

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1371

H.P. 1018 House of Representatives, April 28, 1987
Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative MARSANO of Belfast.
Cosponsored by Representatives WARREN of Scarborough and
CONLEY of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT Relating to the Uniform Limited
Partnership Act.

1
2
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 Sec. 1. 31 MRSA c. 7, as amended, is repealed.

7 Sec. 2. 31 MRSA c. 11 is enacted to read:

8

CHAPTER 11

9

UNIFORM LIMITED PARTNERSHIP ACT

10

SUBCHAPTER I

11

GENERAL PROVISIONS

1 §401. Short title

2 This Act shall be known and may be cited as the
3 "Uniform Limited Partnership Act."

4 §402. Definitions

5 As used in this chapter, unless the context indi-
6 cates otherwise, the following terms have the follow-
7 ing meanings.

8 1. Certificate of limited partnership. "Certif-
9 icate of limited partnership" means the certificate
10 referred to in section 411 and the certificate as
11 amended or restated.

12 2. Contribution. "Contribution" means any cash,
13 property, services rendered or a promissory note or
14 other binding obligation to contribute cash or prop-
15 erty or to perform services, which a partner contrib-
16 utes to a limited partnership in his capacity as a
17 partner.

18 3. Event of withdrawal of a general partner.
19 "Event of withdrawal of a general partner" means an
20 event that causes a person to cease to be a general
21 partner as provided in section 432.

22 4. Foreign limited partnership. "Foreign lim-
23 ited partnership" means a partnership formed under
24 the laws of any state other than this State and hav-
25 ing as partners one or more general partners and one
26 or more limited partners.

27 5. General partner. "General partner" means a
28 person who has been admitted to a limited partnership
29 as a general partner in accordance with the partner-
30 ship agreement and named in the certificate of lim-
31 ited partnership as a general partner.

32 6. Limited partner. "Limited partner" means a
33 person who has been admitted to a limited partnership
34 as a limited partner in accordance with the partner-
35 ship agreement.

36 7. Limited partnership and domestic limited
37 partnership. "Limited partnership" and "domestic

1 limited partnership" means a partnership formed by 2
2 or more persons under the laws of this State and hav-
3 ing one or more general partners and one or more lim-
4 ited partners.

5 8. Partner. "Partner" means a limited or gener-
6 al partner.

7 9. Partnership agreement. "Partnership agree-
8 ment" means any valid agreement, written or oral, of
9 the partners as to the affairs of a limited partner-
10 ship and the conduct of its business.

11 10. Partnership interest. "Partnership inter-
12 est" means a partner's share of the profits and
13 losses of a limited partnership and the right to re-
14 ceive distributions of partnership assets.

15 11. Person. "Person" means a natural person;
16 partnership; limited partnership, domestic or for-
17 foreign; trust; estate; association; or corporation.

18 12. State. "State" means a state, territory or
19 possession of the United States, the District of Co-
20 lumbia or the Commonwealth of Puerto Rico.

21 §403 Name; certificate of partnership

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

24 1. Name; limited partnership. Shall contain
25 without abbreviation the words "limited partnership;"

26 2. General or corporate general partner; busi-
27 ness name. May not contain the name of a limited
28 partner unless:

29 A. It is also the name of a general partner or
30 the corporate name of a corporate general part-
31 ner; or

32 B. The business of the limited partnership had
33 been carried on under that name before the admis-
34 sion of that limited partner;

1 3. Similar names. May not be the same as, or
2 deceptively similar to, the name of any corporation
3 or limited partnership organized under the laws of
4 this State or licensed or registered as a foreign
5 corporation or limited partnership in this State; and

6 4. Prohibited words. May not contain the sur-
7 name of a limited partner unless:

8 A. It is also the surname of a general partner;
9 or

10 B. Prior to the time when the limited partner
11 became a limited partner, the business had been
12 carried on under a name in which his surname ap-
13 peared.

14 §404. Reservation of name

15 1. Exclusive use. The exclusive right to the
16 use of a name may be reserved by:

17 A. Any person intending to organize a limited
18 partnership under this Act and to adopt that
19 name;

20 B. Any domestic limited partnership or any for-
21 foreign limited partnership registered in this State
22 which, in either case, intends to adopt that
23 name;

24 C. Any foreign limited partnership intending to
25 register in this State and adopt that name; and

26 D. Any person intending to organize a foreign
27 limited partnership and intending to have it reg-
28 istered in this State and adopt that name.

29 2. Application. The reservation shall be made
30 by filing with the Secretary of State an application,
31 executed by the applicant, to reserve a specified
32 name. If the Secretary of State finds that the name
33 is available for use by a domestic or foreign limited
34 partnership, he shall reserve the name for the exclu-
35 sive use of the applicant for a period of 120 days.
36 Once having so reserved a name, the same applicant
37 may not again reserve the same name until more than

1 60 days after the expiration of the last 120-day pe-
2 riod for which that applicant reserved that name.
3 The right to the exclusive use of a reserved name may
4 be transferred to any other person by filing in the
5 office of the Secretary of State a notice of the
6 transfer, executed by the applicant for whom the name
7 was reserved and specifying the name and address of
8 the transferee.

9 §405. Specified office and agent

10 Each limited partnership shall continuously main-
11 tain in this State:

12 1. Office. An office, which may, but need not,
13 be a place of the limited partnership's business in
14 this State, at which shall be kept the records re-
15 quired by section 406 to be maintained; and

16 2. Agent. An agent for service of process on
17 the limited partnership, which agent must be an indi-
18 vidual resident of this State, a domestic corporation
19 or a foreign corporation authorized to do business in
20 this State.

