act to reflect the 1985 changes made in Sections 105 and 201.

## ARTICLE 7

## ASSIGNMENT OF PARTNERSHIP INTERESTS

## § 701. Nature of Partnership Interest

A partnership interest is personal property.

## COMMENT

This section is derived from Section 18 of the ~~prior uniform law~~ 1916 Act.

## § 702. Assignment of Partnership Interest

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his [or her] partnership interest.

## COMMENT

Section 19(1) of the ~~prior uniform law~~ 1916 Act 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~~ 1916 Act. The last sentence ~~is new~~ first appeared in the 1976 Act.

## § 703. Rights of Creditor

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This [Act] does not deprive any partner of the benefit of any exemption laws applicable to his [or her] partnership interest.

## COMMENT

Section 703 is derived from Section 22 of the ~~prior uniform law~~ 1916 Act 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.

## § 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) (i) the assignor gives the assignee that right in accordance with authority described in the ~~certificate of limited partnership agreement~~, or (2) (ii) 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 [or her] assignor to make and return contributions as provided in ~~Article~~ Articles 5 and 6. However, the assignee is not obligated for liabilities unknown to the assignee at the time he [or she] 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 [or her] liability to the limited partnership under Sections 207 and 502.

## COMMENT

Section 704 is derived from Section 19 of the ~~prior uniform law~~, 1916 Act, but paragraph (b) defines more narrowly than Section 19 the obligations of the assignor that are automatically assumed by the assignee. Section 704 of the 1985 Act also differs from the 1976 Act to reflect the 1985 changes made in Section 201.

## § 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 [or her] to be incompetent to manage his [or her] person or his [or her] property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his [or her] estate or administering his [or her] 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.

## COMMENT

Section 705 is derived from Section 21(1) of the ~~prior uniform law~~, 1916 Act. 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

§ 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 specified in the certificate of limited partnership;
- (2) ~~or upon the happening of events specified in writing in the certificate of limited partnership agreement;~~
- (2)(3) written consent of all partners;
- (3)(4) 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~~ written provisions of the partnership agreement permit 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 business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
- (4)(5) entry of a decree of judicial dissolution under Section 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, 1916 Act~~, but adds the 90-day grace period. Section 801 also differs from its counterpart in the 1976 Act to reflect the 1985 changes made in Section 201.

§ 802. Judicial Dissolution

On application by or for a partner the [designate the appropriate court] court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

COMMENT

Section 802 ~~is now~~ first appeared in the 1976 Act.

§ 803. Winding Up

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the [designate the appropriate court] court may wind up the limited partnership's affairs upon application of any partner, his [or her] legal representative, or assignee.

COMMENT

Section 803 ~~is now~~ first appeared in the 1976 Act, and is derived in part from Section 37 of the Uniform ~~General~~ Partnership Act.

§ 804. Distribution of Assets

Upon the winding up of a limited partnership, the assets shall be distributed as follows:  
(1) to creditors, including partners who are creditors, to the extent permitted by law, in

satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 601 or 604;

(2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 601 or 604; and

(3) except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

#### COMMENT

Section 804 revises Section 23 of the ~~prior uniform law~~ 1916 Act 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

##### § 901. Law Governing

Subject to the Constitution of this State, (i) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (ii) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

#### COMMENT

Section 901 ~~is new,~~ first appeared in the 1976 Act.

##### § 902. Registration

Before transacting business in this State, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

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

(2) the ~~state~~ State and date of its formation;

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

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

~~(5)~~ (4) a statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under paragraph (4) ~~(3)~~ or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

~~(6)~~ (5) the address of the office required to be maintained in the ~~State~~ state of its organization by the laws of that ~~State~~ state or, if not so required, of the principal office of the foreign limited partnership; and

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

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this State is cancelled or withdrawn.

#### COMMENT

Section 902 ~~is new~~, first appeared in the 1976 Act. 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~~ Section 902 required to be filed would be sufficient to tell interested persons where they could write to obtain copies of those basic documents. Subdivision (3) of the 1976 Act has been omitted, and subdivisions (6) and (7) differ from their counterparts in the 1976 Act, to conform these provisions relating to the registration of foreign limited partnerships to the corresponding changes made by the Act in the provisions relating to domestic limited partnerships. The requirement that an application for registration be sworn to by a general partner is simply intended to produce the same result as is provided for in Section 204(c) with respect to certificates of domestic limited partnerships; the acceptance and endorsement by the Secretary of State (or equivalent authority) of an application which was not sworn to by a general partner should be deemed a mere technical and insubstantial shortcoming, and should not result in the limited partners being subjected to general liability for the obligations of the foreign limited partnership (See Section 907(c)).

