

CHAPTER 917

H.B. No. 273

AN ACT

relating to partnerships and the regulation of limited partnership interests as securities; adopting the Texas Revised Partnership Act; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The Texas Revised Partnership Act is enacted to read as follows:

TEXAS REVISED PARTNERSHIP ACT

ARTICLE I. GENERAL PROVISIONS

Sec. 1.01. GENERAL DEFINITIONS. In this Act:

(1) "Business" means a trade, occupation, profession, or other commercial activity.

(2) "Capital account" means the amount of a partner's original contribution to a partnership, which consists of cash and the agreed value of any other contribution to the partnership, increased by the amount of additional contributions made by that partner and by profits credited to that partner under Section 4.01(b), and decreased by the amount of distributions to that partner and by losses charged to that partner under Section 4.01(b).

(3) "Court" means a court and judge having jurisdiction in the case.

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

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

(B) a comparable order under federal or state law governing insolvency.

(5) "Distribution" means a transfer of cash or other property from a partnership to:

(A) a partner in the partner's capacity as a partner; or

(B) the partner's transferee.

(6) "Event of withdrawal" or "withdrawal" means an event specified by Section 6.01(b).

(7) "Event requiring a winding up" means an event specified by Section 8.01.

(8) "Foreign limited partnership" means a partnership formed under the laws of another state and having as partners one or more general partners and one or more limited partners.

(9) "Majority-in-interest" means, as to all of or a specified group of partners, partners owning more than 50 percent of the current interest in the profits of the partnership owned by all of the partners or by the partners in the specified group, as appropriate.

(10) "Partnership" means an entity created as described by Section 2.02(a). The term includes a registered limited liability partnership formed under Section 3.08 or under the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes) and its subsequent amendments.

(11) "Partnership agreement" means any agreement, written or oral, of the partners concerning a partnership.

(12) "Partnership interest" means a partner's interest in a partnership, including the partner's share of profits and losses or similar items, and the right to receive distributions. A partnership interest does not include a partner's right to participate in management.

(13) "Person" includes an individual, corporation, business trust, estate, trust, custodian, trustee, executor, administrator, nominee, partnership (including a registered limited liability partnership and a limited partnership), association, limited liability company, government, governmental subdivision, governmental agency, governmental instrumentality, and any other legal or commercial entity, in its own or representative capacity.

(14) "Property" means all property, real, personal, or mixed, tangible or intangible, or an interest in that property.

(15) "Registered limited liability partnership" means a partnership registered under Section 3.08(b) and complying with Sections 3.08(c) and (d)(1).

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

(17) "Transfer" includes:

- (A) an assignment;
- (B) a conveyance;
- (C) a lease;
- (D) a mortgage;
- (E) a deed;
- (F) an encumbrance; and
- (G) the creation of a security interest.

(18) "Withdrawn partner" means a partner with respect to whom an event of withdrawal has occurred. A partner withdraws if an event of withdrawal has occurred with respect to that partner under Section 6.01.

Sec. 1.02. KNOWLEDGE AND NOTICE. (a) DEFINITION OF KNOWLEDGE. "Knowledge" means actual knowledge. A person knows of a fact only if the person has knowledge of it.

(b) HAVING NOTICE. A person has notice of a fact if the person:

- (1) knows of the fact;
- (2) has received a communication of the fact as provided by Subsection (d); or
- (3) reasonably should have concluded, from all facts known to that person at the time in question, that the fact exists.

(c) GIVING NOTICE. A person notifies or gives a notice to another person of a fact by taking steps reasonably required to inform the other person of the fact in the ordinary course of business, regardless of whether the other person actually comes to know of the fact.

(d) RECEIVING NOTICE. A person is notified or receives a notice of a fact when the fact is communicated to:

- (1) the person;
- (2) the person's place of business; or
- (3) another place held out by the person as the place for receipt of communications.

(e) **NOTICE TO PARTNER AS NOTICE TO PARTNERSHIP.** Receipt of notice by a partner of a fact relating to the partnership is effective immediately as notice to the partnership except in the case of fraud on the partnership committed by or with the consent of the partner receiving the notice.

Sec. 1.03. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE AND VARIABLE PROVISIONS. (a) **PARTNERSHIP AGREEMENT CONTROLS.** Except as provided by Subsection (b), a partnership agreement governs the relations of the partners and between the partners and the partnership. To the extent that the partnership agreement does not otherwise provide, this Act governs the relations of the partners and between the partners and the partnership.

(b) **STATUTORY PROVISIONS THAT MAY NOT BE VARIED BY AGREEMENT.** A partnership agreement or the partners may not:

- (1) unreasonably restrict a partner's right of access to books and records under Section 4.03(b);
- (2) eliminate the duty of loyalty under Section 4.04(b), but the partners may by agreement identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable;
- (3) eliminate the duty of care under Section 4.04(c), but the partners may by agreement determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (4) eliminate the obligation of good faith under Section 4.04(d), but the partners may by agreement determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (5) vary the power to withdraw as a partner under Section 6.01(b)(1), (7), or (8), except to require the notice to be in writing;
- (6) vary the right to expel a partner by a court in the events specified by Section 6.01(b)(5);
- (7) vary the requirement to wind up the partnership business in the events specified by Section 8.01(c), (d), or (e);
- (8) restrict rights of third parties under this Act; or
- (9) select a governing law not permitted under Section 1.05(a)(1).

Sec. 1.04. SUPPLEMENTAL PRINCIPLES OF LAW. (a) **SUPPLEMENTED BY LAW AND EQUITY.** Unless displaced by a particular provision of this Act, the principles of law and equity supplement this Act.

(b) **STRICT CONSTRUCTION NOT APPLICABLE.** The rule that a statute in derogation of the common law is to be strictly construed does not apply to this Act.

(c) **INTEREST RATE.** If an obligation to pay interest arises under this Act and the rate is not specified, the rate is the rate specified by Article 1.03, Title 79, Revised Statutes (Article 5069-1.03, Vernon's Texas Civil Statutes), and its subsequent amendments, or a successor statute.

Sec. 1.05. LAW GOVERNING INTERNAL AFFAIRS AND PARTNER'S LIABILITY. (a) **INTERNAL AFFAIRS.** A partnership's internal affairs and the relations of the partners to one another are governed by:

- (1) the law of the state chosen by the partners to govern if that state bears a reasonable relation to the partners or to the partnership business and affairs under principles that apply to a contract among the partners other than the partnership agreement; or
- (2) if the partners do not choose a governing law under Subdivision (1), the law of the state in which the partnership has its chief executive office.

(b) **LIABILITY TO THIRD PARTIES.** The law governing a partnership's internal affairs also governs the liability of its partners to third parties.

Sec. 1.06. PARTNERSHIP SUBJECT TO AMENDMENT OR REPEAL OF ACT. A partnership governed by this Act is subject to an amendment or repeal of this Act.

ARTICLE II. NATURE OF PARTNERSHIP

Sec. 2.01. PARTNERSHIP AS ENTITY. A partnership is an entity distinct from its partners.

Sec. 2.02. PARTNERSHIP DEFINED; APPLICATION TO JOINT VENTURE AND LIMITED PARTNERSHIP; CAPACITY AS PARTNER. (a) ASSOCIATION TO CARRY ON BUSINESS FOR PROFIT. Except as provided by Subsections (b) and (c), an association of two or more persons to carry on a business for profit as owners creates a partnership, whether the persons intend to create a partnership and whether the association is called a "partnership," "joint venture," or other name. A partnership may be created under:

(1) this Act;

(2) the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes) and its subsequent amendments;

(3) the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes) and its subsequent amendments; or

(4) a statute of another jurisdiction comparable to this Act or the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes) and its subsequent amendments.

(b) ENTITY NOT A PARTNERSHIP. An association or entity created under a law other than the laws described in Subsection (a) is not a partnership.

(c) PERSON WITH CAPACITY AS PARTNER. A person may be a partner unless the person lacks capacity apart from this Act.

Sec. 2.03. RULES FOR DETERMINING IF PARTNERSHIP IS CREATED. (a) FACTORS INDICATING CREATION OF PARTNERSHIP. Factors indicating that persons have created a partnership include their:

(1) receipt or right to receive a share of profits of the business;

(2) expression of an intent to be partners in the business;

(3) participation or right to participate in control of the business;

(4) sharing or agreeing to share:

(A) losses of the business; or

(B) liability for claims by third parties against the business; and

(5) contributing or agreeing to contribute money or property to the business.

(b) FACTORS NOT INDICATING CREATION OF PARTNERSHIP. One of the following circumstances, by itself, does not indicate that a person is a partner in the business:

(1) the receipt or right to receive a share of profits:

(A) as repayment of a debt, by installments or otherwise;

(B) as payment of wages or other compensation to an employee or independent contractor;

(C) as payment of rent;

(D) as payment to a former partner, surviving spouse or representative of a deceased or disabled partner, or transferee of a partnership interest;

(E) as payment of interest or other charge on a loan, regardless of whether the amount of payment varies with the profits of the business, and including a direct or indirect present or future ownership interest in collateral or rights to income, proceeds, or increase in value derived from collateral; or

(F) as payment of consideration for the sale of a business or other property by installments or otherwise;

(2) co-ownership of property, whether in the form of joint tenancy, tenancy in common, tenancy by the entireties, joint property, community property, or part ownership, whether combined with sharing of profits from the property;

(3) sharing or having a right to share gross returns or revenues, regardless of whether the persons sharing the gross returns or revenues have a common or joint interest in the property from which the returns or revenues are derived; or

(4) ownership of mineral property under a joint operating agreement.

(c) **ADDITIONAL RULES.** An agreement to share losses by the owners of a business is not necessary to create a partnership. Except as provided by Sections 3.06 and 7.03, a person who is not a partner in a partnership under Section 2.02 is not a partner as to a third person and is not liable to a third person under this Act.

Sec. 2.04. **PARTNERSHIP PROPERTY NOT PROPERTY OF PARTNERS.** Partnership property is not property of the partners. Neither a partner nor a partner's spouse has an interest in partnership property.

Sec. 2.05. **PARTNERSHIP PROPERTY.** (a) **ACQUISITION IN CERTAIN NAMES.** Property is partnership property if acquired:

(1) in the name of the partnership; or

(2) in the name of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership, regardless of whether the name of the partnership is indicated.

(b) **PROPERTY IN PARTNERSHIP NAME.** Property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) **PROPERTY ACQUIRED WITH PARTNERSHIP PROPERTY.** Property is presumed to be partnership property if acquired with partnership property, whether acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) **PROPERTY ACQUIRED IN PARTNER'S NAME.** Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership, and without use of partnership property, is presumed to be the partner's property, regardless of whether the property is used for partnership purposes.