21 §406. Records to be kept

22 1. Required records. Each limited partnership
23 shall keep at the office referred to in section 405,
24 subsection 1, the following:

25 A. A current list of the full name and last
26 known business address of each partner, separate-
27 ly identifying the general partners, in alphabet-
28 ical order, and the limited partners, in alpha-
29 betical order;

30 B. A copy of the certificate of limited partner-
31 ship and all certificates of amendment thereto,
32 together with executed copies of any powers of
33 attorney pursuant to which any certificate has
34 been executed;

35 C. Copies of the limited partnership's federal,
36 state and local income tax returns and reports,
37 if any, for the 3 most recent years;

1 D. Copies of any then effective written partner-
2 ship agreements and of any financial statements
3 of the limited partnership for the 3 most recent
4 years; and

5 E. Unless contained in a written partnership
6 agreement, a writing setting out:

7 (1) The amount of cash and a description
8 and statement of the agreed value of the
9 other property or services contributed by
10 each partner and which each partner has
11 agreed to contribute;

12 (2) The times at which or events on the
13 happening of which any additional contribu-
14 tions agreed to be made by each partner are
15 to be made;

16 (3) Any right of a partner to receive, or
17 of a general partner to make, distributions
18 to a partner which include a return of all
19 or any part of the partner's contribution;
20 and

21 (4) Any events upon the happening of which
22 the limited partnership is to be dissolved
23 and its affairs wound up.

24 2. Records subject to inspection. Records kept
25 under this section are subject to inspection and
26 copying at the reasonable request and at the expense
27 of any partner during ordinary business hours.

28 §407. Nature of business

29 A limited partnership may carry on any business
30 that a partnership without limited partners may carry
31 on.

32 §408. Business transactions of partner with partner-
33 ship

34 Except as provided in the partnership agreement,
35 a partner may lend money to and transact other busi-
36 ness with the limited partnership and, subject to
37 other applicable law, has the same rights and obliga-

1 tions with respect thereto as a person who is not a
2 partner.

3 SUBCHAPTER II

4 FORMATION: CERTIFICATE OF LIMITED PARTNERSHIP

5 §411. Certificate of limited partnership

6 1. Contents. In order to form a limited part-
7 nership, a certificate of limited partnership must be
8 executed and filed in the office of the Secretary of
9 State. The certificate shall set forth:

10 A. The name of the limited partnership;

11 B. The address of the office and the name and
12 address of the agent for service of process re-
13 quired to be maintained by section 405;

14 C. The name and the business address of each
15 general partner;

16 D. The latest date upon which the limited part-
17 nership is to dissolve; and

18 E. Any other matters the general partners deter-
19 mine to include therein.

20 2. Time partnership formed. A limited partner-
21 ship is formed at the time of the filing of the cer-
22 tificate of limited partnership in the office of the
23 Secretary of State or at any later time specified in
24 the certificate of limited partnership if, in either
25 case, there has been substantial compliance with the
26 requirements of this section.

27 §412. Amendment to certificate

28 1. Certificate of amendment contents. A certif-
29 icate of limited partnership is amended by filing a
30 certificate of amendment contents in the office of
31 the Secretary of State. The certificate shall set
32 forth:

33 A. The name of the limited partnership;

1 B. The date of filing the certificate; and

2 C. The amendment to the certificate.

3 2. Filing required. Within 30 days after the
4 happening of any of the following events, an amend-
5 ment to a certificate of limited partnership reflect-
6 ing the occurrence of the event or events shall be
7 filed;

8 A. The admission of a new general partner;

9 B. The withdrawal of a general partner; or

10 C. The continuation of the business under sec-
11 tion 421 after an event of withdrawal of a gener-
12 al partner.

13 3. Inaccurate certificates; changes. A general
14 partner who becomes aware that any statement in a
15 certificate of limited partnership was false when
16 made or that any arrangements or other facts de-
17 scribed have changed, making the certificate inaccur-
18 rate in any respect, shall promptly amend the certif-
19 icates.

20 4. Other purposes. A certificate of limited
21 partnership may be amended at any time for any other
22 proper purpose which the general partners determine.

23 5. Liability. No person has any liability be-
24 cause an amendment to a certificate of limited part-
25 nership has not been filed to reflect the occurrence
26 of any event referred to in subsection 2 if the
27 amendment is filed within the 30-day period specified
28 in subsection 2.

29 6. Restated certificates. A restated certifi-
30 cate of limited partnership may be executed and filed
31 in the same manner as a certificate of amendment.

32 §413. Cancellation of certificate

33 A certificate of limited partnership shall be
34 cancelled upon the dissolution and the commencement
35 of winding up of the partnership or at any other time
36 there are no limited partners. A certificate of can-

1 cellation shall be filed in the office of the Secretary of State and set forth:
2

3 1. Name. The name of the limited partnership;

4 2. Date of original filing. The date of original
5 filing of its certificate of limited partnership;

6 3. Reason for filing. The reason for filing the
7 certificate of cancellation;

8 4. Effective date of cancellation. The effective
9 date, which shall be a date certain, of cancellation
10 if it is not to be effective upon the filing
11 of the certificate; and

12 5. Other. Any other information the general
13 partners filing the certificate determine.

14 §414. Execution of certificates

15 1. Procedure. Each certificate required by this
16 Act to be filed in the office of the Secretary of
17 State shall be executed in the following manner:

18 A. An original certificate of limited partner-
19 ship must be signed by all general partners;

20 B. A certificate of amendment must be signed by
21 at least one general partner and by each other
22 general partner designated in the certificate as
23 a new general partner; and

24 C. A certificate of cancellation must be signed
25 by all general partners.

26 2. Signature. Any person may sign a certificate
27 by an attorney, but a power of attorney to sign a
28 certificate relating to the admission of a general
29 partner must specifically describe the admission.

30 3. Effect of execution. The execution of a cer-
31 tificate by a general partner constitutes an affirma-
32 tion under the penalties of perjury that the facts
33 stated in the certificate are true.

34 §415. Execution by judicial act

1 If a person required by section 414 to execute
2 any certificate fails or refuses to do so, any other
3 person who is adversely affected by the failure or
4 refusal may petition a court of competent jurisdic-
5 tion to direct the execution of the certificate. If
6 the court finds that it is proper for the certificate
7 to be executed and that any person so designated has
8 failed or refused to execute the certificate, it
9 shall order the Secretary of State to record an ap-
10 propriate certificate.