#### § 903. Issuance of Registration

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

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

(2) file in his [or her] office a duplicate original of the application; and

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

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

#### COMMENT

Section 903 first appeared in the 1976 Act.

#### § 904. Name

A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

#### COMMENT

Section 904 ~~is new~~, first appeared in the 1976 Act.

#### § 905. Changes and Amendments

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in

the office of the Secretary of State a certificate, signed and sworn to by a general partner, correcting such statement.

## COMMENT

Section 905 ~~is new~~, first appeared in the 1976 Act. It corresponds to the provisions of Section 202(c) relating to domestic limited partnerships.

## § 906. Cancellation of Registration

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to [claims for relief] [causes of action] arising out of the transactions of business in this State.

## COMMENT

Section 906 ~~is new~~, first appeared in the 1976 Act.

## § 907. Transaction of Business Without Registration

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

(b) The failure of a foreign limited partnership to register in this State does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this State.

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

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

## COMMENT

Section 907 ~~is new~~, first appeared in the 1976 Act.

## § 908. Action by [Appropriate Official]

The [designate the appropriate official] may bring an action to restrain a foreign limited partnership from transacting business in this State in violation of this Article.

## COMMENT

Section 908 ~~is new~~, first appeared in the 1976 Act.

## ARTICLE 10

## DERIVATIVE ACTIONS

## § 1001. Right of Action

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the

action or if an effort to cause those general partners to bring the action is not likely to succeed.

## COMMENT

Section 1001 ~~is new,~~ first appeared in the 1976 Act.

## § 1002. Proper Plaintiff

In a derivative action, the plaintiff must be a partner at the time of bringing the action and (i) must have been a partner at the time of the transaction of which he [or she] complains or (ii) his [or her] status as a partner ~~had~~ must have devolved upon him [or her] by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

## COMMENT

Section 1002 ~~is new,~~ first appeared in the 1976 Act.

## § 1003. Pleading

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

## COMMENT

Section 1003 ~~is new,~~ first appeared in the 1976 Act.

## § 1004. Expenses

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him [or her] to remit to the limited partnership the remainder of those proceeds received by him [or her].

## COMMENT

Section 1004 ~~is new,~~ first appeared in the 1976 Act.

## ARTICLE 11

## MISCELLANEOUS

## § 1101. Construction and Application

This [Act] shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

## COMMENT

Because the principles set out in Sections 28(1) and 29 of the 1916 Act have become so universally established, it was felt that the 1976 and 1985 Acts need not contain express provisions to the same effect. However, it is intended that the principles enunciated in those provisions of the 1916 Act also apply to this Act.

## § 1102. Short Title

This [Act] may be cited as the Uniform Limited Partnership Act.

## § 1103. Severability

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

## § 1104. Effective Date, Extended Effective Date and Repeal

Except as set forth below, the effective date of this [Act] is \_\_\_\_\_ and the following acts [list ~~prior~~ existing limited partnership acts] are hereby repealed:

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

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

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

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

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

(6) Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses (rather than the provisions of Section 503), distributions to a withdrawing partner (rather than the provisions of Section 604), and distributions of assets upon the winding up of a limited partnership (rather than the provisions of Section 804) govern limited partnerships formed before the effective date of this [Act].

## COMMENT

Subdivisions (6) and (7) did not appear in Section 1104 of the 1976 Act. They are included in the 1985 Act to ensure that the application of the Act to limited partnerships formed and existing before the Act becomes effective would not violate constitutional prohibitions against the impairment of contracts.

## § 1105. Rules for Cases Not Provided for in This [Act]

In any case not provided for in this [Act] the provisions of the Uniform Partnership Act govern.

## COMMENT

The result provided for in Section 1105 would obtain even in its absence in a jurisdiction which had adopted the Uniform Partnership Act, by operation of Section 6 of that act.