Sec. 2.06. **PARTNERSHIP CONTINUES UNTIL TERMINATED.** (a) **CONTINUATION OF PARTNERSHIP AFTER EVENT OF WITHDRAWAL.** A partnership continues after an event of withdrawal, but the event of withdrawal affects the relationships among the withdrawn partner, the partnership, and the continuing partners as provided by Sections 6.02, 7.01, 7.02, and 7.03.

(b) **EFFECT OF OCCURRENCE OF EVENT REQUIRING A WINDING UP.** On the occurrence of an event requiring a winding up of a partnership under Section 8.01, the partnership continues as provided by Section 8.03, but the relationship among the partners is changed as provided by Sections 8.02, 8.03, 8.04, 8.05, and 8.06.

(c) **EFFECT OF WITHDRAWAL ON RELATION BETWEEN CREDITOR AND PARTNERSHIP.** Relationships between a partnership and its creditors are not affected by the withdrawal of a partner or by the addition of a new partner.

ARTICLE III. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

Sec. 3.01. **GENERAL POWERS OF PARTNERSHIP.** Unless restricted by applicable law, a partnership has the same powers as an individual or corporation to do all things necessary or convenient to carry out its business and affairs, including the power to:

- (1) sue and be sued, complain, and defend in its partnership name;
- (2) purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (3) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (4) purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (5) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the partnership, and secure its obligations by mortgage or pledge of its property, franchises, or income;
- (6) lend money, invest, and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (7) be a promoter, partner, member, associate, or manager of a partnership, joint venture, trust, or other entity;
- (8) conduct its business, locate offices, and exercise the powers granted by this Act within or outside this state;
- (9) appoint employees and agents of the partnership, define their duties, fix their compensation, and lend them money or credit;
- (10) pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former partners, employees, and agents;
- (11) make donations for the public welfare or for charitable, scientific, or educational purposes;
- (12) transact any lawful business that will aid governmental policy;
- (13) make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the partnership;
- (14) enter into mergers and similar transactions to the extent permitted by applicable law;
- (15) indemnify a person who was, is, or is threatened to be made a defendant or respondent in a proceeding and purchase and maintain liability insurance for the person; and
- (16) exercise all of the rights and powers conferred by Sections 111.019 through 111.022, Natural Resources Code, and their subsequent amendments, if the partnership is engaged as a common carrier in the pipeline business for transporting oil, oil products, gas, carbon dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals, or other mineral solutions.

Sec. 3.02. BINDING EFFECT OF PARTNER'S ACT. (a) **PARTNER AGENT OF PARTNERSHIP AS TO PARTNERSHIP BUSINESS.** Each partner is an agent of the partnership for the purpose of its business. Unless the partner does not have authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows that the partner lacks authority, an act of a partner, including the execution of an instrument in the partnership name, binds the partnership if the act is for apparently carrying on in the usual way:

- (1) the partnership business; or
- (2) business of the kind carried on by the partnership.

(b) **ACT OUTSIDE SCOPE OF BUSINESS.** An act of a partner does not bind the partnership unless authorized by the other partners if the act is not apparently for carrying on in the usual way:

- (1) the partnership business; or
- (2) business of the kind carried on by the partnership.

(c) **CONVEYANCE OF REAL PROPERTY.** A conveyance of real property by the partner on behalf of the partnership not otherwise binding on the partnership does bind the partnership if the partnership real property has been conveyed by the grantee or a person claiming through the grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded that partner's authority.

Sec. 3.03. PARTNERSHIP LIABLE FOR PARTNER'S ACTIONABLE CONDUCT. (a) A partnership is liable for loss or injury to a person, including a partner, or for a penalty caused by or incurred as a result of a wrongful act or omission or other actionable conduct of a partner acting:

- (1) in the ordinary course of business of the partnership; or
- (2) with the authority of the partnership.

(b) A partnership is liable for the loss of money or property of a person not a partner that is received in the course of the partnership's business and misapplied by a partner while in the custody of the partnership.

Sec. 3.04. NATURE OF PARTNER'S LIABILITY PARTNERSHIP. Except as provided by Section 3.08(a) for a registered limited liability partnership, all partners are liable jointly and severally for all debts and obligations of the partnership unless otherwise agreed by the claimant or provided by law.

Sec. 3.05. ENFORCEMENT OF PARTNERSHIP AND PARTNER LIABILITY. (a) **PARTNERSHIP AS PARTY.** A partnership may sue and be sued in the name of the partnership.

(b) **ACTION AGAINST PARTNERSHIP AND PARTNERS.** An action may be brought against a partnership and any or all of the partners in the same action or in separate actions.

(c) **JUDGMENT AGAINST PARTNER.** A judgment against a partnership is not by itself a judgment against a partner, but a judgment may be entered against a partner who has been served with process in a suit against the partnership.

(d) **LIMITATION ON CREDITOR'S PURSUIT OF PARTNER'S PROPERTY.** Except as provided by Subsection (e), a creditor may proceed against one or more partners or their property to satisfy a judgment based on a claim that could have been successfully asserted against the partnership only if:

- (1) a judgment is also obtained against the partner; and
- (2) a judgment based on the same claim is obtained against the partnership that:
 - (A) has not been reversed or vacated; and
 - (B) remains unsatisfied for 90 days after:
 - (i) the date of entry of the judgment; or
 - (ii) the date of expiration or termination of the stay, if the judgment is contested by appropriate proceedings and execution on the judgment has been stayed.

(e) **CREDITOR'S DIRECT PURSUIT OF PARTNER'S PROPERTY.** Subsection (d) does not prohibit a creditor from proceeding directly against one or more partners or their property without first seeking satisfaction from partnership property if:

- (1) the partnership is a debtor in bankruptcy;
- (2) the creditor and the partnership agreed that the creditor is not required to comply with Subsection (d);
- (3) a court orders otherwise, based on a finding that partnership property subject to execution within the state is clearly insufficient to satisfy the judgment or that compliance with Subsection (d) is excessively burdensome; or
- (4) liability is imposed on the partner by law independently of the person's status as a partner.

Sec. 3.06. FALSE REPRESENTATION OF PARTNERSHIP. (a) **REPRESENTATION OF PARTNERSHIP.** A representation or other conduct indicating that a person is a partner with another person, if that is not the case, does not of itself create a partnership.

(b) **REPRESENTATION OF MEMBERSHIP IN PARTNERSHIP.** A representation or other conduct indicating that a person is a partner in an existing partnership, if that is not the case, does not of itself make that person a partner in the partnership.

(c) **CREDITOR'S RIGHTS GOVERNED BY OTHER LAW.** The rights of a person extending credit in reliance on a representation described by Subsections (a) or (b) are determined by law other than this Act, including the law of estoppel, agency, negligence, fraud, and unjust enrichment.

(d) **LEGAL STATUS OF PERSON MAKING MISREPRESENTATION.** The rights and duties of a person held liable under Subsection (c) are also determined by law other than this Act, including the law of estoppel, agency, negligence, fraud, and unjust enrichment.

Sec. 3.07. LIABILITY OF INCOMING PARTNER. A person admitted as a partner into an existing partnership does not have personal liability under Section 3.04 for an obligation of the partnership that:

- (1) arose before the partner's admission to the partnership;
- (2) relates to an action taken or omissions occurring before the partner's admission to the partnership; or
- (3) arises before or after the partner's admission under a contract or commitment entered into before the partner's admission to the partnership.

Sec. 3.08. LIABILITY IN AND REGISTRATION OF REGISTERED LIMITED LIABILITY PARTNERSHIP. (a) **LIABILITY OF PARTNER.** (1) A partner in a registered limited liability partnership is not individually liable for debts and obligations of the partnership arising from errors, omissions, negligence, incompetence, or malfeasance committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or a representative of the partnership not working under the supervision or direction of the first partner unless the first partner:

(A) was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative; or

(B) had notice or knowledge of the errors, omissions, negligence, incompetence, or malfeasance by the other partner or representative at the time of occurrence and then failed to take reasonable steps to prevent or cure the errors, omissions, negligence, incompetence, or malfeasance.

(2) Subsection (a)(1) does not affect:

(A) the joint and several liability of a partner for debts and obligations of the partnership arising from a cause other than the causes specified by Subsection (a)(1);

(B) the liability of a partnership to pay its debts and obligations out of partnership property; or

(C) the manner in which service of citation or other civil process may be served in an action against a partnership.

(3) In this subsection, "representative" includes an agent, servant, or employee of a registered limited liability partnership.

(b) **REGISTRATION.** (1) In addition to complying with Subsections (c) and (d)(1), to become a registered limited liability partnership, a partnership must file with the secretary of state an application stating:

(A) the name of the partnership;

(B) the federal tax identification number of the partnership;

(C) the street address of the partnership's principal office in this state and outside this state, as applicable;

(D) the number of partners at the date of application; and

(E) in brief, the partnership's business.

(2) The application must be executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners.

(3) Two copies of the application must be filed, accompanied by a fee of \$200 for each partner.

(4) A partnership is registered as a registered limited liability partnership on filing a completed initial or renewal application, in duplicate with the required fee, or on a later date specified in the application. A registration is not affected by later changes in the partners of the partnership.

(5) An initial application filed under this subsection and registered by the secretary of state expires one year after the date of registration or later effective date unless earlier withdrawn or revoked or unless renewed in accordance with Subdivision (7).

(6) A registration may be withdrawn by filing in duplicate with the secretary of state a written withdrawal notice executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. A withdrawal notice must include the name of the partnership, the federal tax identification number of the partnership, the date of registration of the partnership's last application under this section, and a current street address of the partnership's principal office in this state and outside this state, if applicable. A withdrawal notice terminates the status of the partnership as a registered limited liability partnership as of the date of filing the notice or a later date specified in the notice, but not later than the expiration date under Subdivision (5).

(7) An effective registration may be renewed before its expiration by filing in duplicate with the secretary of state an application containing current information of the kind required in an initial application and the most recent date of registration of the partnership. The renewal application must be accompanied by a fee of \$200 for each partner on the date of renewal. A renewal application filed under this section continues an effective registration for one year after the date the effective registration would otherwise expire.

(8) The secretary of state may remove from its active records the registration of a partnership whose registration has been withdrawn or revoked or has expired and not been renewed.

