

PARTNERSHIPS

CHAPTER 504

SENATE BILL NO. 2183
(Committee on Industry, Business and Labor)
(At the request of the Commission on Uniform State Laws)

UNIFORM LIMITED PARTNERSHIP ACT

AN ACT to adopt the Uniform Limited Partnership Act (1976), relating to limited partnerships; to amend and reenact sections 45-12-01 and 45-12-04 of the North Dakota Century Code, relating to existing limited partnerships and citation of partnership acts; and to repeal chapter 45-10 of the North Dakota Century Code, relating to the Uniform Limited Partnership Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. (101) Definitions. As used in sections 1 through 62, unless the context otherwise requires:

1. "Certificate of limited partnership" means the certificate referred to in section 8, and the certificate as amended.
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 26.
4. "Foreign limited partnership" means a partnership formed under the laws of any 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" means 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 general or limited 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, 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.

SECTION 2. (102) Name. The name of each limited partnership as set forth in its certificate of limited partnership:

1. Must contain without abbreviation the words "limited partnership".
2. May not contain the name of a limited partner unless:
 - a. It is also the name of a general partner or the corporate name of a corporate general partner; or
 - b. 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. May not contain the word "corporation", "company", or "incorporated", or any abbreviation of those words.
5. 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, or a trade name or fictitious name certificate on file with the secretary of state.

SECTION 3. (103) Reservation of name.

1. The exclusive right to the use of a name may be reserved by:
 - a. Any person intending to organize a limited partnership under sections 1 through 62 and to adopt that name.
 - b. Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name.
 - c. Any foreign limited partnership intending to register in this state and adopt that name.
 - d. Any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.
2. 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, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. 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.

SECTION 4. (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 5 to be maintained.
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.

SECTION 5. (105) Records to be kept. Each limited partnership shall keep at the office referred to in subsection 1 of section 4 the following:

1. A current list of the full name and last known business address of each partner set forth 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.
4. Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years. Those records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

SECTION 6. (106) Nature of business. A limited partnership may carry on any business that a partnership without limited partners may carry on except banking or insurance.

SECTION 7. (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.

SECTION 8. (201) Certificate of limited partnership.

1. In order to form a limited partnership, two or more persons must execute a certificate of limited partnership. The certificate must be filed in the office of the secretary of state and set forth:
 - a. The name of the limited partnership.
 - b. The general character of its business.
 - c. The address of the office and the name and address of the agent for service of process required to be maintained by section 4.
 - d. The name and the business address of each partner, specifying separately the general partners and limited partners.
 - e. 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.
 - f. 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.

- g. Any power of a limited partner to grant the right to become a limited partner to an assignee of any part of the limited partner's partnership interest, and the terms and conditions of the power.
 - h. If agreed upon, the time at which or the events on the happening of which a partner may terminate membership in the limited partnership and the amount of, or the method of determining, the distribution to which the partner may be entitled respecting the partner's partnership interest, and the terms and conditions of the termination and distribution.
 - i. Any right of a partner to receive distributions of property, including cash from the limited partnership.
 - j. 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.
 - k. Any time at which or events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.
 - l. Any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner.
 - m. Any other matters the partners determine to include therein.
2. 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.

SECTION 9. (202) Amendment to certificate.

- 1. A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate must set forth all of the following:
 - a. The name of the limited partnership.
 - b. The date of filing the certificate.
 - c. The amendment to the certificate.
- 2. An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be

filed within thirty days after the happening of any of the following events:

- a. A change in the amount or character of the contribution of any partner, or in any partner's obligation to make a contribution.
 - b. The admission of a new partner.
 - c. The withdrawal of a partner.
 - d. The continuation of the business under section 47 after an event of withdrawal of a general partner.
 - e. A change of office or an agent.
3. 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 twelve months.
4. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.
5. 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 2 if the amendment is filed within the thirty-day period specified in subsection 2.

SECTION 10. (203) Cancellation of certificate. A certificate of limited partnership must be canceled 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 must be filed in the office of the secretary of state and set forth all of the following:

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 must be a date certain, of cancellation if it is not to be effective upon the filing of the certificate.
5. Any other information the general partners filing the certificate determine.