## § 1106. Savings Clause

The repeal of any statutory provision by this [Act] does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing at the effective date of this [Act], nor does the repeal of any existing statutory provision by this [Act] impair any contract or affect any right accrued before the effective date of this [Act].

## COMMENT

Section 1106 did not appear in the 1976 Act. It is included in the 1985 Act to ensure that the application of the Act to limited partnerships formed and existing before the Act becomes effective would not violate constitutional prohibitions against the impairment of contracts.

**LEGISLATIVE COMMITTEE REPORT**

DATE: 3/29/93

FURTHER:

DATE TURNED INTO OFFICE: 21 April 93

JUDICIARY Committee considered HOUSE BILL NO. 112

"An Act relating to limited partnerships; and providing for an effective date."

and recommends:

- replace with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal
LAW	2-9-93	✓	
DCED	2-8-93	✓	

Appropriation No Fiscal Note

**DO PASS:**

Rich Halpern  
George Stovall

**OTHER RECOMMENDATIONS:**

Ezraanne Little No Rec

Adrian L. Taylor D. Van  
 Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 112

Revision Date: \_\_\_\_\_  
Title: An Act relating to limited partnerships  
Sponsor: Rep Moses  
Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development  
BRU: Banking, Securities and Corporations  
Component: \_\_\_\_\_  
COMPONENT SERIAL NO. 1233

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GFMHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations

Phone: 465-2521  
Date: \_\_\_\_\_

Approved by Commissioner: Paul Fuhs  
Agency: Commerce and Economic Development

Date: 2-8-93

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**HB 112: "An Act relating to limited partnerships; and providing for an effective date."**

The Department of Commerce and Economic Development favors passage of House Bill 112, as it provides greater uniformity to the Uniform Partnership Act. These amendments to Chapter 128, SLA 1992, effective July 1, 1993, will have, to a small degree, some filing reduction of activity by the department, due to the deletions of information to be filed.

While no amendments are offered by the department, the Legislature may wish to consider the following:

1. Section 1 and Section 18 delete the requirement of a limited partnership to file a general character of the business it proposes to transact. It is suggested that the Legislature may wish to weigh the inclusion of a Standard Industrial Classification code (SIC) to be filed with the department. This would provide statistical information to agencies of the state government and to others who wish to determine the scope of Limited Partnership businesses operating in the State of Alaska. The SIC codes are a requirement for business licenses and for corporations filing with the department. This information has been helpful in Economic Development studies.
2. The department in preparation for the July 1, 1993, effective date of Chapter 128 SLA 1992, has found that other states have had some administrative problems with the lack of authority to dissolve a limited partnership when it becomes known that the limited partnership no longer has any operational existence. The only action available to the department would be to remove the nonfunctional limited partnership at the expiration date listed on its certificate. It might be appropriate for the Legislature to consider including the department as one that could make application to Superior Court for judicial dissolution (Section 32.11.380).

The department appreciates the opportunity to state our position, and finds that should HB 112 pass, there would be no fiscal impact upon the agency.



Paul Fuhs, Commissioner

2-8-93

Date

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 112

Revision Date: February 9, 1993  
Title: "An Act relating to limited partnerships;  
and providing for an effective date."  
Sponsor: Representative Moses  
Requestor: House Rules Committee

Department Affected: Law  
BRU: Legal Services  
Component: Operations  
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see attached analysis.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division  
Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Phone: 465-3672  
Date: February 9, 1993  
Date: February 9, 1993

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 112

ANALYSIS: (continued)

This bill repeals, reenacts, and amends a good part of the state's Limited Partnership Act, AS 32.10, which was first adopted in ~~1992~~<sup>1917</sup>. The bill deals with transactions between private parties, and it will not have a fiscal impact for the Department of Law.

**HB**

**113**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: March 22, 1993

FURTHER REFERRALS:

Date of Committee Action: 4/02/93

The FINANCE Committee considered:

HB 113

HOUSE BILL NO. 113

CHARITABLE & TELEPHONIC SOLICITING/SALES

"An Act regulating the solicitation of contributions by charitable organizations and paid solicitors and the solicitation of sales by telephonic means; and amending Alaska Rules of Civil Procedure 79 and 82."