(9) The secretary of state may revoke the filing of a document filed under this subsection if the secretary of state determines that the filing fee for the document was paid by an instrument that was dishonored when presented by the state for payment. The secretary of state shall return the document and give notice of revocation to the filing party by regular mail. Failure to give or receive notice does not invalidate the revocation. A revocation of a filing does not affect an earlier filing.

(10) The secretary of state may provide forms for application for or renewal of registration.

(11) A document filed under this subsection may be amended or corrected by filing in duplicate with the secretary of state articles of amendment executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. The articles of amendment must contain the name of the partnership, the tax identification number of the partnership, the identity of the document being amended, the date on which the document being amended was filed, the part of the document being amended, and the amendment or correction. Two copies of the articles of amendment must be filed, accompanied by a fee of \$10 plus, if the amendment increases the number of partners, \$200 for each partner added by amendment of the number of partners.

(12) A document filed under this subsection may be a photographic, facsimile, or similar reproduction of a signed document. A signature on a document filed under this section may be a facsimile.

(13) A person commits an offense if the person signs a document the person knows is false in any material respect with the intent that the document be delivered on behalf of a partnership to the secretary of state for filing. An offense under this subdivision is a Class A misdemeanor.

(14) The secretary of state is not responsible for determining if a partnership is in compliance with the requirements of Subsection (d)(1).

(15) The secretary of state may adopt procedural rules on filing documents under this subsection.

(c) **NAME.** A registered limited liability partnership's name must contain the words "registered limited liability partnership" or the abbreviation "L.L.P." as the last words or letters of its name.

(d) **INSURANCE OR FINANCIAL RESPONSIBILITY.** (1) A registered limited liability partnership must:

(A) carry at least \$100,000 of liability insurance of a kind that is designed to cover the kinds of errors, omissions, negligence, incompetence, or malfeasance for which liability is limited by Subsection (a)(1); or

(B) provide \$100,000 of funds specifically designated and segregated for the satisfaction of judgments against the partnership based on the kinds of errors, omissions, negligence, incompetence, or malfeasance for which liability is limited by Subsection (a)(1) by:

(i) deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; or

(ii) a bank letter of credit or insurance company bond.

(2) If the registered limited liability partnership is in compliance with Subdivision (1), the requirements of this subsection shall not be admissible or in any way be made known to the jury in determining an issue of liability for or extent of the debt or obligation or damages in question.

(3) If compliance with Subdivision (1) is disputed:

(A) compliance must be determined separately from the trial or proceeding to determine the partnership debt or obligation in question, its amount, or partner liability for the debt or obligation; and

(B) the burden of proof of compliance is on the person claiming limitation of liability under Subsection (a)(1).

(e) **LIMITED PARTNERSHIP.** A limited partnership may become a registered limited liability partnership by complying with applicable provisions of the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes) and its subsequent amendments.

ARTICLE IV. RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

Sec. 4.01. **PARTNER'S RIGHTS AND DUTIES.** (a) **CAPITAL CREDITS AND CHARGES.** Each partner is credited with an amount equal to the cash plus the value of property the partner contributes to a partnership and the partner's share of the partnership's profits. Each partner is charged with an amount equal to the cash plus the value of other property distributed by the partnership to the partner and the partner's share of the partnership's losses.

(b) **PROFITS AND LOSSES.** Each partner is credited with an equal share of the profits of a partnership. Each partner is charged with a share of the losses, whether capital or operating, of the partnership in proportion to the partner's share of the profits.

(c) **DISPROPORTIONATE PAYMENT OR ADVANCE.** A partner who, in the proper conduct of the business of the partnership or for the preservation of its business or property, reasonably makes a payment or advance beyond the amount the partner agreed to contribute, or who reasonably incurs a liability, is entitled to be repaid and to receive interest from the date of the payment or advance or the inurrence of the liability.

(d) **PARTICIPATION IN MANAGEMENT.** Each partner has equal rights in the management and conduct of the business of a partnership. A partner's right to participate in the management and conduct of the business is not community property.

(e) **PARTNERSHIP PROPERTY.** A partner may use or possess partnership property only on behalf of the partnership.

(f) **COMPENSATION.** A partner is not entitled to compensation for services performed for a partnership other than reasonable compensation for services rendered in winding up the business of the partnership.

(g) **NEW PARTNER.** A person may become a partner only with the consent of all partners.

(h) **MAJORITY DECISION ON ORDINARY MATTER.** A difference arising as to a matter in the ordinary course of the business of the partnership may be decided by a majority-in-interest of the partners. An act outside the ordinary course of business of a partnership may be undertaken only with the consent of all partners.

(i) **AMENDMENT OF AGREEMENT.** An amendment to a partnership agreement may be effected only with the consent of all partners.

(j) **PARTNERSHIP OBLIGATION.** This section does not limit a partnership's obligation to another person under Section 3.02.

(k) **PARTNER TRANSACTION OF BUSINESS WITH PARTNERSHIP.** A partner may lend money to or transact other business with a partnership and, subject to other applicable law, has the same rights and obligations with respect to that matter as a person who is not a partner.

(l) **CLASSES OR GROUPS OF PARTNERS.** A written partnership agreement may establish classes or groups of one or more partners having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation of additional classes or groups of partners having certain relative rights, powers, and duties, including voting rights, expressed in the partnership agreement or at the time of creation of the class or group. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of partners.

(m) **VOTING RIGHTS.** A written partnership agreement that grants or provides for granting to a partner a right to vote may contain provisions relating to:

- (1) giving notice of the time, place, or purposes of a meeting at which a matter is to be voted on by the partners;
- (2) waiver of notice;
- (3) action by consent without a meeting;
- (4) the establishment of a record date;
- (5) quorum requirements;
- (6) voting in person or by proxy; or
- (7) any other matter relating to the exercise of the right to vote.

(n) **NOTICE OF NONUNANIMOUS ACTION.** (1) Prompt notice of the taking of an action under an agreement that requires consent of fewer than all of the partners and that may be taken without a meeting shall be given to the partners who have not consented in writing to the action.

(2) For the purposes of this section, the taking of an action includes amending the partnership agreement or creating, under provisions of the partnership agreement, a class of partner that did not previously exist.

Sec. 4.02. **DISTRIBUTION IN KIND.** A partner does not have a right to receive, and may not be required to accept, a distribution in kind.

Sec. 4.03. **INFORMATION REGARDING A PARTNERSHIP.** (a) **BOOKS AND RECORDS AT CHIEF EXECUTIVE OFFICE.** A partnership shall keep its books and records, if any, at its chief executive office.

(b) **ACCESS TO BOOKS AND RECORDS.** A partnership shall provide access to its books and records to partners and their agents and attorneys. The partnership shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which the former partners were partners or for any other proper purpose with respect to another period. The right of access includes the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) **INFORMATION CONCERNING THE PARTNERSHIP.** Each partner and the partnership shall furnish, on request and to the extent just and reasonable, to a partner, the legal representative of a deceased partner or a partner under legal disability, or an assignee,

complete and accurate information concerning the partnership. A legal representative of a deceased partner or a partner under legal disability and an assignee are subject to the same duties as a partner with respect to information made available.

Sec. 4.04. GENERAL STANDARDS OF PARTNER'S CONDUCT. (a) DUTIES. A partner owes to the partnership and the other partners:

- (1) a duty of loyalty; and
- (2) a duty of care.

(b) LOYALTY. A partner's duty of loyalty includes:

(1) accounting to the partnership and holding for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or from use by the partner of partnership property;

(2) refraining from dealing with the partnership on behalf of a party having an interest adverse to the partnership; and

(3) refraining from competing with the partnership or dealing with the partnership in a manner adverse to the partnership.

(c) CARE. A partner's duty of care to the partnership and the other partners is to act in the conduct and winding up of the partnership business with the care an ordinarily prudent person would exercise in similar circumstances. An error in judgment does not by itself constitute a breach of this duty of care. A partner is presumed to satisfy this duty if the partner acts on an informed basis and in compliance with Subsection (d).

(d) METHOD OF DISCHARGE. A partner shall discharge the partner's duties to the partnership and the other partners under this Act or under the partnership agreement, and exercise any rights and powers in the conduct or winding up of the partnership business:

- (1) in good faith; and
- (2) in a manner the partner reasonably believes to be in the best interest of the partnership.

(e) EFFECT OF PARTNER BENEFIT. A partner does not violate a duty or obligation under this Act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) TRUSTEE STANDARD INAPPLICABLE. A partner, in that capacity, is not a trustee and is not held to the same standards as a trustee.

(g) APPLICATION TO NONPARTNER WINDING UP. This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

Sec. 4.05. PARTNER'S LIABILITY TO PARTNERSHIP. A partner is liable to a partnership and the other partners for a breach of the partnership agreement or for a violation of a duty to the partnership or the other partners under this Act that causes harm to the partnership or the other partners.

Sec. 4.06. REMEDIES OF PARTNERSHIP AND PARTNERS. (a) ACTION BY PARTNERSHIP. A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership causing harm to the partnership.

(b) ACTION BY PARTNER. A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to:

- (1) enforce a right under the partnership agreement;
- (2) enforce a right under this Act, including:
 - (A) the partner's rights under Sections 4.01, 4.03, and 4.04;
 - (B) the partner's right on withdrawal to have the partner's interest in the partnership redeemed under Section 7.01 or enforce any other right under Article 6 or 7; and
 - (C) the partner's rights under Article 8; or

(3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) ACCRUAL OF ACTION. The accrual of and a time limitation on a right of action for a remedy under this section is governed by other law.

(d) NO REVIVAL BY ACCOUNTING. A right to an accounting does not revive a claim barred by law.

Sec. 4.07. CONTINUATION OF PARTNERSHIP. (a) CONTINUATION BY EXPRESS AGREEMENT. If all the partners in a partnership for a definite term or a particular undertaking or for which the partnership agreement provides for winding up on a specified event agree to continue the business of the partnership despite the expiration of the term, the completion of the undertaking, or the occurrence of the event, other than the withdrawal of a partner, the partnership is continued and the partnership agreement is considered amended to provide that the expiration, the completion, or the occurrence of the event did not result in an event requiring the winding up of the partnership business.

(b) CONTINUATION BY ACTION. A continuation of the business for 90 days by the partners or those who habitually acted in the business during the term or undertaking or preceding the event, without a settlement or liquidation of the partnership business and without objection from a partner, is prima facie evidence of agreement by all partners to continue the business.

ARTICLE V. TRANSFEREE OF PARTNER

Sec. 5.01. PARTNER'S INTEREST IN PARTNERSHIP PROPERTY NOT TRANSFERABLE. A partner is not a co-owner of partnership property and does not have an interest that can be transferred, either voluntarily or involuntarily, in partnership property.