11 §416. Filing in office of Secretary of State

12 1. Certificates. Two signed copies of the cer-
13 tificate of limited partnership and of any certifi-
14 cates of amendment or cancellation, or of any judi-
15 cial decree of amendment or cancellation, shall be
16 delivered to the Secretary of State. A person who
17 executes a certificate as an agent or fiduciary need
18 not exhibit evidence of his authority as a prerequi-
19 site to filing. Unless the Secretary of State finds
20 that any certificate does not conform to law, upon
21 receipt of all filing fees required by law, he shall:

22 A. Endorse on each duplicate original the word
23 "Filed" and the day, month and year of the fil-
24 ing;

25 B. File one duplicate original in his office;
26 and

27 C. Return the other duplicate original to the
28 person who filed it or his representative.

29 2. Certificates of amendment and cancellation;
30 effective dates. Upon the filing of a certificate of
31 amendment or judicial decree of amendment in the of-
32 fice of the Secretary of State, the certificate of
33 limited partnership shall be amended as set forth in
34 the amendment and, upon the effective date of a cer-
35 tificate of cancellation or a judicial decree of can-
36 cancellation, the certificate of limited partnership is
37 cancelled.

38 §417. Liability for false statement in certificate

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

5 1. Person who executed certificate. Any person
6 who executes the certificate, or causes another to
7 execute it on his behalf, and knew, and any general
8 partner who knew or should have known, that the
9 statement was false at the time the certificate was
10 executed; and

11 2. General partners. Any general partner who
12 thereafter knows or should have known that any ar-
13 rangement or other fact described in the certificate
14 has changed, making the statement inaccurate in any
15 respect within a sufficient time before the statement
16 was relied upon reasonably to have enabled that gen-
17 eral partner to cancel or amend the certificate, or
18 to file a petition for its cancellation or amendment
19 under section 415.

20 §418. Scope of notice

21 The fact that a certificate of limited partner-
22 ship is on file in the office of the Secretary of
23 State is notice that the partnership is a limited
24 partnership and the persons designated in the certif-
25 icate as general partners are general partners, but
26 it is not notice of any other fact.

27 §419. Delivery of certificates to limited partners

28 Upon the return by the Secretary of State, pursu-
29 ant to section 416, of a certificate marked "Filed,"
30 the general partners shall promptly deliver or mail a
31 copy of the certificate of limited partnership and
32 each certificate of amendment or cancellation to each
33 limited partner, unless the partnership agreement
34 provides otherwise.

35 SUBCHAPTER III

36 LIMITED PARTNERS

37 §421. Admission of limited partners

1 1. Time. A person becomes a limited partner:

2 A. At the time the limited partnership is
3 formed; or

4 B. At any later time specified in the records of
5 the limited partnership for becoming a limited
6 partner.

7 2. Acquired interests; assignees. After the
8 filing of a limited partnership's original certifi-
9 cate of limited partnership, a person may be admitted
10 as an additional limited partner:

11 A. In the case of a person acquiring a partner-
12 ship interest directly from the limited partner-
13 ship, upon compliance with the partnership agree-
14 ment or, if the partnership agreement does not so
15 provide, upon the written consent of all part-
16 ners; and

17 B. In the case of an assignee of a partnership
18 interest of a partner who has the power, as pro-
19 vided in section 464, to grant the assignee the
20 right to become a limited partner, upon the exer-
21 cise of that power and compliance with any condi-
22 tions limiting the grant or exercise of the pow-
23 er.

24 §422. Voting

25 Subject to section 423, the partnership agreement
26 may grant the right to vote to all or a specified
27 group of the limited partners, on a per capita or
28 other basis, upon any matter.

29 §423. Liability to 3rd parties

30 1. Limitations. Except as provided in subsec-
31 tion 4, a limited partner is not liable for the obli-
32 gations of a limited partnership unless he is also a
33 general partner or, in addition to the exercise of
34 his rights and powers as a limited partner, he par-
35 ticipates in the control of the business. If the
36 limited partner participates in the control of the
37 business, he is liable only to persons who transact
38 business with the limited partnership reasonably be-

1 lieving, based upon the limited partner's conduct,
2 that the limited partner is a general partner.

3 2. Control. A limited partner does not partici-
4 pate in the control of the business within the mean-
5 ing of subsection 1 solely by doing one or more of
6 the following:

7 A. Being a contractor for or an agent or employ-
8 ee of the limited partnership or of a general
9 partner, or being an officer, director or share-
10 holder of a general partner that is a corpora-
11 tion;

12 B. Consulting with and advising a general part-
13 ner with respect to the business of the limited
14 partnership;

15 C. Acting as surety for the limited partnership
16 or guaranteeing or assuming one or more specific
17 obligations of the limited partnership;

18 D. Taking any action required or permitted by
19 law to bring or pursue a derivative action in the
20 right of the limited partnership;

21 E. Requesting or attending a meeting of part-
22 ners;

23 F. Proposing, approving or disapproving, by vot-
24 ing or otherwise, one or more of the following
25 matters:

26 (1) The dissolution and winding up of the
27 limited partnership;

28 (2) The sale, exchange, lease, mortgage,
29 pledge or other transfer of all or substan-
30 tially all of the assets of the limited
31 partnership;

32 (3) The incurrence of indebtedness by the
33 limited partnership other than in the ordi-
34 nary course of its business;

35 (4) A change in the nature of the business;

1 (5) The admission or removal of a general
2 partner;

3 (6) The admission or removal of a limited
4 partner;

5 (7) A transaction involving an actual or
6 potential conflict of interest between a
7 general partner and the limited partnership
8 or the limited partners;

9 (8) An amendment to the partnership agree-
10 ment or certificate of limited partnership;
11 or

12 (9) Matters related to the business of the
13 limited partnership not otherwise enumerated
14 in this subsection which the partnership
15 agreement states in writing may be subject
16 to the approval or disapproval of limited
17 partners;

18 G. Winding up the limited partnership pursuant
19 to section 473; or

20 H. Exercising any right or power permitted to
21 limited partners under this Act and not specifi-
22 cally enumerated in this subsection.

23 3. Participation in business. The enumeration
24 in subsection 2 does not mean that the possession or
25 exercise of any other powers by a limited partner
26 constitutes participation by him in the business of
27 the limited partnership.