RECOMMENDATIONS:  the same title  
 be replaced with CSHB113 (Fin)  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) PS 3/5/93

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ronald J. Larson</i> Larson	x				
<i>Sean R. Parrell</i> Parrell	x	<i>Mark Hanley</i> Hanley		x	
<i>Ben Grussendorf</i> Grussendorf	x	<i>Leann Martin</i> Martin		✓	
<i>Richard D. Hoff</i> Hoff	x	<i>Frank Hoffman</i> Hoffman		✓	
<i>John Theoria</i> Theoria	x	<i>James Theoria</i> Theoria		x	
<i>Eileen P. McLean</i> McLean					✓

*Eileen P. McLean* *Ronald J. Larson*  
 \_\_\_\_\_  
 SIGNATURE

Date Referred: February 1, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/04/93

The LABOR AND COMMERCE Committee considered:

HB 113

HOUSE BILL NO. 113

CHARITABLE & TELEPHONIC SOLICITING/SALES

An Act regulating the solicitation of contributions by charitable organizations and paid solicitors and the solicitation of sales by telephonic means; and amending Alaska Rules of Civil Procedure 79 and 82."

RECOMMENDATIONS:

be replaced with \_\_\_\_\_ [ ] the same title [ ] a new title

[ ] have attached amendments(s)

[X] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[X] zero fiscal note LAW 2/12/93

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Brian J. Porter	✓				
Joe Sittler	✓				
Golden Hader	✓				
Chris [unclear]	✓				
Bill Hudson	✓				

Bill Hudson  
CHAIRMAN'S SIGNATURE

(11)

Date Referred: March 5, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-19-93

The JUDICIARY Committee considered:

HB 113

HOUSE BILL NO. 113

CHARITABLE & TELEPHONIC SOLICITING/SALES

"An Act regulating the solicitation of contributions by charitable organizations and paid solicitors and the solicitation of sales by telephonic means; and amending Alaska Rules of Civil Procedure 79 and 82."

RECOMMENDATIONS:

be replaced with CS HB113 (JUD)

the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note LAW 2-12-93

zero fiscal note(s) LAW 2-12-93

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Brian S. Porter	✓	Tom Nordlund		✓	
Gail Phillips	✓				
Committee Jones	✓				
Bob [unclear]	✓				
[unclear]	✓				

Brian S. Porter  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 113

Revision Date: February 12, 1993  
Title: "...regulating the solicitation of charitable contributions...solicitation of sales by telephonic means..."  
Sponsor: Representative Larson  
Requestor: Representative Larson

Department Affected: Law  
BRU: Legal Services  
Component: Fair Business Practices  
COMPONENT SERIAL NO. 1823

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see attached analysis.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division  
Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Phone: 465-3672  
Date: February 12, 1993  
Date: February 12, 1993

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 113

ANALYSIS: (continued)

This bill would amend Title 45 by adding regulatory provisions to address abuses in charitable fundraising and telemarketing solicitations.

Under this bill, non-exempt charities would be required to:

1. File registration papers with the attorney general identifying the party making the charitable solicitation, and describing the charitable purpose to be served with the proceeds;
2. Execute written contracts with any paid fundraisers establishing the method of payment for the paid fundraiser, including the amount of any contingent fee; and
3. Provide certain information to donors.

Non-exempt telemarketers would be required to:

1. Register with the attorney general; and
2. Execute written contracts with customers as a condition of closing any sales. This provision creates an enforceable "cooling off period" that is currently lacking in these high pressure sales situations.

The bill provides criminal penalties for charitable solicitors who refuse to honor the consumer's right to revoke a deal, or who take the consumer's money without observing the cooling off period under the written contract provision.

This bill is an attempt to solve the related problems presented by high pressure charity fundraisers who make misrepresentations regarding their fundraising purposes; and telephone sales artists who use high pressure tactics to sell merchandise at greatly inflated prices with false promises of extravagant prizes, and other illusory inducements.

Because there is no regulatory scheme now in effect, the Department of Law cannot say with certainty how much additional staff time will be required to meet the paperwork generated by this bill. But we estimate that the initial year's filings will not greatly exceed 250 charities, and 100 telemarketers.