Sec. 5.02. NATURE OF PARTNER'S PARTNERSHIP INTEREST. (a) PERSONAL PROPERTY. A partner's partnership interest is personal property for all purposes. A partner's partnership interest may be community property under applicable law.

(b) CERTIFICATE EVIDENCING INTEREST. A written partnership agreement may:

(1) provide that a partner's partnership interest may be evidenced by a certificate of partnership interest issued by the partnership;

(2) provide for the assignment or transfer of a partnership interest represented by the certificate; and

(3) make other provisions with respect to the certificate.

Sec. 5.03. TRANSFER OF PARTNER'S PARTNERSHIP INTEREST. (a) ACT OF TRANSFER. A transfer of a partner's partnership interest:

(1) is permissible, in whole or in part;

(2) is not an event of withdrawal;

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

(4) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business.

(b) BASIC RIGHTS OF TRANSFEREE. A transferee of a partner's partnership interest is entitled to receive, to the extent transferred, distributions to which the transferor otherwise would be entitled. After transfer, the transferor continues to have the rights and duties of a partner other than the interest transferred. Until a transferee becomes a partner, the transferee does not have liability as a partner solely as a result of the transfer. For a proper purpose the transferee may require reasonable information or an account of partnership transactions and make reasonable inspection of the partnership books.

(c) RIGHTS OF TRANSFEREE ON WINDING UP. If an event requires a winding up of partnership business under Section 8.01, a transferee is entitled to receive, to the extent transferred, the net amount otherwise distributable to the transferor. In a winding up a transferee may require an accounting only from the date of the latest account agreed to by all of the partners.

(d) NOTICE TO PARTNERSHIP. Until receipt of notice of a transfer, a partnership does not have a duty to give effect to a transferee's rights under this section.

(e) NO EFFECT IF PROHIBITED. A partnership does not have a duty to give effect to a transfer, assignment, or grant of a security interest prohibited by a partnership agreement.

Sec. 5.04. EFFECT OF DEATH OR DIVORCE ON PARTNERSHIP INTEREST. (a) DIVORCE. On the divorce of a partner, the partner's spouse, to the extent of the spouse's partnership interest, shall be regarded for purposes of this Act as a transferee of the partnership interest from the partner.

(b) DEATH OF PARTNER. On the death of a partner, the partner's surviving spouse, if any, and the partner's heirs, legatees, or personal representative, to the extent of their respective partnership interests, shall be regarded for purposes of this Act as transferees of the partnership interests from the partner.

(c) DEATH OF PARTNER'S SPOUSE. On the death of a partner's spouse, the spouse's heirs, legatees or personal representative, to the extent of their respective partnership interests, shall be regarded for purposes of this Act as transferees of the partnership interest from the partner.

(d) EVENT INVOLVING PARTNER'S SPOUSE NOT WITHDRAWAL. An event of the type described in Section 6.01 occurring with respect to a partner's spouse is not an event of withdrawal.

(e) NO IMPAIRMENT OF PURCHASE RIGHTS. This Act does not impair an agreement for the purchase or sale of a partnership interest at the time of death of the owner of the partnership interest or at any other time.

ARTICLE VI. EVENTS OF WITHDRAWAL

Sec. 6.01. EVENTS OF WITHDRAWAL. (a) NO LONGER A PARTNER. A person ceases to be a partner on the occurrence of an event of withdrawal.

(b) EVENT OF WITHDRAWAL. An event of withdrawal of a partner occurs on:

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

(2) an event specified in the partnership agreement as causing the partner's withdrawal;

(3) the partner's expulsion as provided in the partnership agreement;

(4) the partner's expulsion by the vote of a majority-in-interest of the other partners if:

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

(B) there has been a transfer of all or substantially all of that partner's partnership interest, other than:

(i) a transfer for security purposes that has not been foreclosed; or

(ii) the substitution of a successor trustee or successor personal representative;

(C) within 90 days after the date the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution is not revoked or its charter or its right to conduct business is not reinstated; or

(D) an event requiring a winding up has occurred with respect to a partnership that is a partner;

(5) application by the partnership or another partner for the partner's expulsion by judicial decree because:

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

(B) the partner wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 4.04; or

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

(6) the partner:

(A) becoming a debtor in bankruptcy;

(B) executing an assignment for the benefit of creditors;

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

(D) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the date of expiration of a stay to have the appointment vacated;

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

(A) the partner's death;

(B) the appointment of a guardian or general conservator for the partner; or

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

(8) termination of a partner's existence;

(9) in the case of a partner that has transferred all of the partner's partnership interest, redemption of the transferee's interest under Sections 7.01(n)-(r); or

(10) an agreement to continue the partnership under Section 8.01(g) if the partnership has received a notice from the partner under Section 8.01(g) requesting that the partnership be wound up.

Sec. 6.02. WRONGFUL WITHDRAWAL. (a) **POWER TO WITHDRAW.** A partner at any time before the occurrence of an event requiring a winding up has the power to withdraw from the partnership and cease to be a partner as provided by Section 6.01.

(b) **WRONGFUL WITHDRAWAL.** A partner's withdrawal is wrongful only if:

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

(2) in the case of a partnership for a definite term or particular undertaking or for which the partnership agreement provides for winding up on a specified event, before the expiration of the term, the completion of the undertaking, or the occurrence of the event:

(A) the partner withdraws by express will; or

(B) in the case of a partner that is not an individual, a trust other than a business trust, or an estate, the partner is expelled or otherwise withdraws because the partner wilfully terminated; or

(3) the partner is expelled by judicial decree under Section 6.01(b)(5).

(c) **LIABILITY FOR DAMAGES.** A wrongfully withdrawing partner is liable to the partnership and to the other partners for damages caused by the withdrawal, in addition to other liability of the partner to the partnership or to the other partners.

ARTICLE VII. PARTNER'S WITHDRAWAL IF BUSINESS NOT WOUND UP

Sec. 7.01. REDEMPTION OF WITHDRAWING PARTNER OR TRANSFEREE'S INTEREST IF PARTNERSHIP NOT WOUND UP. (a) **REDEMPTION.** If an event of withdrawal occurs under Sections 6.01(b)(1)-(9) and an event requiring a winding up does not occur within 60 days after the date of the withdrawal, or on a partner's withdrawal under Section 6.01(b)(10), the partnership interest of the withdrawn partner automatically is redeemed by the partnership as of the date of withdrawal in accordance with this section.

(b) **REDEMPTION PRICE.** (1) The redemption price of a withdrawn partner's partnership interest is the fair value of the interest as of the date of withdrawal, except that the redemption price of the partnership interest of a partner who wrongfully withdraws before the expiration of a definite term, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up is the lesser of:

(A) the fair value of the withdrawn partner's partnership interest as of the date of withdrawal; or

(B) the amount that the withdrawn partner would have received if an event requiring a winding up had occurred at the time of the partner's withdrawal.

(2) Interest is payable on the amount owed under this subsection.

(c) **CONTRIBUTIONS FROM WRONGFULLY WITHDRAWING PARTNER.** If a wrongfully withdrawing partner would have been liable to make contributions to the partnership under Section 8.06(b) or (c) if an event requiring winding up had occurred at the time of withdrawal, the withdrawn partner is liable to the partnership to make contributions in that amount to the partnership, plus interest on the amount owed.

(d) **SETOFF.** The partnership may set off the damages for wrongful withdrawal under Section 6.02(b) and all other amounts owed by the withdrawn partner to the partnership, whether currently due, including interest, against the redemption price payable to the withdrawn partner.

(e) **INTEREST.** Interest owed under Subsection (b), (c), or (d) accrues from the date of the withdrawal to the date of payment.

(f) **INDEMNITY.** (1) A partnership shall indemnify a withdrawn partner against a partnership liability incurred before the withdrawal except a liability:

(A) then unknown to the partnership; or

(B) incurred by an act of the withdrawn partner under Section 7.02.

(2) For purposes of this subsection, a liability not known to a partner other than the withdrawn partner is not known to the partnership.

(g) **TENDER OF REDEMPTION PRICE.** If a deferred payment is not authorized under Subsection (k) and an agreement on the redemption price of a withdrawn partner's interest is not reached within 120 days after the date of a written demand for payment by either party, within 30 days after the expiration of the 120-day period the partnership shall:

(1) pay in cash to the withdrawn partner the amount the partnership estimates to be the redemption price plus accrued interest, reduced by any setoffs and accrued interest under Subsection (d); or

(2) make written demand for payment of its estimate of the amount owed by the withdrawn partner, net of amounts owed to the partner, to the partnership.

(h) **WRITTEN OFFER TO PAY OR DEMAND FOR PAYMENT.** If a deferred payment is authorized under Subsection (k) or a contribution or other amount is owed by the withdrawn partner to the partnership, the partnership may tender a written offer to pay or deliver a written statement of demand for the amount that it estimates to be the net amount owed to it, stating the amount and other terms and conditions of the obligation.

(i) **EXPLANATORY STATEMENT ACCOMPANYING OR FOLLOWING TENDER.** On request of the other party, the payment, tender, or demand required or allowed by Subsection (g) or (h) must be accompanied or followed promptly by:

(1) a statement of partnership property and liabilities as of the date of the partner's withdrawal and the latest available partnership balance sheet and income statement, if any, if payment, tender, or demand is made or delivered by the partnership; and

(2) an explanation of the computation of the estimated payment obligation.

(j) **TENDER IN FULL SATISFACTION.** The terms of a payment or tender under Subsection (g) or (h) govern a redemption if:

(1) the payment or tender is accompanied by written notice that:

(A) the payment or tendered amount, if made, is in full satisfaction of a party's obligations relating to the redemption of the withdrawn partner's partnership interest; and

(B) an action to determine the redemption price, a contribution obligation or setoff under Subsection (c) or (d), or other terms of the redemption obligation must be commenced within one year after the later of:

(i) the date the written notice is given; or

(ii) the date of delivery of the information required by Subsection (i); and

(2) the party receiving the payment or tender does not commence an action within that one-year period.

(k) **DEFERRAL OF PAYMENT TO WRONGFULLY WITHDRAWING PARTNER.** A partner who wrongfully withdraws before the expiration of a definite term, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up is not entitled to receive any portion of the redemption price until the expiration of the term, the completion of the undertaking, or the occurrence of the specified event unless the partner establishes to the satisfaction of a court that earlier payment will not cause undue hardship to the partnership. A deferred payment bears interest. The withdrawn partner may seek to demonstrate to the satisfaction of the court that security for a deferred payment is appropriate.