28 4. Representation as general partner. A limited
29 partner who knowingly permits his name to be used in
30 the name of the limited partnership, except under
31 circumstances permitted by section 403, subsection 2,
32 is liable to creditors who extend credit to the lim-
33 ited partnership without actual knowledge that the
34 limited partner is not a general partner.

35 §424. Person erroneously believing himself limited
36 partner

1 1. Good faith contribution. Except as provided
2 in subsection 2, a person who makes a contribution to
3 a business enterprise and erroneously but in good
4 faith believes that he has become a limited partner
5 in the enterprise is not a general partner in the en-
6 terprise and is not bound by its obligations by rea-
7 son of making the contribution, receiving distribu-
8 tions from the enterprise, or exercising any rights
9 of a limited partner, if, on ascertaining the mis-
10 take, he:

11 A. Causes an appropriate certificate of limited
12 partnership or a certificate of amendment to be
13 executed and filed; or

14 B. Withdraws from future equity participation in
15 the enterprise by executing and filing in the of-
16 fice of the Secretary of State a certificate de-
17 claring withdrawal under this section.

18 2. Failure to file certificate. A person who
19 makes a contribution of the kind described in subsec-
20 tion 1 is liable as a general partner to any 3rd par-
21 ty who transacts business with the enterprise:

22 A. Before the person withdraws and an appropri-
23 ate certificate is filed to show withdrawal; or

24 B. Before an appropriate certificate is filed to
25 show the he is not a general partner, but in ei-
26 ther case only if the 3rd party actually believed
27 in good faith that the person was a general part-
28 ner at the time of the transaction.

29 §425. Information

30 Each limited partner has the right to:

31 1. Partnership records. Inspect and copy any of
32 the partnership records required to be maintained by
33 section 406; and

34 2. Financial and other information. Obtain from
35 the general partners from time to time upon reason-
36 able demand:

1 A. True and full information regarding the state
2 of the business and financial condition of the
3 limited partnership;

4 B. Promptly after becoming available, a copy of
5 the limited partnership's federal, state and lo-
6 cal income tax returns for each year; and

7 C. Other information regarding the affairs of
8 the limited partnership as is just and reason-
9 able.

10 SUBCHAPTER IV

11 GENERAL PARTNERS

12 §431. Admission of additional general partners

13 After the filing of a limited partnership's orig-
14 inal certificate of limited partnership, additional
15 general partners may be admitted as provided in writ-
16 ing in the partnership agreement or, if the partner-
17 ship agreement does not provide in writing for the
18 admission of additional general partners, with the
19 written consent of all partners.

20 §432. Events of withdrawal

21 Except as approved by the specific written con-
22 sent of all partners at the time, a person ceases to
23 be a general partner of a limited partnership upon
24 the happening of any of the following events:

25 1. Withdrawal. The general partner withdraws
26 from the limited partnership as provided in section
27 452;

28 2. Assignment. The general partner ceases to be
29 a member of the limited partnership as provided in
30 section 462;

31 3. Removal. The general partner is removed as a
32 general partner in accordance with the partnership
33 agreement;

34 4. Other. Unless otherwise provided in writing
35 in the partnership agreement, the general partner:

- 1 A. Makes an assignment for the benefit of credi-
2 tors;
- 3 B. Files a voluntary petition in bankruptcy;
- 4 C. Is adjudicated a bankrupt or insolvent;
- 5 D. Files a petition or answer seeking for him-
6 self any reorganization, arrangement, composi-
7 tion, readjustment, liquidation, dissolution or
8 similar relief under any statute, law or regula-
9 tion;
- 10 E. Files an answer or other pleading admitting
11 or failing to contest the material allegations of
12 a petition filed against him in any proceeding of
13 this nature; or
- 14 F. Seeks, consents to, or acquiesces in the ap-
15 pointment of a trustee, receiver or liquidator of
16 the general partner or of all or any substantial
17 part of his properties;
- 18 5. Proceeding against general partner. Unless
19 otherwise provided in writing in the partnership
20 agreement, if, within 120 days after the commencement
21 of any proceeding against the general partner seeking
22 reorganization, arrangement, composition, readjust-
23 ment, liquidation, dissolution or similar relief un-
24 der any statute, law or regulation, the proceeding
25 has not been dismissed or if, within 90 days after
26 the appointment without the general partner's consent
27 or the acquiescence of a trustee, receiver or liqui-
28 dator of the general partner or of all or any sub-
29 stantial part of his properties, the appointment is
30 not vacated or stayed or, within 90 days after the
31 expiration of any stay, the appointment is not va-
32 cated;
- 33 6. Death finding or incompetence. In the case
34 of a general partner who is a natural person:
- 35 A. His death; or
- 36 B. The entry of an order by a court of competent
37 jurisdiction adjudicating him incompetent to man-
38 age his person or his estate;

1 7. Termination of trust. In the case of a gen-
2 eral partner who is acting as a general partner by
3 virtue of being a trustee of a trust, the termination
4 of the trust, but not merely the substitution of a
5 new trustee;

6 8. Dissolution of partnership. In the case of a
7 general partner that is a separate partnership, the
8 dissolution and commencement of winding up of the
9 separate partnership;

10 9. Dissolution of corporation. In the case of a
11 general partner that is a corporation, the filing of
12 a certificate of dissolution, or its equivalent, for
13 the corporation or the revocation of its charter; or

14 10. Distribution of estate. In the case of an
15 estate, the distribution by the fiduciary of the
16 estate's entire interest in the partnership.

17 §433. General powers and liabilities

18 1. Rights and powers. Except as provided in
19 this Act or in the partnership agreement, a general
20 partner of a limited partnership has the rights and
21 powers and is subject to the restrictions of a part-
22 ner in a partnership without limited partners.

23 2. Liabilities. Except as provided in this Act,
24 a general partner of a limited partnership has the
25 liabilities of a partner in a partnership without
26 limited partners to persons other than the partner-
27 ship and the other partners. Except as provided in
28 this Act or in the partnership agreement, a general
29 partner of a limited partnership has the liabilities
30 of a partner in a partnership without limited part-
31 ners to the partnership and to the other partners.