The staff time needed to file the registration documents will be partially offset by a time savings in the investigation sphere, because the files will contain data that significantly reduces investigative effort in cases involving charitable fundraisers and telemarketers. Both types of cases currently involve significant investigative time spent identifying the people and organizations involved. Of course, to the extent that the bill deters illegal conduct, it will result in additional reductions of investigative time, due to the reduction in law violations requiring investigation. Investigators will be free to devote resources to those other pressing matters needing their attention which currently go unaddressed because of reduced funding.

In the event that the time estimates are inaccurate, the Department of Law may need to return with a request for additional funding in the future. Until such time, however, this bill does not require an increased appropriation.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

April 19, 1993

**SUBJECT:** Sectional summary of CSHB 113(FIN)

**TO:** Representative Ron Larson  
Attn: Judy

**FROM:** Theresa L. Bannister *TB*  
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 of the bill adds a new chapter regulating telephonic solicitations.

Section 45.63.010 requires a person selling property or services by telephonic means to register with the Department of Law before the solicitation campaign, if the person makes substantially the same offer on substantially the same terms to two or more persons. Establishes certain procedures and information requirements for registration. Prohibits the seller from giving false information in the notice of intent to engage in the solicitation campaign.

Section 45.63.020 requires a telephonic seller to obtain from the buyer a signed, written contract before finalizing a purchase payment. Requires the contract to notify the buyer of the buyer's cancellation and replacement rights under sec. 45.63.030.

Section 45.63.030 provides the buyer with certain cancellation and replacement rights. Establishes when the sale becomes final.

Section 45.63.040 prohibits the seller from making certain representations to the buyer.

Section 45.63.050 prohibits a waiver of the buyer's rights under the chapter. Makes a waiver void.

SECTIONAL ANALYSIS

# Alaska State Legislature

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**Representative Ronald L. Larson**  
District 27

## POSITION PAPER HB 113

I have introduced HB113 in an effort to regulate telemarketers and Charitable Organizations who solicit donations by telephone. There has been a dramatic increase in fraudulent activity in this area. It has been brought to my attention that these scam artists have caused the loss of millions of dollars each year in Alaska -- money that would otherwise circulate among legitimate businesses in the local economy. Many of these victims are elderly or reside in native villages and once a solicitor has been successful in ripping these people off, their name is often sold to other solicitors, in order to continue the practice.

I would hope with regulations in place, the public, would have a renewed trust, again, in giving to legitimate charitable organizations, and that the immediate distrust when that telephone rings would be replaced with a confidence that a person is giving to a regulated charity, and indeed that their hard earned money is going to that organization and its charitable needs.

A mandated "cooling off period" prohibits the telemarketer from taking the customer's money until the agreement is reduced to a written contract. This will avoid hasty credit card transactions over the phone, without the consumer having the time to consider the donation.

These types of regulations are already in place in other states, it is time for Alaska to take the steps needed in regulating this type of activity.

SPONSOR STATEMENT



# Alaska State Legislature

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Representative Ronald L. Larson  
District 27

## MEMORANDUM

TO: Senator Robin Taylor, Chairman  
Senate Judiciary Committee

FROM: Representative Ron Larson *RL*

DATE: April 13, 1993

RE: Request to Hear - HB113

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I respectfully request that HB113, An Act regulating the solicitation of contributions by charitable organizations and paid solicitors and the solicitation of sales by telephonic means, be heard in the Senate Judiciary Committee pending referral from the Senate Labor and Commerce Committee. It is being scheduled for hearing in Senate L&C on Tuesday, April 20th. HB 113 is my personal priority for this session. In order to have a chance of passing this session, I would appreciate a hearing by the Committee at the end of next week, pending referral. Thank you for your attention to this request.

This bill passed out of House L&C with 5DP, out of House Judiciary with 5DP and 1NR. It passed out of Finance with 5DP, 4NR and 1AM (which was taken care of in Finance). HB113 passed the House unanimously.

**There has been a dramatic increase in fraudulent activity in this area.** This bill will regulate telemarketers and Charitable Organizations who solicit donations by telephone. These scam artists have caused the loss of millions of dollars each year in Alaska--money that might otherwise circulate among legitimate businesses in the local economy. Many of these victims are elderly or reside in native villages and once a solicitor has been successful in ripping these people off, their name is often sold to other solicitors.

These types of regulations are already in place in other states, it is time for Alaska to take the steps needed in regulating this type of activity.