SECTION 11. (204) Execution of certificates.

1. Each certificate required by sections 8 through 19 to be filed in the office of the secretary of state must be executed in the following manner:
 - a. An original certificate of limited partnership must be signed by all partners named therein.
 - b. A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new partner or whose contribution is described as having been increased.
 - c. A certificate of cancellation must be signed by all general partners.
2. Any person may sign a certificate by an attorney in fact, but a power of attorney to sign a certificate relating to the admission, or increased contribution, of a partner must specifically describe the admission or increase.
3. The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

SECTION 12. (205) Amendment or cancellation by judicial act.

If a person required by section 11 to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, who is adversely affected by the failure or refusal, may petition the district court to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate of amendment or cancellation.

SECTION 13. (206) Filing in office of secretary of state.

1. A signed copy of the certificate of limited partnership and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's 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 the secretary of state shall endorse on the copy the word "Filed" and the day, month, and year of the filing and shall file the copy in the office of the secretary of state.

2. 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 is 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 canceled.

SECTION 14. Renewal of certificate - Filing with secretary of state - Cancellation. Any certificate of limited partnership or registration of foreign limited partnership filed under sections 1 through 62 of this Act must be renewed every five years from the date of the initial filing. Limited partnerships existing prior to July 1, 1985, must file the statement of renewal by July 1, 1987, and every five years thereafter. The statement of renewal must be executed by the limited partnership or foreign limited partnership on forms prescribed and furnished by the secretary of state and sent to the address of the registered office at least sixty days prior to the deadline for filing. The statement must include the name of the limited partnership or foreign limited partnership, the state or country of organization, the address of the registered office and the name of the registered agent, and a statement that the limited partnership or foreign limited partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement. If the secretary of state finds that it does not conform, the secretary of state shall promptly return the statement to the limited partnership or the foreign limited partnership for any necessary corrections, and the certificate of limited partnership or registration of foreign limited partnership must be canceled if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any limited partnership or foreign limited partnership fails to file the statement of renewal when due, the secretary of state shall cancel the certificate of limited partnership or registration of foreign limited partnership and shall mail notice of cancellation to the address of the registered office.

SECTION 15. Fees for filing documents. The secretary of state shall charge and collect for:

1. Filing a limited partnership, seventy-five dollars.
2. Filing a limited partnership amendment, twenty-five dollars.
3. Filing a limited partnership dissolution, twenty-five dollars.
4. Filing a limited partnership cancellation, twenty-five dollars.
5. Filing a reservation of name, ten dollars.

6. Filing a statement of renewal of a limited partnership or renewal of registration of foreign limited partnership, twenty-five dollars.
7. Filing a registration of foreign limited partnership, seventy-five dollars.
8. Filing a certified statement of amendment of foreign limited partnership, twenty-five dollars.
9. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.
10. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
11. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.

SECTION 16. Duties of the secretary of state. The secretary of state shall maintain an alphabetical index of all limited partnerships and foreign limited partnerships on file with that office. All documents filed with the secretary of state pursuant to sections 1 through 62 of this Act must be retained in that office until they have been committed to microcopy, at which time the documents may be returned to the limited partnership or foreign limited partnership.

SECTION 17. (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 all of the following:

1. Any person who executes the certificate, or causes another to execute it on that person's 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.
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 12.

SECTION 18. (208) 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 partners are limited partners, but it is not notice of any other fact.

SECTION 19. (209) Delivery of certificates to limited partners. Upon the filing by the secretary of state pursuant to section 13 of a certificate, 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.

SECTION 20. (301) Admission of additional limited partners.

1. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

a. 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.

b. In the case of an assignee of a partnership interest of a partner who has the power, as provided in section 45, 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.

2. In each case under subsection 1, the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

SECTION 21. (302) Voting. Subject to section 22, 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.

SECTION 22. (303) Liability to third parties.

1. Except as provided in subsection 4, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, the limited partner is liable only to persons who transact business with the limited partnership with actual knowledge of the limited partner's participation in control.