(l) **ACTION TO DETERMINE REDEMPTION TERMS.** A withdrawn partner or the partnership may maintain an action against the other party under Section 4.06 to determine the terms of redemption of that partner's interest, including a contribution obligation or setoff under Subsection (c) or (d) or other terms of the redemption obligations of either party. The action must be commenced within one year after the later of the date of delivery of information required by Subsection (i) or the date written notice is given under Subsection (j). The court shall determine the terms of the redemption of the withdrawn partner's interest, any contribution obligation or setoff due under Subsection (c) or (d), and accrued interest and enter judgment for an additional payment or refund. If deferred payment is authorized under Subsection (k), the court shall also determine the security for payment if requested to consider whether security is appropriate. If the court finds that a party acted arbitrarily, vexatiously, or not in good faith, including failure to tender payment or make an offer to pay or to comply with the requirements of Subsection (i), the court may assess damages against the party, including if appropriate a share of the profits of the continuing business, reasonable attorney's fees, and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable.

(m) **DEFERRAL OF PAYMENT ON OCCURRENCE OF EVENT REQUIRING WINDING UP.** If a partner withdraws under Section 6.01 and an event occurs within 60 days of the date of withdrawal that requires a winding up of the partnership under Section 8.01:

(1) the partnership may defer paying the redemption price to the withdrawn partner until the partnership first makes a winding up distribution to the remaining partners; and

(2) the redemption price or contribution obligation is the amount the withdrawn partner would have received or contributed if the event requiring a winding up had occurred at the time of the partner's withdrawal.

(n) **OBLIGATION TO REDEEM TRANSFEREE.** A partnership must redeem the partnership interest of a transferee for its fair value if:

(1) the interest was transferred when:

(A) the partnership was for a definite term not then expired or a particular undertaking not then completed; or

(B) the partnership agreement provided for winding up on a specified event that has not yet occurred;

(2) the definite term has expired, the particular undertaking has been completed, or the specified event has occurred; and

(3) the transferee makes a written demand for redemption.

(o) **PAYMENT TO TRANSFEREE.** If an agreement for the redemption price of a transferee's interest is not reached within 120 days after the date of a written demand for redemption, within 30 days after the expiration of the 120-day period the partnership must pay in cash to the transferee the amount the partnership estimates to be the redemption price, plus accrued interest from the date of demand.

(p) **INFORMATION TO TRANSFEREE.** On request of the transferee, the payment required by Subsection (o) must be accompanied or followed by:

(1) a statement of partnership property and liabilities as of the date of the demand for redemption;

(2) the latest available partnership balance sheet and income statement, if any; and

(3) an explanation of the computation of the estimated payment obligation.

(q) **PRICE FOR TRANSFEREE.** If payment required by Subsection (o) is accompanied by written notice that the payment is in full satisfaction of the partnership's obligations relating to the redemption of the transferee's interest, the payment, less interest, is the redemption price unless the transferee within one year after the date of the written notice commences an action to determine the redemption price.

(r) **SUIT BY TRANSFEREE.** A transferee may maintain an action against a partnership to determine the redemption price of the transferee's interest. The court shall determine the redemption price of the transferee's interest and accrued interest and enter judgment for payment or refund. If the court finds that the partnership acted arbitrarily, vexatiously, or not in good faith, including failure to make payment, the court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against the partnership.

(s) **DEFERRAL OF TRANSFEREE REDEMPTION.** The redemption of a transferee's interest under Subsections (n) and (o) may be deferred as determined by the court if the partnership establishes to the satisfaction of the court that failure to defer redemption will cause undue hardship to the business of the partnership.

Sec. 7.02. WITHDRAWN PARTNER'S POWER TO BIND PARTNERSHIP. (a) **POWER TO BIND FOR ONE YEAR.** The action of a withdrawn partner within one year after the date of the person's withdrawal binds the partnership if the transaction is one that would bind the partnership before the person's withdrawal and the other party to the transaction:

(1) does not have notice of the person's withdrawal as a partner;

(2) had done business with the partnership within one year preceding the date of withdrawal; and

(3) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

(b) **WITHDRAWN PARTNER'S LIABILITY FOR LOSS.** A withdrawn partner is liable to the partnership for loss caused to the partnership arising from an obligation incurred by the withdrawn partner after withdrawal and for which the partnership is liable under Subsection (a).

Sec. 7.03. EFFECT OF WITHDRAWAL ON PARTNER'S EXISTING LIABILITY. (a) **WITHDRAWAL DOES NOT DISCHARGE LIABILITY.** Withdrawal of a partner does not of itself discharge the partner's liability for an obligation of the partnership incurred before withdrawal.

(b) **LIABILITY OF DECEASED PARTNER'S ESTATE.** The estate of a deceased partner is liable for an obligation of the partnership incurred while the deceased was a partner to the same extent that a withdrawn partner is liable for an obligation of the partnership incurred before withdrawal.

(c) **DISCHARGE OF WITHDRAWN PARTNER BY AGREEMENT OF CREDITOR.** A withdrawn partner is discharged from liability incurred before the withdrawal by an agreement to that effect between the partner and a partnership creditor.

(d) **MATERIAL ALTERATION OF OBLIGATION WITHOUT CONSENT DISCHARGES WITHDRAWN PARTNER.** If a creditor of a partnership has notice of a partner's withdrawal and without the consent of the withdrawn partner agrees to a material alteration in the nature or time of payment of an obligation of the partnership incurred before the withdrawal, the withdrawn partner is discharged from the obligation.

(e) **LIABILITY OF WITHDRAWN PARTNER TO CREDITOR.** A person who withdraws as a partner in a circumstance that does not constitute an event requiring a winding up under Section 8.01 is liable as a partner to another party in a transaction entered into by the partnership or a surviving partnership under Section 9.02 within two years after the date of the partner's withdrawal only if the other party to the transaction:

- (1) does not have notice of the partner's withdrawal; and
- (2) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

ARTICLE VIII. WINDING UP PARTNERSHIP BUSINESS

Sec. 8.01. EVENTS REQUIRING WINDING UP OF PARTNERSHIP. (a) EXPRESS WILL OF MAJORITY-IN-INTEREST IN CERTAIN PARTNERSHIPS. In a partnership that is not for a definite term or a particular undertaking or in which the partnership agreement does not provide for winding up on a specified event, the express will of a majority-in-interest of the partners who have not assigned their interests requires a winding up of the partnership.

(b) **TERM OR UNDERTAKING.** In a partnership for a definite term or particular undertaking, winding up is required on:

- (1) the express will of all the partners; or
- (2) the expiration of the term or the completion of the undertaking, unless otherwise continued under Section 4.07.

(c) **AGREEMENT ON SPECIFIED EVENT.** In a partnership in which the partnership agreement provides for winding up on a specified event, winding up is required on:

- (1) the express will of all the partners; or
- (2) the occurrence of the specified event, unless otherwise continued under Section 4.07.

(d) **ILLEGAL TO CONTINUE.** An event that makes it illegal for all or substantially all of the business of the partnership to be continued requires a winding up of a partnership, but a cure of illegality within 90 days after the date of notice to the partnership of the event is effective retroactively to the date of the event for purposes of this subsection.

(e) **JUDICIAL DECREE.** A judicial decree, on application by a partner, requires a winding up if the decree determines that:

- (1) the economic purpose of the partnership is likely to be unreasonably frustrated;
- (2) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or
- (3) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

(f) **SALE OF PROPERTY.** The sale of all or substantially all of the property of the partnership outside the ordinary course of business requires a winding up of a partnership.

(g) **NOTICE FROM PARTNER IF NO TERM OR UNDERTAKING; OPTION TO CONTINUE.** If a partnership is not for a definite term or a particular undertaking and its partnership agreement does not provide for a specified event requiring a winding up, a request for winding up the partnership from a partner, other than a partner who has agreed not to withdraw, requires a winding up 60 days after the date of the partnership's receipt of notice of the request or at a later date as specified by the notice, unless a majority-in-interest of the partners agree to continue the partnership. The continuation of the business by the other partners or by those who habitually acted in the business before the notice, other than the partner giving the notice, without any settlement or liquidation of the partnership business, is prima facie evidence of an agreement to continue the partnership.

Sec. 8.02. PARTNERSHIP CONTINUES AFTER OCCURRENCE OF EVENT REQUIRING WINDING UP. A partnership continues after the occurrence of an event requiring winding up until the winding up of its business is completed, at which time the partnership is terminated.

Sec. 8.03. CONDUCT OF WINDING UP. (a) PERSONS AUTHORIZED TO WIND UP. After the occurrence of an event requiring a winding up:

- (1) the partners who have not withdrawn may wind up a partnership's business;

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

(3) on application of a partner, a partner's legal representative or transferee, or a withdrawn partner whose interest is not redeemed under Section 7.01(k), a court, for good cause, may appoint a person to carry out the winding up and may make an order, direction, or inquiry that the circumstances require.

(b) **AUTHORIZED ACTIONS.** To the extent appropriate for winding up, as soon as reasonably practicable, and in the name of and for and on behalf of the partnership, a person winding up a partnership's business may:

- (1) prosecute and defend civil, criminal, or administrative suits;
- (2) settle and close the partnership's business;
- (3) dispose of and convey the partnership's property;
- (4) satisfy or provide for the satisfaction of the partnership's liabilities;
- (5) distribute to the partners any remaining property of the partnership; and
- (6) perform any other necessary act.

(c) **CONTINUATION TO PRESERVE VALUE.** A person winding up a partnership's business may continue the business of the partnership in whole or in part, including delaying the disposition of partnership property, but only for the limited period necessary to avoid unreasonable loss of the partnership's property or business.

Sec. 8.04. **PARTNER'S LIABILITY TO OTHER PARTNERS AFTER OCCURRENCE OF EVENT REQUIRING WINDING UP.** (a) **LIABILITY OF ALL PARTNERS FOR LOSSES.** Except as provided by Subsection (b), after occurrence of an event requiring winding up the losses with respect to which a partner must contribute under Section 8.06(c) include losses from any liabilities incurred under Section 8.05.

(b) **INDIVIDUAL LIABILITY OF ACTING PARTNER FOR LOSSES.** A partner who, with notice that an event requiring a winding up has occurred, incurs a partnership liability under Section 8.05(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for a loss caused to the partnership arising from that liability.