32 §434. Contributions by general partner

33 A general partner of a limited partnership may
34 make contributions to the partnership and share in
35 the profits and losses of, and in distributions from,
36 the limited partnership as a general partner. A gen-
37 eral partner also may make contributions to and share
38 in profits, losses and distributions as a limited
39 partner. A person who is both a general partner and

1 a limited partner has the rights and powers, and is
2 subject to the restrictions and liabilities, of a
3 general partner and, except as provided in the part-
4 nership agreement, also has the powers, and is sub-
5 ject to the restrictions, of a limited partner to the
6 extent of his participation in the partnership as a
7 limited partner.

8 §435. Voting

9 The partnership agreement may grant the right to
10 vote on any matter to all or certain identified gen-
11 eral partners, on a per capita or any other basis,
12 separately or with all or any class of the limited
13 partners.

14 SUBCHAPTER V

15 FINANCE

16 §441. Form of contribution

17 The contribution of a partner may be in cash,
18 property or services rendered, a promissory note or
19 other obligation to contribute cash or property or to
20 perform services.

21 §442. Liability for contribution

22 1. Promise in writing. A promise by a limited
23 partner to contribute to the limited partnership is
24 not enforceable unless set out in a writing signed by
25 the limited partner.

26 2. Obligation. Except as provided in the part-
27 nership agreement, a partner is obligated to the lim-
28 ited partnership to perform any enforceable promise
29 to contribute cash or property or to perform ser-
30 vices, even if he is unable to perform because of
31 death, disability or any other reason. If a partner
32 does not make the required contribution of property
33 or services, he is obligated at the option of the
34 limited partnership to contribute cash equal to that
35 portion of the value, as stated in the partnership
36 records required to be kept pursuant to section 406,
37 of the stated contribution which has not been made.

1 3. Compromise. Unless otherwise provided in the
2 partnership agreement, the obligation of a partner to
3 make a contribution or return money or other property
4 paid or distributed in violation of this Act may be
5 compromised only by consent of all partners. Not-
6 withstanding the compromise, a creditor of a limited
7 partnership who extends credit or otherwise acts in
8 reliance on that obligation after the partner signs a
9 writing which reflects the obligation and before the
10 amendment or cancellation of the writing to reflect
11 the compromise may enforce original obligation.

12 §443. Sharing of profits and losses

13 The profits and losses of a limited partnership
14 shall be allocated among the partners and among
15 classes of partners in the manner provided in writing
16 in the partnership agreement. If the partnership
17 agreement does not so provide in writing, profits and
18 losses shall be allocated on the basis of the value,
19 as stated in the partnership records required to be
20 kept pursuant to section 406, of the contributions
21 made by each partner to the extent they have been re-
22 ceived by the partnership and have not been returned.

23 §444. Sharing of distributions

24 Distributions of cash or other assets of a lim-
25 ited partnership shall be allocated among the part-
26 ners and among classes of partners in the manner pro-
27 vided in writing in the partnership agreement. If
28 the partnership agreement does not so provide in
29 writing, distributions shall be made on the basis of
30 the value, as stated in the partnership records re-
31 quired to be kept pursuant to section 406, of the
32 contributions made by each partner to the extent they
33 have been received by the partnership and have not
34 been returned.

35 SUBCHAPTER VI

36 DISTRIBUTIONS AND WITHDRAWAL

37 §451. Interim distributions

38 Except as provided in this Act, a partner is en-
39 titled to receive distributions from a limited part-

1 nership before his withdrawal from the limited part-
2 nership and before the dissolution and winding up of
3 the partnership to the extent and at the times or
4 upon the happening of the events specific in the
5 partnership agreement.

6 §452. Withdrawal of general partner

7 A general partner may withdraw from a limited
8 partnership at any time by giving written notice to
9 the other partners, but, if the withdrawal violates
10 the partnership agreement, the limited partnership
11 may recover damages from the withdrawing general
12 partner for breach of the partnership agreement and
13 offset the damages against the amount otherwise dis-
14 tributable to him.

15 §453. Withdrawal of limited partner

16 A limited partner may withdraw from a limited
17 partnership at the time or upon the happening of
18 events specified in writing in the partnership agree-
19 ment. If the agreement does not specify in writing
20 the time or the events upon the happening of which a
21 limited partner may withdraw or a definite time for
22 the dissolution and winding up of the limited part-
23 nership, a limited partner may withdraw upon not less
24 than 6 months' prior written notice to each general
25 partner at his address on the books of the limited
26 partnership at its office in this State.

27 §454. Distribution upon withdrawal

28 Except as provided in this Act, upon withdrawal,
29 any withdrawing partner is entitled to receive any
30 distribution to which he is entitled under the part-
31 nership agreement and, if not otherwise provided in
32 the agreement, he is entitled to receive, within a
33 reasonable time after withdrawal, the fair value of
34 his interest in the limited partnership as of the
35 date of withdrawal, based upon his right to share in
36 distributions from the limited partnership.

37 §455. Distribution in kind

38 Except as provided in writing in the partnership
39 agreement, a partner, regardless of the nature of his

1 contribution, has no right to demand and receive any
2 distribution from a limited partnership in any form
3 other than cash. Except as provided in writing in
4 the partnership agreement, a partner may not be com-
5 pelled to accept a distribution of any asset in kind
6 from a limited partnership to the extent that the
7 percentage of the asset distributed to him exceeds a
8 percentage of that asset which is equal to the per-
9 centage in which he shares in distributions from the
10 limited partnership.

11 §456. Right to distribution

12 At the time a partner becomes entitled to receive
13 a distribution, he has the status of, and is entitled
14 to all remedies available to, a creditor of the lim-
15 ited partnership with respect to the distribution.

16 §457. Limitations on distribution

17 A partner may not receive a distribution from a
18 limited partnership to the extent that, after giving
19 effect to the distribution, all liabilities of the
20 limited partnership, other than liabilities to part-
21 ners on account of their partnership interests, ex-
22 ceed the fair value of the partnership assets.