2. A limited partner does not participate in the control of the business within the meaning of subsection 1 solely by doing one or more of the following:
 - a. Being a contractor for or an agent or employee of the limited partnership or of a general partner.
 - b. Consulting with and advising a general partner with respect to the business of the limited partnership.
 - c. Acting as surety for the limited partnership.
 - d. Approving or disapproving an amendment to the partnership agreement.
 - e. Voting on one or more of the following matters:
 - (1) The dissolution and winding up of the limited partnership.
 - (2) 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.
 - (3) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business.
 - (4) A change in the nature of the business.
 - (5) The removal of a general partner.
3. The enumeration in subsection 2 does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.
4. A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by subsection 2 of section 2, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

SECTION 23. (304) Person erroneously believing oneself limited partner.

1. Except as provided in subsection 2, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that the person 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, the person:

- a. Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or
 - b. Withdraws from future equity participation in the enterprise.
2. A person who makes a contribution of the kind described in subsection 1 is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate is filed to show withdrawal, or before an appropriate certificate is filed to show the person's status as a limited partner and, in the case of an amendment, after expiration of the thirty-day period for filing an amendment relating to the person as a limited partner under section 9, 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.

SECTION 24. (305) Information. Each limited partner has the right to:

1. Inspect and copy any of the partnership records required to be maintained by section 5.
2. Obtain from the general partners from time to time upon reasonable demand each of the following:
 - a. True and full information regarding the state of the business and financial condition of the limited partnership.
 - b. Promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year.
 - c. Other information regarding the affairs of the limited partnership as is just and reasonable.

SECTION 25. (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 with the specific written consent of each partner.

SECTION 26. (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 35.
2. The general partner ceases to be a member of the limited partnership as provided in section 43.
3. The general partner is removed as a general partner in accordance with the partnership agreement.
4. Unless otherwise provided in the certificate of limited partnership, the general partner:
 - a. Makes an assignment for the benefit of creditors.
 - b. Files a voluntary petition in bankruptcy.
 - c. Is adjudicated a bankrupt or insolvent.
 - d. Files a petition or answer seeking for the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation.
 - e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding of this nature.
 - f. 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 the general partner's properties.
5. Unless otherwise provided in the certificate of limited partnership, one hundred twenty 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 ninety days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, the appointment is not vacated or stayed or, within ninety days after the expiration of a stay, the appointment is not vacated.
6. In the case of a general partner who is a natural person:
 - a. The general partner's death.
 - b. The entry by a court of competent jurisdiction adjudicating the general partner incompetent to manage the general partner's person or 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.
10. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

SECTION 27. (403) General powers and liabilities. Except as provided in sections 1 through 62 or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

SECTION 28. (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 participation in the partnership as a limited partner.

SECTION 29. (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.

SECTION 30. (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.

SECTION 31. (502) Liability for contribution.

1. Except as provided in the certificate of limited partnership, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if the partner 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, the partner 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, of the stated contribution that has not been made.

2. 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 sections 1 through 62 may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, after the filing of the certificate of limited partnership or an amendment thereto which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

SECTION 32. (503) Sharing of profits and losses. The profits and losses of a limited partnership must be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses must be allocated on the basis of the value, as stated in the certificate of limited partnership, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

SECTION 33. (504) Sharing of distributions. Distributions of cash or other assets of a limited partnership must be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions must be made on the basis of the value, as stated in the certificate of limited partnership, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

SECTION 34. (601) Interim distributions. Except as provided in sections 34 through 41, a partner is entitled to receive distributions from a limited partnership before the partner's 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 the partner's contribution under subsection 2 of section 38, to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.

SECTION 35. (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 the general partner.

SECTION 36. (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 the partnership agreement. If the certificate does not specify 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 the general partner's address on the books of the limited partnership at its office in this state.

SECTION 37. (604) Distribution upon withdrawal. Except as provided in sections 34 through 41, upon withdrawal any withdrawing partner is entitled to receive any distribution to which the withdrawing partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the withdrawing partner's interest in the limited partnership as of the date of withdrawal based upon the withdrawing partner's right to share in distributions from the limited partnership.