Sec. 8.05. **PARTNER'S POWER TO BIND PARTNERSHIP AFTER OCCURRENCE OF EVENT REQUIRING WINDING UP.** After the occurrence of an event requiring winding up, a partnership is bound by a partner's act that:

- (1) is appropriate for winding up the partnership business; or
- (2) would bind the partnership under Section 3.02 before the occurrence of the event requiring winding up, if the other party to the transaction does not have notice that an event requiring winding up has occurred.

Sec. 8.06. **RULES FOR DISTRIBUTION ON WINDING UP.** (a) **APPLICATION OF PROPERTY TO OBLIGATIONS.** In winding up the partnership business, the property of the partnership must be applied to discharge its obligations to creditors, including partners who are creditors other than in their capacities as partners. A surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Subsection (b).

(b) **SETTLEMENT OF ACCOUNTS AMONG PARTNERS.** Each partner is entitled to a settlement of all partnership accounts on winding up the partnership business. In settling accounts among the partners, the partnership interest of a withdrawn partner that is not redeemed under Section 7.01 is credited with a share of any profits for the period after the partner's withdrawal but is charged with a share of losses for that period only to the extent of profits credited for that period, and the profits and losses that result from the liquidation of the partnership property must be credited and charged to the partners' capital accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive balance in the partner's capital account. A partner shall contribute to the partnership an amount equal to that partner's negative balance in the partner's capital account.

(c) **CONTRIBUTION TO SATISFY OBLIGATIONS.** To the extent not taken into account in settling the accounts among partners under Subsection (b), each partner must

contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations, excluding liabilities that creditors have agreed may be satisfied only with partnership property without recourse to individual partners. If a partner fails to contribute, the other partners shall contribute, in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or partner's legal representative may enforce or recover from the other partners, or from the estate of a deceased partner, contributions the partner or estate makes to the extent the amount contributed exceeds that partner's or the estate's share of the partnership obligations.

(d) **LIABILITY OF DECEASED PARTNER'S ESTATE.** The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(e) **ENFORCEMENT OF OBLIGATION OF ESTATE OF DECEASED PARTNER.** The partnership, an assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner may enforce the obligation of a partner or the estate of a deceased partner to contribute to a partnership.

ARTICLE IX. PARTNERSHIP CONVERSIONS, MERGERS, AND EXCHANGES

Sec. 9.01. **CONVERSIONS.** (a) **GENERAL TO LIMITED PARTNERSHIP.** A partnership that is not a limited partnership may convert, with the consent of a majority-in-interest of the partners, to a domestic or foreign limited partnership by properly filing a certificate of limited partnership in the state in which the limited partnership is to be formed. If the limited partnership is formed under the law of this state, in addition to other matters required, the certificate must state:

- (1) that the partnership is converting from a partnership that is not a limited partnership to a limited partnership;
- (2) the name or names of the partnership before the conversion to a limited partnership;
- (3) the names of the general partners before the conversion;
- (4) the state in which the partnership was organized before conversion;
- (5) the change in name required, if any, in connection with the operation of the partnership as a limited partnership in this state; and
- (6) the effective date of the conversion if different from the date the certificate is filed.

If a partnership that is not a limited partnership converts to a limited partnership, a partner who did not consent to the conversion is considered to be a partner who has withdrawn from the partnership effective immediately before the effective date of the conversion unless, within 60 days after the later of the effective date of the conversion or the date the partner receives actual notice of the conversion, the partner notifies the partnership in writing of the partner's desire not to withdraw. A withdrawal under the described circumstances is not a wrongful withdrawal.

(b) **LIMITED TO GENERAL.** A domestic or foreign limited partnership may convert, on the affirmative vote of a majority-in-interest of the partners, to a partnership that is not a limited partnership by:

- (1) cancelling its certificate of limited partnership in the state of formation or otherwise complying with the provisions of that state's law as of the date that partnership's existence terminated;
- (2) amending its partnership agreement to reflect its change in status and any change in name required to comply with this Act; and
- (3) stating the effective date of the conversion in the partnership agreement if different from the date of the cancellation of the limited partnership certificate.

If a limited partnership converts to a partnership that is not a limited partnership, a partner who did not consent to the conversion is considered to be a partner who has withdrawn from the limited partnership effective immediately before the effective date of the conversion unless, within 60 days after the later of the effective date of the conversion or the date the partner receives actual notice of the conversion, the partner notifies the partnership

in writing of the partner's desire not to withdraw. A withdrawal under the described circumstances is not a wrongful withdrawal.

(c) **LIABILITY OF FORMER LIMITED PARTNER.** A limited partner who remains in a partnership that results from the conversion of a limited partnership to a partnership that is not a limited partnership is treated as an incoming partner in the partnership as of the effective date of the conversion for purposes of determining the partner's liability:

- (1) to the partners of the partnership; and
- (2) for the debts and obligations of the partnership.

(d) **LIABILITY OF GENERAL PARTNER IN CONVERTED LIMITED PARTNERSHIP.** If a partnership that is not a limited partnership converts to a limited partnership, a partner who converts to a limited partner continues to be liable to the partners of the partnership and for a debt or obligation of the partnership incurred before the date of conversion on the same basis as a withdrawn partner remains liable to the partners of the partnership or for a debt or obligation of a partnership incurred before withdrawal.

(e) **AUTHORITY OF FORMER PARTNER WHO IS LIMITED PARTNER IN CONVERTED LIMITED PARTNERSHIP.** If a partnership that is not a limited partnership converts to a limited partnership, an action of a partner who converts to a limited partner that is taken within one year after the effective date of the conversion binds the partnership to a transaction for which the former partner no longer has authority to bind the partnership if:

- (1) the transaction is one in which the partner's action would bind the partnership before the effective date of the conversion; and
- (2) the other party to the transaction:
 - (A) does not have notice of the person's conversion to a limited partner;
 - (B) has done business with the partnership within one year preceding the effective date of the conversion; and
 - (C) reasonably believed that the partner who converted was a partner with authority to bind the partnership to the transaction at the time of the transaction.

(f) **EFFECTIVE DATE OF CONVERSION.** A conversion of a partnership that is not a limited partnership to a limited partnership or a conversion of a limited partnership to a partnership that is not a limited partnership is effective on the later of the date specified in a written agreement concerning the conversion between the partners or the date all actions required by this section have been completed.

Sec. 9.02. MERGERS. (a) **ADOPTION OF PLAN.** A partnership may adopt a plan of merger and one or more partnerships may merge with one or more domestic or foreign partnerships or other entities if each domestic or foreign partnership that is a party to the plan of merger approves the plan of merger in the manner prescribed for mergers in its partnership agreement or constituent documents or by applicable law. If one or more foreign partnerships or other entities is a party to the merger or is to be created by the terms of the plan of merger:

- (1) the merger must be permitted by:

(A) the laws under which each foreign partnership and each other entity that is a party to the merger is formed or organized; or

(B) the partnership agreement or other constituent documents of the foreign partnership or other entity not inconsistent with those laws; and

- (2) each foreign partnership or other entity that is a party to the merger must comply with the laws or documents in effecting the merger.

(b) **CONTENTS OF PLAN OF MERGER.** If a partnership merges with one or more domestic or foreign limited partnerships or other entities, other than another partnership that is not a limited partnership, a plan of merger must be adopted. The plan must include:

- (1) the name and state of organization of:

(A) each domestic or foreign partnership or other entity that is a party to the merger;

(B) each domestic or foreign partnership or other entity, if any, that will survive the merger, which may be one or more of the domestic or foreign partnerships or other entities who are a party to the merger; and

(C) each new domestic or foreign partnership or other entity, if any, that may be created by the terms of the plan of merger;

(2) the terms and conditions of the merger, including, if more than one domestic or foreign partnership or other entity is to survive or to be created by the terms of the plan of merger, the manner and basis of:

(A) allocating and vesting the real estate and other property of each domestic or foreign partnership and of each other entity that is a party to the merger among one or more of the surviving or new domestic or foreign partnerships or other entities; and

(B) allocating all liabilities and obligations of each domestic or foreign partnership and other entity that is a party to the merger, or making adequate provision for the payment and discharge of the liabilities and obligations, among one or more of the surviving or new domestic or foreign partnerships or other entities;

(3) the manner and basis of converting any of the partnership interests or other evidences of ownership of each domestic or foreign partnership and other entity that is a party to the merger into:

(A) partnership interests, shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving or new domestic or foreign partnerships or other entities;

(B) cash; or

(C) other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of another person or entity; or

(D) any combination of those items;

(4) the certificate of limited partnership, articles of incorporation, articles of organization, or other organizational documents of each other entity that is to be created or will act as a surviving entity by the terms of the plan of merger;

(5) the names of the principal officer of the surviving entities and the registered office and registered agent of the surviving entities if a registered office or agent is required by the laws under which the surviving entities are formed;

(6) a statement describing whether the surviving entity is a partnership, limited partnership, corporation, limited liability company, or other entity; and

(7) other provisions relating to the merger.

(c) **CERTIFICATE OF MERGER.** After a plan of merger has been approved by each of the partnerships or other entities that is a party to the plan of merger and a partnership merges with one or more domestic or foreign limited partnerships or other entities, a certificate of merger shall be executed on behalf of each partnership or other entity by at least one general partner of each partnership that is a party to the plan of merger and by an authorized officer, agent, or other representative of each other entity that is a party to the plan of merger. The certificate must include:

(1) the plan of merger; and

(2) for each domestic or foreign partnership or other entity that is a party to the plan of merger, a statement that the plan of merger was authorized by all actions required by the laws under which it was formed or organized and by its constituent documents.

(d) **FILING.** The certificate of merger must be filed for each surviving and new domestic or foreign partnership or other entity and for each other entity that is a party to the plan of merger. The filing must be with the secretary of state or other authority with which the entity must file organizational or related documents and must comply with that authority's filing requirements.

(e) **EFFECTIVE DATE OF MERGER.** If a certificate of merger is delivered to the secretary of state, the merger is effective on the date of the issuance of the certificate of merger by the secretary of state or on a later date stated in the certificate of merger. If a certificate of merger is not required to be filed with the secretary of state, the merger is

effective on the date agreed to by the parties to the merger as set out in the plan of merger or as otherwise agreed to by the parties.

(f) EFFECT OF MERGER. (1) A partner of a partnership that is a party to a merger does not become personally liable as a result of the merger for a liability or obligation of another person that is a party to the merger unless the partner consents to becoming personally liable by action taken in connection with the specific plan of merger approved by the partner. A partner who remains in or enters a domestic or foreign partnership or other entity that survives a merger or that enters a domestic or foreign partnership or other entity created by the terms of the plan of merger shall be treated as an incoming partner in the new or surviving partnership as of the effective date of the merger for the purpose of determining the partner's liability for a debt or obligation of the other partnerships or entities that are parties to the merger and in which the partner was not associated.