23 §458. Liability upon return of contribution

24 1. Liabilities to creditors. If a partner has
25 received the return of any part of his contribution
26 without violation of the partnership agreement or
27 this Act, he is liable to the limited partnership for
28 a period of one year thereafter for the amount of the
29 returned contribution, but only to the extent neces-
30 sary to discharge the limited partnership's liabili-
31 ties to creditors who extended credit to the limited
32 partnership during the period the contribution was
33 held by the partnership.

34 2. Wrongfully returned contribution. If a part-
35 ner has received the return of any part of his con-
36 tribution in violation of the partnership agreement
37 or this Act, he is liable to the limited partnership
38 for a period of 6 years thereafter for the amount of
39 the contribution wrongfully returned.

1 1. Partnership interest. An assignee of a part-
2 nership interest, including an assignee of a general
3 partner, may become a limited partner if and to the
4 extent that:

5 A. The assignor gives the assignee that right in
6 accordance with authority described in the part-
7 nership agreement; or

8 B. All other partners consent.

9 2. Rights and liabilities. An assignee who has
10 become a limited partner has, to the extent assigned,
11 the rights and powers and is subject to the restric-
12 tions and liabilities of a limited partner under the
13 partnership agreement and this Act. An assignee who
14 becomes a limited partner also is liable for the ob-
15 ligations of his assignor to make and return contri-
16 butions as provided in subchapters V and VI. The as-
17 signee is not obligated for liabilities unknown to
18 the assignee at the time he became a limited partner.

19 3. Assignor's liability. If an assignee of a
20 partnership interest becomes a limited partner, the
21 assignor is not released from his liability to the
22 limited partnership under sections 417 and 452.

23 §465. Power of estate of deceased or incompetent
24 partner

25 If a partner who is an individual dies or a court
26 of competent jurisdiction adjudges him to be incompe-
27 tent to manage his person or his property, the
28 partner's executor, administrator, guardian, conser-
29 vator or other legal representative may exercise all
30 the partner's rights for the purpose of settling his
31 estate or administering his property, including any
32 power the partner had to give an assignee the right
33 to become a limited partner. If a partner is a cor-
34 poration, trust or other entity and is dissolved or
35 terminated, the powers of that partner may be exer-
36 cised by its legal representative or successor.

37 SUBCHAPTER VIII

38 DISSOLUTION

1 §471. Nonjudicial dissolution

2 A limited partnership is dissolved and its af-
3 fairs shall be wound up upon the happening of the
4 first of the following to occur:

5 1. Specified time. At the time specified in the
6 certificate of limited partnership;

7 2. Specified events. Upon the happening of
8 events in writing in the partnership agreement;

9 3. Consent. Written consent of all partners;

10 4. Withdrawal. An event of withdrawal of a gen-
11 eral partner unless at the time there is at least one
12 other general partner and the written provisions of
13 the partnership agreement permit the business of the
14 limited partnership to be carried on by the remaining
15 general partner and that partner does so, but the
16 limited partnership is not dissolved and is not re-
17 quired to be wound up by reason of any event of with-
18 drawal if, within 90 days after the withdrawal, all
19 partners agree in writing to continue the business of
20 the limited partnership and to the appointment of one
21 or more additional general partners if necessary or
22 desired; or

23 5. Dissolution. Entry of a decree of judicial
24 dissolution under section 472.

25 §472. Judicial dissolution

26 On application by or for a partner, the court of
27 appropriate jurisdiction may decree dissolution of a
28 limited partnership whenever it is not reasonably
29 practicable to carry on the business in conformity
30 with the partnership agreement.

31 §473. Winding up

32 Except as provided in the partnership agreement,
33 the general partners who have not wrongfully dis-
34 solved a limited partnership or, if none, the limited
35 partners, may wind up the limited partnership's af-
36 fairs; but the court may wind up the limited
37 partnership's affairs upon application of any part-
38 ner, his legal representative or assignee.

1 §474. Distribution of assets

2 Upon the winding up of a limited partnership, the
3 assets shall be distributed as follows:

4 1. Creditors. To creditors, including partners
5 who are creditors, to the extent permitted by law, in
6 satisfaction of liabilities of the limited partner-
7 ship other than liabilities for distributions to
8 partners under section 451 or 454;

9 2. Partners. Except as provided in the partner-
10 ship agreement, to partners and former partners in
11 satisfaction of liabilities for distributions under
12 section 451 or 454; and

13 3. Return of contributions and proportion of in-
14 terest. Except as provided in the partnership agree-
15 ment, to partners first for the return of their con-
16 tributions and 2nd respecting their partnership in-
17 terests, in the proportions in which the partners
18 share in distributions.

19 SUBCHAPTER IX

20 FOREIGN LIMITED PARTNERSHIPS

21 §481. Law governing

22 Subject to the Constitution of Maine:

23 1. Foreign limited partnership. The laws of the
24 state under which a foreign limited partnership is
25 organized govern its organization and internal af-
26 airs and the liability of its limited partners; and

27 2. Registration. A foreign limited partnership
28 may not be denied registration by reason of any dif-
29 ference between those laws and the laws of this
30 State.

31 §482. Registration

32 Before transacting business in this State, a for-
33 ign limited partnership shall register with the Sec-
34 retary of State. In order to register, a foreign
35 limited partnership shall submit to the Secretary of

1 State, in duplicate, an application for registration
2 as a foreign limited partnership, signed and sworn to
3 by a general partner and setting forth:

4 1. Name. The name of the foreign limited part-
5 nership and, if different, the name under which it
6 proposes to register and transact business in this
7 State;

8 2. Location; date. The state and date of its
9 formation;

10 3. Agent. The name and address of any agent for
11 service of process on the foreign limited partnership
12 whom the foreign limited partnership elects to ap-
13 point. The agent must be an individual resident of
14 this State, a domestic corporation or a foreign cor-
15 poration having a place of business in and authority
16 to do business in this State;

17 4. Secretary of State as agent. A statement
18 that the Secretary of State is appointed the agent of
19 the foreign limited partnership for service of pro-
20 cess if no agent has been appointed under subsection
21 3 or, if appointed, the agent's authority has been
22 revoked or if the agent cannot be found or served
23 with the exercise of reasonable diligence;

24 5. Address of principal office. The address of
25 the office required to be maintained in the state of
26 its organization by the laws of that state or, if not
27 so required, of the principal office of the foreign
28 limited partnership;

29 6. Address of partners. The name and business
30 address of each general partner; and

31 7. Address of records. The address of the of-
32 fice at which is kept a list of the names and ad-
33 resses of the limited partners and their capital
34 contributions, together with an undertaking by the
35 foreign limited partnership to keep those records un-
36 til the foreign limited partnership's registration in
37 this State is cancelled or withdrawn.