LEGISLATIVE COMMITTEE REPORT

DATE: 4/21/93

FURTHER: FINANCE

DATE TURNED INTO OFFICE: 4/23/93

JUDICIARY Committee considered CS FOR HOUSE BILL NO. 113(FIN)

"An Act regulating the solicitation of contributions by charitable organizations and paid solicitors and the solicitation of sales by telephonic means; and amending Alaska Rules of Civil Procedure 79 and 82."

and recommends:

- replace with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)  same title
- or  CS \_\_\_\_\_ (\_\_\_\_\_)  new title
- attaches amendment(s)  technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
LAW	2-12-93	✓	

Appropriation No Fiscal Note

DO PASS:

Rich Halford

George Acha

OTHER RECOMMENDATIONS:

Suzanne R Little No Rec

Chris L. Taylor DA 1000

Chair: Signature and Recommendation

# MEMORANDUM

State of Alaska  
Department of Law

TO: Honorable Ron Larson  
State of Alaska  
House of Representatives


DATE: January 29, 1993

FILE NO:

TEL. NO: 269-5206

SUBJECT: House bill regulating  
telephonic and charitable  
solicitations

FROM:

  
James Forbes  
Assistant Attorney General  
Fair Business Practices Section

Description of Bill

This bill would regulate solicitations for telephonic sales and charitable fund raising; areas which are, for the most part, unregulated. State consumer protection investigators have noticed a dramatic increase in fraudulent activity in this area. Most states have adopted legislation dealing with charitable solicitation fraud and telemarketing scams, but Alaska lags behind. As a result, scam artists are increasingly avoiding those states, and are concentrating their activities on unregulated states, such as Alaska. We believe that they cause the loss of millions of dollars each year in Alaska -- money which would otherwise circulate among legitimate businesses in the local economy. Many of the victims are elderly or reside in native villages, and we have documented cases where individual victims have lost substantial amounts of money -- in the tens of thousands of dollars.

Section 1: Regulation of Telemarketers

Purpose: This section is designed to curtail a rampant form of fraud which typically involves a high pressure sales pitch by telephone. The caller is almost invariably an out-of-state "boiler room" operator with minimal ties to any one locality, and with the ability to quickly close up shop, change identity, and re-open at another location.

The typical scam involves a promise to the consumer that (s)he has won a fabulous prize, usually including a new car, and all that is necessary to get the new car (or other fabulous prize) is that the consumer agree to purchase products (frequently vitamins or skin care products) for a high price, usually in the \$500 to \$750 range. The seller utilizes high pressure tactics

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DEPT. OF LAW ANALYSIS

Honorable Ron Larson

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Page 2

designed to force the consumer to make a quick decision to agree to the purchase, lest the opportunity to win the fabulous prize be lost. The consumer is usually required to make payment on the spot, either by authorizing a credit card charge over the telephone or, more recently, by writing out a check which is picked up within minutes by a courier, such as Federal Express, dispatched by the telemarketer. The consumer is promised that (s)he will receive the valuable prize after several weeks. By the time the consumer realizes that the prize is not forthcoming, the telemarketer has frequently moved on to a new location, with a new identity.

State investigators have observed that the victims of these scams are frequently elderly, and once they agree to a sale by one telemarketer, they become the target of numerous telemarketers because their names are added to a "suckers list" which is sold for substantial sums of money to other telemarketers.

Remedy proposed by bill: Section 1 of the bill attacks the above-described problem in three important ways:

(1) It requires registration of telemarketers, including detailed information about exactly who they are, their histories, and the physical location from which they are operating;

(2) It mandates a "cooling off period" by prohibiting the telemarketer from taking the customer's money until the agreement is reduced to a written contract; and

(3) It provides criminal penalties for violators.

The registration and identification requirements will allow the state to pinpoint the individuals who are operating high pressure telephonic sales, and determine whether they have prior criminal histories or significant other past problems dealing with sales fraud, making closer scrutiny appropriate. The state currently has no effective means of forcing individuals, who conduct sales by telephonic means across state lines, to identify themselves. Businesses operating within Alaska are required to obtain a state business license, but interstate telemarketers routinely fail to comply with this requirement -- and they are the operators the state has the most need to supervise.