SECTION 38. (605) Distribution in kind. Except as provided in the certificate of limited partnership, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided 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 the partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the limited partnership.

SECTION 39. (606) Right to distribution. At the time a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

SECTION 40. (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.

SECTION 41. (608) Liability upon return of contribution.

1. If a partner has received the return of any part of the partner's contribution without violation of the partnership agreement or sections 1 through 62, the partner 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.
2. If a partner has received the return of any part of the partner's contribution in violation of the partnership agreement or sections 1 through 62, the partner is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.
3. A partner receives a return of the partner's contribution to the extent that a distribution to the partner reduces the partner's 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, of the partner's contribution that has not been distributed to the partner.

SECTION 42. (701) Nature of partnership interest. A partnership interest is personal property.

SECTION 43. (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 the partner's partnership interest.

SECTION 44. (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. Sections 1 through 62 do not deprive any partner of the benefit of any exemption laws applicable to the partner's partnership interest.

SECTION 45. (704) Right of assignee to become limited partner.

1. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:
 - a. The assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership; or
 - b. All other partners consent.
2. 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 sections 1 through 62. An assignee who becomes a limited partner also is liable for the obligations of the assignor to make and return contributions as provided in sections 34 through 41. However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and which could not be ascertained from the certificate of limited partnership.
3. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under sections 17 and 31.

SECTION 46. (705) Power of estate of deceased or incompetent partner. If a partner who is an individual dies or a court of competent jurisdiction adjudges the partner to be incompetent to manage the partner's person or property, the partner's executor, administrator guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling the partner's estate or administering the partner's 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.

SECTION 47. (801) Nonjudicial dissolution. A limited partnership is dissolved and its affairs must be wound up upon the happening of the first to occur of the following:

1. At the time or upon the happening of events specified in the certificate of limited partnership.
2. Written consent of all partners.
3. An event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be

wound up by reason of any event of withdrawal, if, within ninety 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.

4. Entry of a decree of judicial dissolution under section 48.

SECTION 48. (802) Judicial dissolution. On application by or for a partner, the district 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.

SECTION 49. (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 district court may wind up the limited partnership's affairs upon application of any partner or the partner's legal representative or assignee.

SECTION 50. (804) Distribution of assets. Upon the winding up of a limited partnership, the assets must 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 34 or 37.
2. Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section 34 or 37.
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.

SECTION 51. (901) Law governing. Subject to the Constitution of North Dakota, 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 a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

SECTION 52. (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, on forms prescribed and furnished by the secretary of state, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth all of the following:

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 and date of its formation.
3. The general character of the business it proposes to transact in this state.
4. 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, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state.
5. A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence.
6. The address of the principal office of the foreign limited partnership.

The application must be accompanied by a certificate of identification, existence, and status of a foreign limited partnership, duly certified by the proper officer of the state or country under the laws of which it is organized.

SECTION 53. (903) Filing of registration. If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary of state shall:

1. Endorse on the application the word "Filed", and the month, day, and year of the filing.
2. File the application in the office of the secretary of state.

SECTION 54. (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.

SECTION 55. (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 the statement.

SECTION 56. (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 arising out of the transactions of business in this state.

SECTION 57. (907) Transaction of business without registration.

1. A foreign limited partnership transacting business in this state may not maintain any action or proceeding in any court of this state until it has registered in this state.
2. 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 or proceeding in any court of this state.
3. 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.
4. 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 arising out of the transaction of business in this state.
5. Without excluding other activities which may constitute transacting business in this state, a foreign limited partnership shall not be considered to be transacting business in this state, for the purposes of this Act only, by reason of carrying on in this state any one or more of the following activities:
 - a. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
 - b. Holding meetings of its partners or carrying on other activities concerning its internal affairs.
 - c. Maintaining bank accounts.
 - d. Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

- e. Effecting sales through independent contractors.
- f. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.
- g. Creating evidences of debt, mortgages, or liens on real or personal property.
- h. Securing or collecting debts or enforcing any rights in property securing the same.
- i. Transacting any business in interstate commerce.
- j. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

This subsection does not establish a standard for activities which may or may not subject a foreign limited partnership to taxation or service of process.