38 §483. Insurance of registration

1 1. Procedure. If the Secretary of State finds
2 that an application for registration conforms to law
3 and all requisite fees have been paid, he shall:

4 A. Endorse on the application the word "Filed,"
5 and the month, day and year of the filing;

6 B. File a duplicate original of the application
7 in his office; and

8 C. Issue a certificate of registration to trans-
9 act business in this State.

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

14 §484. Name

15 A foreign limited partnership may register with
16 the Secretary of State under any name, whether or not
17 it is the name under which it is registered in its
18 state of organization, that includes without abbrevi-
19 ation the words "limited partnership" and may be reg-
20 istered by a domestic limited partnership.

21 §485. Changes and amendments

22 If any statement in the application for registra-
23 tion of a foreign limited partnership was false when
24 made or any arrangements or other facts described
25 have changed, making the application inaccurate in
26 any respect, the foreign limited partnership shall
27 promptly file in the office of the Secretary of State
28 a certificate, signed and sworn to by a general part-
29 ner, correcting the statement.

30 §486. Cancellation of registration

31 A foreign limited partnership may cancel its reg-
32 istration by filing with the Secretary of State a
33 certificate of cancellation signed and sworn to by a
34 general partner. A cancellation does not terminate
35 the authority of the Secretary of State to accept
36 service of process on the foreign limited partnership
37 with respect to causes of action arising out of the
38 transactions of business in this State.

1 §487. Transaction of business without registration

2 1. Court proceedings. A foreign limited part-
3 nership transacting business in this State may not
4 maintain any action, suit or proceeding in any court
5 of this State until it has registered in this State.

6 2. Validity of contracts. The failure of a for-
7 ign limited partnership to register in this State
8 does not impair the validity of any contract or act
9 of the foreign limited partnership or prevent the
10 foreign limited partnership from defending any ac-
11 tion, suit or proceeding in any court of this State.

12 3. Liability of foreign limited partners. A
13 limited partner of a foreign limited partnership is
14 not liable as a general partner of the foreign lim-
15 ited partnership solely by reason of having trans-
16 acted business in this State without registration.

17 4. Secretary of State as agent. A foreign lim-
18 ited partnership, by transacting business in this
19 State without registration, appoints the Secretary of
20 State as its agent for service of process with re-
21 spect to claims for relief, causes of action arising
22 out of the transaction of business in this State.

23 §488. Action by Attorney General

24 The Attorney General may bring an action to re-
25 strain a foreign limited partnership from transacting
26 business in this State in violation of this Act.

27 SUBCHAPTER X

28 DERIVATIVE ACTIONS

29 §491. Right of action

30 A limited partner may bring an action in the
31 right of a limited partnership to recover a judgment
32 in its favor if general partners with authority to do
33 so have refused to bring the action or if an effort
34 to cause those general partners to bring the action
35 is not likely to succeed.

36 §492. Proper plaintiff

1 In a derivative action, the plaintiff must be a
2 partner at the time of bringing the action and:

3 1. Partner at time of transaction. Must have
4 been a partner at the time of the transaction of
5 which he complains; or

6 2. Status as partner. His status as a partner
7 must have devolved upon him by operation of law or
8 pursuant to the terms of the partnership agreement
9 from a person who was a partner at the time of the
10 transaction.

11 §493. Pleading

12 In a derivative action, the complaint shall set
13 forth with particularity the effort of the plaintiff
14 to secure initiation of the action by a general part-
15 ner or the reasons for not making the effort.

16 §494. Expenses

17 If a derivative action is successful, in whole or
18 in part, or if anything is received by the plaintiff
19 as a result of a judgment, compromise or settlement
20 of an action or claim, the court may award the plain-
21 tiff reasonable expenses, including reasonable attor-
22 neys fees, and shall direct him to remit to the lim-
23 ited partnership the remainder of those proceeds re-
24 ceived by him.

25 §495. Construction and application

26 This Act shall be so applied and construed to ef-
27 fectuate its general purpose to make uniform the law
28 with respect to the subject of this Act among states
29 enacting it.

30 §496. Rules for cases not provided for in this Act

31 In any case not provided for in this Act, the
32 provisions of the Uniform Partnership Act govern.

STATEMENT OF FACT

2 In 1976, the National Conference of Commissioners
3 on Uniform State Laws adopted the first revision of
4 the Uniform Limited Partnership Act, originally
5 promulgated in 1916. The 1976 Act was intended to
6 modernize the prior uniform law while retaining the
7 special character of limited partnerships as compared
8 with corporations. The draftsman of a limited part-
9 nership agreement has a degree of flexibility in de-
10 fining the relations among the partners that is not
11 available in the corporate form. Moreover, the rela-
12 tionship among partners is consensual, and under some
13 circumstances may require a general partner to seek
14 approval of the other partners (sometimes unanimous
15 approval) under circumstances that corporate manage-
16 ment would find unthinkable. The limited partnership
17 was not intended to be an alternative in all cases
18 where the corporate form is undesirable for tax or
19 other reasons, and the 1976 Act was not intended to
20 make it so. The 1976 Act clarified many ambiguities
21 and filled interstices in the 1916 Act by adding more
22 detailed language and mechanics. In addition, it ef-
23 fected some important substantive changes and addi-
24 tions from the prior uniform law.