(2) The separate existence of every domestic partnership or other entity that is a party to a merger, except a surviving or new domestic partnership or other entity, ceases when a merger takes effect.

(3) All rights, title, and interest to all real estate and other property owned by each domestic or foreign partnership and by each other entity that is a party to the merger are allocated to and vested in one or more of the surviving or resulting entities as provided in a plan of merger without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances on the property, when a merger takes effect.

(4) When a merger takes effect, all liabilities and obligations of each domestic or foreign partnership and other entity that is a party to the merger are allocated to one or more of the surviving or new domestic or foreign partnerships or other entities in the manner prescribed by the plan of merger, and each surviving or new domestic or foreign partnership or other entity to which a liability or obligation is allocated under the plan of merger becomes the primary obligor for the liability or obligation. Except as otherwise provided by the plan of merger or by law or contract, a party to the merger, other than a surviving domestic or foreign partnership or other entity with liability at the time of the merger, or another domestic or foreign partnership or other entity created by the merger does not become liable for the debt or obligation.

(5) After a merger, a proceeding pending by or against a domestic or foreign partnership or another entity that is a party to the merger may be continued as if the merger did not occur and the partnership or other entity that has been allocated the liabilities, obligations, asset, or rights associated with the proceeding under the terms of the plan of merger remains the primary obligor, or the surviving or new domestic or foreign partnership or other entity or entities to which the liability, obligation, asset, or right associated with the proceeding is allocated to and vested in under the plan of merger may be substituted in the proceeding.

(6) The partnership agreement, certificate of limited partnership, and other constituent documents of each other entity that will act as a surviving entity by the terms of a plan of merger is considered amended to the extent provided in the plan of merger when the merger takes effect.

(7) Each new domestic partnership named in a plan of merger under Subsection (b)(1), each new domestic limited partnership for which a certificate of limited partnership is included in a plan of merger under Subsection (b)(4), and each other entity to be formed or organized under the laws of this state for which organizational documents are included in a plan of merger under Subsection (b)(4) are formed or organized as provided in the plan of merger on:

(A) delivering an executed copy of the certificate of merger to, or filing the certificate with, the governmental entity with which organizational documents of the partnership or other entity are required to be delivered or filed, if any; and

(B) meeting additional requirements, if any, of law for its formation or organization.

(8) The partnership interest of each domestic or foreign partnership and the interest, shares, or evidences of ownership in each other entity that is a party to the merger that are to be converted or exchanged, in whole or in part, into (i) partnership interests, shares,

obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving or new domestic or foreign partnerships or other entities, (ii) cash, or (iii) other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any other person or entity, or into any combination of those items, are converted and exchanged when a merger takes effect. After the merger the former partners of each domestic partnership and owners of shares or evidences of ownership in each other domestic entity that is a party to the merger are entitled only to the rights provided in the plan of merger.

(9) If a plan of merger fails to provide for the allocation and vesting of the right, title, and interest in a particular item of real estate or other property or for the allocation of a liability or obligation of a party to the merger, when the merger takes effect the item of real estate or other property shall be owned in undivided interests by, or the liability or obligation shall be a joint and several liability and obligation of, each of the surviving and new domestic and foreign partnerships and other entities, pro rata to the total number of surviving and new domestic and foreign partnerships and other entities resulting from the merger.

(10) If a domestic or foreign partnership merges with another domestic or foreign partnership or other entity and through the merger process no longer exists, a person who becomes a member of the surviving domestic or foreign partnership or other entity, for a period of one year after the effective date of the merger, may bind the surviving entity to a transaction for which it no longer has authority to bind the entity if the transaction is one in which the partner's actions would bind the foreign or domestic partnership before the effective date of the merger and the other party to the transaction:

(A) does not have notice of the merger;

(B) had done business with the partnership which no longer exists within one year preceding the effective date of the merger; and

(C) reasonably believes that the partner who was previously a member of the partnership which was merged into the surviving entity and is now a partner of the surviving entity was a partner with authority to bind the partnership to the transaction at the time of the transaction.

(g) DEFINITION OF "OTHER ENTITY." For purposes of this section, the term "other entity" means any entity, whether organized for profit or not, that is a corporation, limited partnership, limited liability company, joint venture, joint stock company, cooperative, association, bank, insurance company, or other legal entity organized under the laws of this state or another state or country to the extent the laws or the constituent documents of that entity, not inconsistent with law, permit that entity to enter into a merger or partnership interest exchange as permitted by this section.

Sec. 9.03. EXCHANGE. (a) One or more domestic or foreign partnerships may adopt a plan of exchange by which a domestic or foreign partnership or other entity acquires all of the outstanding partnership interests of one or more domestic partnerships in exchange for cash or securities of the acquiring domestic or foreign partnership or other entity, if:

(1) each domestic or foreign partnership, the partnership interests of which are to be acquired under the plan of exchange, approves the plan of exchange in the manner prescribed in its partnership agreement; and

(2) each acquiring domestic or foreign partnership or other entity takes all action that may be required by the laws of the state under which it was formed or incorporated and as required by its partnership agreement or other constituent documents in order to effect the exchange.

(b) Filing with the secretary of state is not necessary to evidence or effect an interest exchange under this section for a domestic partnership that is a party to the interest exchange. When an interest exchange takes effect as provided in the plan of exchange:

(1) the partnership interest of each domestic partnership that is to be acquired under the plan of exchange is considered exchanged as provided in the plan of exchange;

(2) the former holders of the partnership interests exchanged under the plan of exchange are entitled only to the exchange rights provided in the plan of exchange; and

(3) the acquiring domestic or foreign partnership or other entity or entities are entitled to all rights, title, and interest with respect to the partnership interests so acquired and exchanged, subject to the provisions in the plan of exchange.

(c) For purposes of this section, the term "other entity" means any entity, whether organized for profit or not, that is a corporation, limited partnership, limited liability company, joint venture, joint stock company, cooperative, association, bank, insurance company, or other legal entity organized under the laws of this state or another state or country to the extent the laws or the constituent documents of that entity, not inconsistent with law, permit that entity to enter into a merger or partnership interest exchange as permitted by this section.

Sec. 9.04. LAW GOVERNING LIMITED PARTNERSHIP. A limited partnership's participation in a merger or exchange is governed by Section 2.11, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), and its subsequent amendments, not Sections 9.02 or 9.03 of this Act.

ARTICLE X. MISCELLANEOUS PROVISIONS

Sec. 10.01. SHORT TITLE. This Act may be cited as the "Texas Revised Partnership Act."

Sec. 10.02. SEVERABILITY. If a provision of this Act or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 10.03. APPLICATION. (a) BEFORE JANUARY 1, 1999. Except as provided by Subsection (b), before January 1, 1999, this Act applies only to a partnership formed:

(1) on or after January 1, 1994, unless that partnership is continuing the business of a dissolved partnership under Section 41, Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) before January 1, 1994, that elects, as provided by Subsection (d), to be governed by this Act.

(b) REGISTERED LIMITED LIABILITY PARTNERSHIP. Section 3.08 of this Act, including the fee provisions, applies to a registered limited liability partnership, regardless of the date of formation and regardless of whether the partnership elects to be governed by this Act, except that a registered limited liability partnership formed before January 1, 1994, is subject to Sections 2, 15(2)-(4), 45-A, 45-B, and 45-C, Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes), for purposes of determining liability for errors, omissions, negligence, incompetence, or malfeasance occurring before January 1, 1994.

(c) AFTER DECEMBER 31, 1998. After December 31, 1998, this Act applies to all partnerships.

(d) VOLUNTARY APPLICATION EARLY. Before January 1, 1999, a partnership formed before January 1, 1994, voluntarily may elect, by complying with the procedures provided in its partnership agreement for amending the partnership agreement, to adopt this Act. The provisions of this Act relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to adopt this Act only if the partnership gives notice to the third party of the partnership's election to adopt this Act.

Sec. 10.04. APPLICATION TO EXISTING RELATIONSHIPS. (a) This Act does not impair the obligations of a contract existing when this Act takes effect or affect an action or proceeding begun or right accrued before this Act takes effect.

(b) A judgment against a partnership or a partner in an action commenced before the effective date of this Act may be enforced in the same manner as a judgment rendered before the effective date of this Act.

SECTION 2. Part VII, Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes), is amended by adding Section 47 to read as follows:

Sec. 47. APPLICATION; EXPIRATION. (a) Except as provided by Section 10.03(b), Texas Revised Partnership Act, this Act does not apply to a partnership to which the Texas Revised Partnership Act applies.

(b) This Act expires January 1, 1999.

SECTION 3. Subsection A, Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), is amended to read as follows:

A. The term "security" or "securities" shall include any *limited partner interest in a limited partnership*; share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, preorganization certificate or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not. Provided, however, that this definition shall not apply to any insurance policy, endowment policy, annuity contract, optional annuity contract, or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the State Board of Insurance when the form of such policy or contract has been duly filed with the Board as now or hereafter required by law.

SECTION 4. Section 1.03, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.03. PARTNERSHIP NAME. Except as provided by Section 2.14(a)(3) of this Act, the [The] name of a limited partnership as stated in its certificate of limited partnership, a reserved or registered name, or the name under which a foreign limited partnership is permitted to register to do business in Texas as contained in its application for registration as a foreign limited partnership must contain the words "Limited Partnership," "Limited," or the abbreviation "L.P." or "Ltd." as the last words or letters of its name and may not:

(1) contain the name of a limited partner unless:

(A) that name is also the name of a general partner; or

(B) the business of the limited partnership or foreign limited partnership had been carried on under that name before the admission of that limited partner;

(2) contain a word or phrase indicating or implying that it is organized other than for a purpose stated in its partnership agreement;

(3) be the same as or deceptively similar to the name of a corporation or limited partnership that exists under the laws of Texas, that has a certificate of authority to transact business as a foreign corporation in Texas, or that is registered as a foreign limited partnership in Texas, or a name that has been reserved or registered for a corporation, limited partnership, or foreign limited partnership under the laws of Texas, except that a limited partnership or foreign limited partnership may adopt, reserve, or register, as appropriate, a name that is similar if written consent is obtained from the corporation, limited partnership, or foreign limited partnership having the name considered similar or from the person for whom the name considered similar is reserved or registered in the office of the secretary of state; or

(4) contain a word or phrase indicating or implying that it is a corporation.