SECTION 58. (908) Action by secretary of state. The secretary of state may revoke the registration of a foreign limited partnership for transacting business in this state in violation of sections 52 through 58, or that has failed to file a renewal statement as required by section 14 of this Act. The secretary of state may not revoke the registration of a foreign limited partnership unless the secretary of state has given the foreign limited partnership not less than sixty days' notice by mail addressed to its registered office in this state and the principal office of record, and the foreign limited partnership has failed to remedy the deficiency prior to revocation.

SECTION 59. (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.

SECTION 60. (1002) Proper plaintiff. In a derivative action, the plaintiff must be a partner at the time of bringing the action, and at the time of the transaction of which the plaintiff complains or the plaintiff's status as a partner had devolved upon the plaintiff 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.

SECTION 61. (1003) Pleading. In a derivative action, the complaint must 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.

SECTION 62. (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 the plaintiff to remit to the limited partnership the remainder of those proceeds received by the plaintiff.

SECTION 63. AMENDMENT. Section 45-12-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-12-01. Provisions for existing limited partnerships.

1. A limited or special partnership formed under any statute of this state prior to July 1, 1959, may become a limited partnership under this title by complying with the provisions of section 45-10-02, provided the certificate sets forth:
 - a. The amount of the original contribution of each limited partner, and the time when the contribution was made; and
 - b. That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.
2. A limited or special partnership formed under any statute of this state prior to July 1, 1959, until or unless it becomes a limited partnership under chapter 45-10, shall continue sections 1 through 62, continues to be governed by the provisions of chapter 45-03 of the North Dakota Revised Code of 1943, except that such through June 30, 1986, but the partnership shall may not be renewed unless so provided in the original agreement.
2. A limited partnership formed under former chapter 45-10 prior to July 1, 1985, until or unless it becomes a limited partnership under sections 1 through 62, continues to be governed by the provisions of former chapter 45-10, through June 30, 1986, but the partnership may not be renewed unless so provided in the original agreement.
3. After June 30, 1986, sections 1 through 62 apply to all existing limited partnerships formed under any law of this state providing for formation of limited partnerships. All provisions of partnership agreements that may be included in the partnership agreements under sections 1 through 62 of this Act remain in effect. All provisions of the partnership agreements that are inconsistent with sections 1 through 62 of this Act cease to be effective on July 1, 1986. Any provisions required by sections 1

through 62 of this Act to be contained in the partnership agreement that do not appear in the partnership agreement are read into them as a matter of law.

SECTION 64. AMENDMENT. Section 45-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-12-04. Citation. Chapters 45-05 through 45-09 may be cited as the "Uniform Partnership Act", and chapter 45-10 may be cited as the "Uniform Limited Partnership Act".

SECTION 65. REPEAL. Chapter 45-10 of the North Dakota Century Code is hereby repealed.

Approved March 28, 1985

CHAPTER 505

SENATE BILL NO. 2134
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

FICTITIOUS PARTNERSHIP NAMES

AN ACT to create and enact two new sections to chapter 45-11 of the North Dakota Century Code, relating to fictitious partnership names; and to amend and reenact sections 45-11-01, 45-11-02, 45-11-03, 45-11-04, 45-11-05, 45-11-06, 45-11-07, and 45-11-08 of the North Dakota Century Code, relating to fictitious partnership names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 45-11-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-01. Use of fictitious partnership name---Certificate---Filing--
-Publication. Except as otherwise provided in section 45-11-03, every Every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file a fictitious name certificate with the secretary of state a certificate stating the names in full of all the members of such partnership and their places of residence, and must publish the same once in a newspaper published in the county in which the principal place of business of the partnership is located, if there is one, and if there is none in such county, then in a newspaper published in an adjoining county, together with a filing fee of twenty-five dollars. A limited partnership or a foreign limited partnership transacting business under a name filed pursuant to chapter 45-10, and as otherwise provided in section 45-11-03, is not required to file a fictitious name certificate pursuant to this section.