The written contract requirement will put an end to the "high pressure" tactic which is so successful in separating consumers from their money when the promise of a valuable prize is involved. Consumers who have acquiesced to high pressure sales techniques frequently wish to cancel the sale after they have had time to calmly reflect on the transaction. But when they have already authorized a credit card sale by telephone, or a courier

Honorable Ron Larson

January 29, 1993  
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has already picked up their payment, revocation of the sale is not always possible. The written contract requirement will put high pressure telemarketers on more of an equal footing with local, established merchants who are, on a day-to-day basis, accountable to their customers after the sale.

Criminal penalties at the felony level are necessary if the regulations are to be taken seriously by the telemarketers. In our experience, and in discussions with our counterparts in other states, we find that fraudulent telemarketing operators build the cost of defending civil suits into their profit structures, and are not the least bit deterred by the threat of civil litigation by state attorneys general. Misdemeanor penalties would not be adequate because they do not permit extradition, and fraudulent telemarketing operators virtually always work across state lines. Elevating the penalty to the felony level is, therefore, necessary in order to provide a credible deterrent to those who are otherwise disposed to violate the law. Considering the degree of theft we have observed in this area, and the vulnerability of many of the victims, felony treatment is appropriate to the offense.

Exemptions: This bill is noteworthy for the types of transactions not covered. The bill provides a total of 16 exempt categories. These categories exempt sales operations which we have not perceived as presenting a fraud problem. Most legitimate enterprises are exempt by the express language of the bill, but those legitimate sellers that are not exempt will have no difficulty complying with the requirements of the bill.

#### Section II: Regulation of Charitable Solicitations

Purpose: Alaska is one of the few states without some form of charitable solicitation regulation. Investigators for the Fair Business Practices Section have uncovered numerous recent examples of scam artists collecting money from the public by posing as charitable organizations. We believe this problem to be doubly pernicious because these scam artists divert the limited amount of money available for charitable giving from legitimate charities to their own pockets; and they poison the atmosphere for charitable giving by making members of the public cynical about donating money to charity. We believe that this bill will adequately address those problems.

Operation of the Section: Section II of the bill requires all non-exempt organizations to file a registration document with the Attorney General. In the case of a paid solicitor (an organization under contract with a charitable organization to raise money) a bond must also be filed. Organizations are required to re-register each year in September.

Honorable Ron Larson

January 29, 1993

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The registration statement will be on a form provided by the Attorney general, in accordance with regulations to be adopted under the bill. There will be no registration fee.

The bill requires that paid solicitors enter into a written contract with the charitable organization on whose behalf the solicitations are made. The contract must clearly spell out the respective obligations of the parties, including the method for calculating the compensation of the paid solicitor. A copy of that contract must be filed with the Attorney General.

Disclosures: Paid solicitors are required by the bill to disclose identifying information to the person solicited so that (s)he will have a clear picture of who it is that is calling, who it is that they represent, and what charitable purpose is served by the organization. Upon request, a paid solicitor is required to provide a financial statement of the charitable organization and the terms of the contract under which the solicitor is paid.

Mail and Broadcast Solicitations: Paid solicitors who raise money by means of mail, radio, or television are required by the bill to send the donor written confirmation of any pledge that is received, including disclosure of the identity of the person making the solicitation, the charitable organization on whose behalf the solicitation is being made, and the purpose for which the funds will be used.

Unlawful Practices: The bill prohibits the use of any deceptive statements in the course of a solicitation. State investigators have discovered that, particularly in the case of telephonic solicitations by proxy or "sound alike" charities, deceptive or false information is frequently disseminated.

Records: The bill provides that the registration statements, written contracts, and other documents filed with the Attorney General are public records. Charitable organizations are also required to maintain their records for a period of three years in a form that permits them to be audited.

Enforcement and Penalties: Violations of this law can be enforced privately by either the charitable organization which sustains damages as a result of another organization or solicitor's violation of the section, or by a person who makes a charitable contribution to a solicitor who violates the law. It can also be enforced by the Attorney General. The bill provides a powerful private remedy in that it permits the court to: issue an injunction against further violations; award damages for the violation; and require the violator to pay 100% of the attorney's fees and costs incurred by the aggrieved party. In the case of a

Honorable Ron Larson

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willful violation, treble damages can be awarded under the Consumer Protection Act. The bill also provides a criminal misdemeanor penalty for nonexempt persons or organizations who fail to file the necessary registration papers.