SECTION 5. Article 2, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended by adding Section 2.14 to read as follows:

Sec. 2.14. LIMITED PARTNERSHIP AS REGISTERED LIMITED LIABILITY PARTNERSHIP. (a) A limited partnership is a registered limited liability partnership as well as a limited partnership if it:

(1) registers as a registered limited liability partnership as provided by Section 3.08(b), Texas Revised Partnership Act, as permitted by its partnership agreement or, if its partnership agreement does not include provisions for becoming a registered limited

liability partnership, with the consent of partners required to amend its partnership agreement;

(2) complies with Section 3.08(d), Texas Revised Partnership Act; and

(3) has as the last words or letters of its name the words "Limited Partnership" or the abbreviation "Ltd." followed by the words "registered limited liability partnership" or the abbreviation "L.L.P."

(b) In applying Section 3.08(b), Texas Revised Partnership Act, to a limited partnership:

(1) an application to become a registered limited liability partnership or to withdraw a registration must be executed by at least one general partner; and

(2) all other references to partners mean general partners only.

(c) If a limited partnership is a registered limited liability partnership, Section 3.08(a), Texas Revised Partnership Act, applies to its general partners and to any of its limited partners who, under other provisions of this Act, are liable for the debts or obligations of the limited partnership.

SECTION 6. Article 7, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended by adding Section 7.06 to read as follows:

Sec. 7.06. *PERMITTED TRANSFER IN CONNECTION WITH RACETRACK LICENSE.* A transfer by a general partnership of its assets to a limited partnership, the corporate general partner of which is controlled by the partners of the general partnership, or by a limited partnership of the beneficial use of or interest in any of its rights, privileges, or assets to a local development corporation incorporated before January 31, 1993, pursuant to Section 4A, Texas Transportation Corporation Act (Article 1528I, Vernon's Texas Civil Statutes), is not a prohibited transfer in violation of Section 6.12(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

SECTION 7. Section 11.13, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.13. *LIMITS ON A CONTRACTUAL INDEMNIFICATION.* A provision for a limited partnership to indemnify or to advance expenses to a general partner who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the limited partnership agreement, a resolution of the general partners or the limited partners, an agreement, or otherwise, except in accordance with Section 11.18 of this Act, is valid only to the extent that it is consistent with this article or with the applicable reimbursement provisions of the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes), or the Texas Revised Partnership Act and its subsequent amendments as limited by the limited partnership agreement, if such a limitation exists.

SECTION 8. Section 13.03, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.03. *CASES NOT PROVIDED FOR BY THIS ACT.* (a) In any case not provided for by this Act, the applicable statute governing partnerships that are not limited partnerships [~~Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes)~~] and the rules of law and equity, including the law merchant, govern.

(b) Before January 1, 1999:

(1) the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes) and its subsequent amendments applies to a limited partnership formed or a foreign partnership registered in this state before January 1, 1994, that does not elect, as provided by Subsection (b), to have the Texas Revised Partnership Act apply as its supplemental law; and

(2) the Texas Revised Partnership Act applies to a limited partnership formed or a foreign limited partnership registered in this state:

(A) on or after January 1, 1994; and

(B) before January 1, 1994, that elects, as provided by Subsection (d), to have the Texas Revised Partnership Act apply as its supplemental law.

(c) After December 31, 1998, the applicable statute governing a partnership that is not a limited partnership is the Texas Revised Partnership Act for all limited partnerships and foreign limited partnerships registered in this state.

(d) Before January 1, 1999, a limited partnership formed or foreign limited partnership registered in this state before January 1, 1994, voluntarily may elect, by complying with the procedures in its partnership agreement for amending the partnership agreement, to have the Texas Revised Partnership Act apply as its supplemental law. The election is made effective by amending its certificate of limited partnership or amending its application for registration to state that it has so elected.

SECTION 9. Article 13, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended by adding Sections 13.05-13.09 to read as follows:

Sec. 13.05. **PERIODIC REPORT BY LIMITED PARTNERSHIP.** (a) The secretary of state may require a domestic limited partnership or a foreign limited partnership authorized to transact business in this state to file a report as required by this section. The report may not be required to be filed more than once every four years. The report must include:

(1) the name of the limited partnership and the state or territory under the laws of which it is organized;

(2) the address of the registered office of the limited partnership in this state and the name of the registered agent at that address;

(3) the address of the principal office in the United States where records are to be kept or made available under Section 1.07 of this Act; and

(4) the name, mailing address, and street address of the business or residence of each general partner.

(b) The report must be made on a form adopted by the secretary of state for that purpose, and the information contained in the report must be given as of the date of the execution of the report. The report must be signed on behalf of the limited partnership by at least one general partner. The filing fee for the report is \$50.

(c) The report must be delivered to the secretary of state not later than the 30th day after the date on which notice is mailed by the secretary of state stating that the report is due. The notice shall be addressed to the limited partnership and mailed to:

(1) the registered office of the limited partnership;

(2) the last known address of the limited partnership as it appears on record in the office of the secretary of state; or

(3) any other known place of business of the limited partnership.

(d) Along with the notice that the report is due, the secretary of state shall mail to the limited partnership copies of a report form to be prepared and filed as provided by this section. Two copies of the report shall be delivered to the secretary of state. If the secretary of state finds that the report complies with this section, the secretary shall:

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

(2) notify the limited partnership of the filing of the report; and

(3) update the records of the secretary of state's office to reflect:

(A) address changes reported for the registered office, principal office, and the business or residence address of a general partner; and

(B) a reported change in the name of the registered agent.

(e) The filing of a report under this section does not relieve the limited partnership of the requirement to file an amendment to the certificate of limited partnership required under Section 2.02 of this Act, except that the limited partnership is not required to file an amendment to change the registered office or agent.

(f) The secretary of state shall mail each limited partnership subject to this Act its first notice under Subsection (c) of this section on or before September 1, 1997. This subsection expires September 2, 1997.

Sec. 13.06. **FORFEITURE OF RIGHT TO TRANSACT BUSINESS FOR FAILURE TO FILE PERIODIC REPORT.** (a) A domestic or foreign limited partnership that fails to file

a report required under Section 13.05 of this Act when due forfeits its right to transact business in this state.

(b) A forfeiture under this section takes effect without judicial ascertainment. The secretary of state shall enter on the record kept in the secretary's office relating to the limited partnership a notation that the right to transact business has been forfeited together with the date of forfeiture. Notice of the forfeiture shall be mailed to the limited partnership at:

- (1) the registered office of the limited partnership;
- (2) the last known address of the limited partnership; or
- (3) any other place of business of the limited partnership.

(c) Unless the right of the limited partnership to transact business is revived in accordance with Section 13.07 of this Act, the limited partnership may not maintain an action, suit, or proceeding in a court of this state, and a successor or assignee of the limited partnership may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising out of the transaction of business by the limited partnership in this state. The forfeiture of the right to transact business in this state does not impair the validity of a contract or act of the limited partnership and does not prevent the limited partnership from defending an action, suit, or proceeding in a court of this state.

(d) This section does not affect the liability of a limited partner in the limited partnership.

Sec. 13.07. REVIVAL OF RIGHT TO TRANACT BUSINESS AFTER FORFEITURE FOR FAILURE TO FILE PERIODIC REPORT. (a) A limited partnership that forfeits the right to transact business in this state as provided by Section 13.06 of this Act may be relieved from the forfeiture by filing the required report not later than the 120th day after the date of mailing of the notice of forfeiture under Section 13.06(b) of this Act, together with:

- (1) the filing fee; and
- (2) a late fee in an amount equal to the lesser of:

(A) \$25 for each month or fractional part of a month that has elapsed since the date of the notice of forfeiture; or

(B) \$100.

(b) If a limited partnership complies with Subsection (a) of this section, the secretary of state shall revive the right of the limited partnership to transact business in this state, cancelling the notation regarding the forfeiture and noting the revival and the date of revival on the record kept in the secretary's office relating to the limited partnership.

Sec. 13.08. CANCELLATION OF CERTIFICATE OR REGISTRATION AFTER FORFEITURE FOR FAILURE TO FILE PERIODIC REPORT. (a) The secretary of state may cancel the certificate of a limited partnership, or the registration of a foreign limited partnership, if the limited partnership forfeits its right to transact business in this state under Section 13.06 of this Act and fails to revive that right under Section 13.07 of this Act. The cancellation takes effect without judicial ascertainment. The secretary of state shall enter on the record kept in the secretary's office relating to the limited partnership a notation of the cancellation and the date of cancellation.

(b) On cancellation, the status of the limited partnership is changed to inactive according to the records of the secretary of state. The change to inactive status does not affect the liability of a limited partner of the limited partnership.

Sec. 13.09. REINSTATEMENT OF CERTIFICATE OR REGISTRATION AFTER CANCELLATION FOR FAILURE TO FILE PERIODIC REPORT. (a) A limited partnership whose certificate or registration has been canceled as provided by Section 13.08 of this Act may be relieved of the cancellation by filing the report required by Section 13.05, together with the filing fee for the report, a late fee of \$100, and a reinstatement fee of \$100.

(b) If the limited partnership complies with the fees required by Subsection (a) of this section, the secretary of state shall reinstate the certificate or registration of the limited partnership without judicial ascertainment. The secretary shall change the status of the limited partnership to active and note the reinstatement on the record kept in the secretary's office relating to the limited partnership. If the name of the limited partnership is not available at the time of reinstatement, the secretary shall require the limited partnership to

file an amendment to its certificate or application or adopt an assumed name for use in this state as a precondition to reinstatement.

SECTION 10. Section 6 of this Act applies to any transfers approved pursuant to the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) before or after the effective date of this Act relating to any original license granted before January 1, 1992, pursuant to the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

SECTION 11. This Act takes effect January 1, 1994, except that Sections 6 and 10 of this Act take effect immediately.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed by the House on April 19, 1993, by a non-record vote; the House refused to concur in Senate amendments on May 26, 1993, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on May 30, 1993: Yeas 130, Nays 0, 1 present, not voting; the House adopted H.C.R. No. 185 authorizing certain corrections in H.B. No. 273 on May 31, 1993, by a non-record vote; passed by the Senate, with amendments, on May 18, 1993: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on May 29, 1993: Yeas 31, Nays 0; the Senate adopted H.C.R. No. 185 authorizing certain corrections in H.B. No. 273 on May 31, 1993.

Approved June 19, 1993.

Effective Jan. 1, 1994, except §§ 6 and 10, effective June 19, 1993.