25 The Uniform Limited Partnership Act (1976) with
26 the amendments in this bill follows the 1976 Act very
27 closely in most respects. It makes almost no change
28 in the basic structure of the 1976 Act. It does,
29 however, differ from the 1976 Act in certain signifi-
30 cant respects for the purpose of more effectively
31 modernizing, improving and establishing uniformity in
32 the law of limited partnerships. This bill accom-
33 plishes this, without impairing the basic philosophy
34 or values underlying the 1976 Act, by incorporating
35 into the structure, framework and text of the 1976
36 Act the best and most important improvements that
37 have emerged in the limited partnership Acts enacted
38 recently by certain states. Most of those improve-
39 ments were considered by the draftsmen of the 1976
40 Act, but were not included in it because of uncer-
41 tainties as to the possible consequences of such in-
42 clusion under applicable federal income tax laws.
43 Those uncertainties have since been resolved satis-
44 factorily, and no impediment to incorporating them in
45 this bill remains at this time.

1 The Maine Revised Statutes, Title 31, chapter 11,
2 subchapter I, provides a list of all definitions used
3 in the Act, integrates the use of limited partnership
4 names with corporate names and provides for an office
5 and agent for services of process in the state of or-
6 ganization. All these provisions were innovations in
7 the 1976 Act and were carried over from the 1976 Act
8 to this bill.

9 Subchapter II collects in one place all provi-
10 sions dealing with execution and filing of certifi-
11 cates of limited partnership and certificates of
12 amendment and cancellation. When adopted in 1976,
13 subchapters I and II reflected an important change in
14 the prior statutory scheme: Recognition that the ba-
15 sic document in any partnership, including a limited
16 partnership, is the partnership agreement. The cer-
17 tificate of limited partnership is not a constitutive
18 document (except in the sense that it is a statutory
19 prerequisite to creation of the limited partnership),
20 and merely reflects the most basic matters as to
21 which government officials, creditors and others
22 dealing or considering dealing with the partnership
23 should be put on notice. This principle is further
24 implemented by this bill's elimination of the re-
25 quirement, carried from the original 1916 Act into
26 the 1976 Act, that the certificate of limited part-
27 nership set out the name, address and capital contri-
28 bution of each limited partner and certain other de-
29 tails relating to the operation of the partnership
30 and the respective rights of the partners. The
31 former requirement served no significant practical
32 purpose while it imposed on limited partnerships
33 (particularly those having large numbers of partners
34 or doing business in more than one state) inordinate
35 administrative and logistical burdens and expenses
36 connected with filing and amending their certificates
37 of limited partnership. Many of the other changes
38 made by this bill merely reflect the elimination of
39 that requirement.

40 Subchapter III deals with the single most diffi-
41 cult issue facing lawyers who use the limited part-
42 nership form of organization: The powers and poten-
43 tial liabilities of limited partners. Title 31, sec-
44 tion 423, lists a number of activities in which a
45 limited partner may engage without being held to have

1 so significantly participated in the control of the
2 business that he acquires the liability of a general
3 partner. Moreover, it goes on to confine the liability
4 of a limited partner who merely participates in
5 control to situations in which persons who actually
6 know of that participation in control are misled
7 thereby to their detriment into reasonably believing
8 the limited partner to be a general partner. This
9 "detrimental reliance" test, together with an expansion
10 of the "laundry list" of specific activities in
11 which limited partners may participate without incurring
12 liability, are among the principal innovations
13 in this bill.

14 The provisions relating to general partners are
15 collected in subchapter IV. It differs little from
16 the corresponding article in the 1976 Act, except
17 that some of the 1976 Act's references to the certificate
18 of limited partnership have been changed to refer
19 instead to the partnership agreement. This is in
20 recognition of the principle that the limited partnership
21 agreement, not the certificate of limited
22 partnership, is the primary constitutive, organizational
23 and governing document of a limited partnership.
24

25 Subchapter V dealing with finance, differs in
26 some important respects from subchapter V of the 1976
27 Act, which made some important changes from the 1916
28 Act. The 1976 Act explicitly permitted contributions
29 to the partnership to be made in the form of the contribution
30 of services and promises to contribute
31 cash, property or services, and provided that those
32 who failed to perform promised services were required,
33 in the absence of an agreement to the contrary,
34 to pay the value of the services as stated in
35 the certificate of limited partnership. These important
36 innovations of the 1976 Act are retained in substance
37 in this bill. This bill substitutes the partnership
38 agreement and the records of the limited
39 partnership for the certificate of limited partnership
40 as the place the agreements are to be set out
41 and the information is to be kept.

42 Subsection 6 of the 1976 Act, dealing with distributions
43 and with the withdrawal of partners from the partnership,
44 made a number of changes from the

1 1916 Act. For example, section 468 created a statute
2 of limitations applicable to the right of a limited
3 partnership to recover all or part of a contribution
4 that had been returned to a limited partner, whether
5 to satisfy creditors or otherwise. This bill retains
6 these features of the 1976 Act without substantive
7 change.

8 In both the 1976 Act and the amendments in this
9 bill, the assignability of partnership interests is
10 dealt with in considerable detail in subchapter VII,
11 and the provisions relating to dissolution appear in
12 subchapter VIII. Subchapter VIII of the 1976 Act es-
13 tablished a new standard for seeking judicial disso-
14 lution of a limited partnership, which standard is
15 carried forward into this bill.

16 Subchapter IX of the 1976 Act and this bill deal
17 with one of the thorniest questions for those who op-
18 erate limited partnerships in more than one state,
19 for example, the status of the partnership in a state
20 other than the state of its organization. Neither
21 case law under the 1916 Act nor administrative prac-
22 tice made it clear which state's law governed the
23 partnership or whether, in that other state, the lim-
24 ited partners continued to possess limited liability.
25 Subchapter IX of the 1976 Act dealt with this problem
26 by providing for registration of foreign limited
27 partnerships and specifying choice-of-law rules.
28 Subchapter IX of this bill retains all of those basic
29 provisions and innovations of the 1976 Act.

30 Subchapter X of the 1976 Act represented another
31 significant innovation, by authorizing derivative ac-
32 tions to be brought by limited partners. The 1916
33 Act failed to address this entire concept. Subchap-
34 ter X of the 1985 Act clarifies certain provisions of
35 the 1976 Act, but does not make any substantive
36 changes in the corresponding provisions of the 1976
37 Act.

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