The fictitious name:

1. May not contain the word "corporation", "company", "incorporated", or "limited", or an abbreviation of one of such words. This does not preclude the word "limited" from being used in conjunction with the word "partnership".

2. May not be the same as, or deceptively similar to any corporate name, trade name, limited partnership name, foreign limited partnership name, or fictitious name certificate on file with the secretary of state.

SECTION 2. AMENDMENT. Section 45-11-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-02. How certificate executed. A certificate filed with the secretary of state as provided in section 45-11-01 must be signed by the partners and acknowledged before some officer authorized to take acknowledgments of conveyances of real property. The certificate must state the fictitious name, the names in full of all the members of the partnership and their places of residence, and the address of the principal place of business.

SECTION 3. AMENDMENT. Section 45-11-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-03. Foreign partnership permitted to use fictitious name. A commercial partnership established and transacting business in a place without the United States may use in this state the partnership name used by it there, without filing the certificate ~~or making the publication~~ prescribed in section 45-11-01, although it is fictitious or does not show the names of the persons interested as partners in such business.

SECTION 4. AMENDMENT. Section 45-11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-04. Penalty for unlawful use of fictitious name. Persons doing business as partners contrary to the provisions of section 45-11-01 shall not maintain an action on, or an account of, any contracts made or transactions had in their partnership name in any court of this state until they have filed the certificate ~~and made the publication~~ required by section 45-11-01. If such partners shall comply with such provisions at any time, they thereupon shall have the right to maintain an action on all such partnership contracts and transactions entered into prior to, as well as after, such compliance.

SECTION 5. AMENDMENT. Section 45-11-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-05. New certificate required when members changed. Whenever there is a change in the members of a partnership transacting business in this state under a fictitious name, or in a designation which does not show the names of the persons interested as partners in the business, except in a case mentioned in section 45-11-03, a new certificate must be filed with the secretary of state ~~and a new publication made~~ as required by this chapter upon the formation of such partnership.

SECTION 6. AMENDMENT. Section 45-11-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-06. Duty of secretary of state regarding certificates of partnership fictitious name certificate. The secretary of state must keep a register an alphabetical file of the fictitious names of firms and persons mentioned in the certificates filed with him pursuant to this chapter, entering in alphabetical order the name of every such partnership and of each partner therein. All documents filed with the secretary of state pursuant to this chapter must be retained in that office until they have been committed to microcopy, at which time the documents may be returned to the partnership.

SECTION 7. AMENDMENT. Section 45-11-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-07. Certified copy used as evidence. A copy of the entry of the secretary of state relating to a partnership certificate, made as directed in section 45-11-01, when certified by him, and an affidavit of publication made as prescribed in title 31, is presumptive evidence of the facts stated therein.

SECTION 8. AMENDMENT. Section 45-11-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-08. Unlawful use of fictitious partnership name. It shall be unlawful for any person to transact business in the name of a person, as a partner, who is not interested in his firm, or to transact business under a firm name in which the designation "and company" or "& Co." is used without representing an actual partner, except in cases in which the continued use of a copartnership name is authorized by law.

SECTION 9. A new section to chapter 45-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Principal place of business. Each partnership which files a fictitious name certificate shall have and continuously maintain on file in the office of the secretary of state, an address of the principal place of business, which must also serve as a mailing address. The address of the principal place of business may be changed by submitting a statement executed by the partnership with a filing fee of ten dollars. The statement must contain the name of the partnership, the state or country of organization, and the new address of the principal place of business.

SECTION 10. A new section to chapter 45-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Renewal. Any fictitious name certificate filed under this chapter must be renewed every five years from the date of the

initial filing, except that those filings existing prior to July 1, 1985, must be required to file the statement of renewal by July 1, 1987, and then every five years thereafter. The statement of renewal shall be executed by the partnership on forms prescribed and furnished by the secretary of state which are sent to the address of the principal place of business at least sixty days prior to the deadline for filing. The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, the names and addresses of all members, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state shall file the same. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the same to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any partnership fails to file the statement of renewal when due, the fictitious name certificate must be cancelled by the secretary of state and notice of such cancellation must be mailed to the address of the principal place of business.

Approved March 22, 1985