Exemptions: The following are exempt from registration under this bill: church or religious organizations; political candidates; organizations that do not raise more than \$5,000 in contributions in a given year; and charitable gaming operators licensed under AS 05.15.100. The term "paid solicitor" under the bill does not apply to an individual who counsels a person or institution on whether to make a contribution, nor does it include a salaried officer, employee, or volunteer of a charitable organization.

Regulations: The bill gives the Department of Law authority to adopt regulations to implement it.

#### Section III: Relation to Consumer Protection Law

Violation of either Section I or Section II of this bill would constitute a violation of the Consumer Protection Act, AS 45.50.471(b). Under this section, both the Attorney General and private individuals would have authority to enforce provisions of the law with the mechanisms available under the Consumer Protection Act. These mechanisms include injunctive relief, and treble damages in the case of a "willful" violation.

#### Section IV: Full Costs and Attorney's Fees

By providing that litigation under Section II of the bill could result in an award of full costs and attorney's fees, the bill conflicts with Civil Rules 79 and 82. Section 4 of the bill resolves the conflict by specifically providing that Rules 79 and 82 be amended to the extent provided in the bill. Section 4 requires, therefore, passage by a two-third vote of the Legislature.

#### Conclusion

Section I of the bill dealing with telemarketing is largely patterned after existing statutes in Oregon and Florida. The Oregon and Florida laws have reportedly been helpful in deterring telemarketing fraud. In fact, we believe that the current increase in telemarketing fraud in Alaska may be the result, at least in part, of the successful implementation of regulations in other states. Telemarketers who find inhospitable conditions in other states due to effective legislation are probably turning their attention to states like Alaska which do not

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have similar legislation. Law enforcement officers in other states who have executed search warrants on telemarketer "boiler rooms" report that they have seen signs on the walls reminding the sales agents not to make solicitation calls in certain states, due to the anticipated level of law enforcement.

We believe that Section I of the bill strikes the appropriate balance between legitimate sales operations and society's need to regulate illegitimate scam operations. We believe that Section I of the bill does so without interfering unduly in legitimate sales operations.

Section II of the bill is largely patterned after the Michigan charitable solicitation statute, with certain provisions borrowed from California and Hawaii. We believe that Section II strikes the appropriate balance between noninterference with legitimate charitable organizations' fund raising efforts and society's need to deal with scam artists who steal money that otherwise might be donated to legitimate charities. We anticipate that legitimate charitable organizations will support this bill.

JF:bev

cc: Attorney General Charlie Cole  
Deputy Attorney General Bruce Botelho  
Regulations Attorney Deborah Behr  
Legislative Liaison Kris Lethin

# National Society of Fund Raising Executives

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Alaska Chapter  
P.O. Box 230611  
Anchorage, AK 99523-0611

VIA FAX

February 25, 1993

The Honorable Ron Larson  
House of Representatives  
State of Alaska  
Juneau, Alaska

Dear Representative Larson:

The Alaska Chapter of the National Society of Fund Raising Executives is supportive of your efforts at curbing abuses in charitable solicitation in Alaska. Thank you for your sponsorship of HB #113.

Fraudulent charitable solicitation obviously hurts those individuals who unknowingly contribute to non-existent causes, but there is also a heavy impact on legitimate Alaska charities. To the extent that these scams are successful, they harm non-profits in two ways.

First, they take away monies which may very well have been contributed to real Alaska non-profits. Those funds are no longer available, obviously, to help the myriad Alaska non-profit organizations helping make this a better state in which to live.

The second impact is that, rightly or wrongly, fraudulent solicitation places a cloud of suspicion on all charitable solicitation, legitimate or otherwise. While the vast majority of Alaska's non-profits provide identified, needed services in a very efficient manner, they are able to do so only because of generous charitable support from citizens throughout the state. Yet in many cases these scams only serve to reinforce the all-too-common generalization that all fund raising is somehow tainted, and we do believe there is a direct impact on contributions as a result.

The National Society of Fund Raising Executives Alaska Chapter is one of several hundred NSFRE chapters nationwide. Nationally there are over 13,000 members; we have 32 in the Alaska Chapter, representing non-profits from Juneau, Fairbanks and Anchorage.

LETTERS OF SUPPORT