

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
OCTOBER 9, 1991

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1991

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

enacts the Maine Revised Statutes, Title 4, sections 164-A and 164-B takes effect when this Act is approved.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, unless otherwise indicated.

Effective July 10, 1991, unless otherwise indicated.

CHAPTER 550

H.P. 959 - L.D. 1386

An Act to Authorize Involvement of the Department of Human Services in Providing School-based Child Care

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

20-A MRSA §6654, as enacted by PL 1989, c. 551, §1, is amended to read:

§6654. School-based child care grants

The department is and the Department of Human Services are authorized to make grants provide assistance to school administrative units to assist the units in establishing school-based child care services. Each grant shall Any assistance provided must provide funds for 2 years and expenditure of grant money shall be those funds is considered expenditure of local funds in computing the unit's educational program costs in chapter 606. The department ~~shall have~~ has full authority to administer the any grant program that it operates under this section.

See title page for effective date.

CHAPTER 551

H.P. 752 - L.D. 1086

An Act Regarding the Statute of Limitations in Cases of Child Abuse and Incest

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

Sec. 1. 14 MRSA §752-C, as amended by PL 1989, c. 292, is further amended to read:

§752-C. Sexual acts towards minors

Actions based upon sexual intercourse or a sexual act, as defined in Title 17-A, chapter 11, with a person under the age of majority ~~shall~~ must be commenced within 6 12 years after the cause of action accrues, or within 3

6 years of the time the person discovers or reasonably should have discovered the harm, whichever occurs later.

Sec. 2. Application. This Act applies to the following actions based upon sexual intercourse or a sexual act with a person under the age of majority:

1. All actions based upon sexual intercourse or a sexual act occurring after the effective date of this Act; and

2. All actions for which the claim has not yet been barred by the previous statute of limitations in force on the effective date of this Act.

See title page for effective date.

CHAPTER 552

H.P. 1276 - L.D. 1847

An Act to Establish the Maine Revised Uniform Limited Partnership Act

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

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

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

CHAPTER 11

MAINE REVISED UNIFORM LIMITED PARTNERSHIP ACT

SUBCHAPTER I

GENERAL PROVISIONS

§401. Short title

This chapter may be known and cited as the "Maine Revised Uniform Limited Partnership Act."

§402. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Certificate of limited partnership. "Certificate of limited partnership" means the certificate referred to in section 421, and the certificate as amended.

2. Contribution. "Contribution" means any cash, tangible or intangible property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services that a partner contributes to a limited partnership in the capacity as a partner.

3. Distribution. "Distribution" means the transfer of property by a limited partnership to one or more of its partners in the capacity as a partner.

4. Event of withdrawal of a general partner. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 442.

5. Foreign limited partnership. "Foreign limited partnership" means a partnership formed under the laws of any state or jurisdiction, including the District of Columbia, the Commonwealth of Puerto Rico, any other state, territory, possession or other jurisdiction of the United States or any foreign country, other than the laws of this State and having as partners one or more general partners and one or more limited partners.

6. General partner. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner or, in the case of a foreign limited partnership, named as a general partner in the certificate of limited partnership or similar instrument required by the laws of the jurisdiction under which the limited partnership is organized.

7. Limited partner. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner as provided in section 431 or, in the case of a foreign limited partnership, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the limited partnership is organized.

8. Limited partnership; domestic limited partnership. "Limited partnership" and "domestic limited partnership" mean a partnership formed by 2 or more persons under the laws of this State and having one or more general partners and one or more limited partners.

9. Liquidating trustee. "Liquidating trustee" means a person, other than a general partner, but including a limited partner, carrying out the winding up of a limited partnership.

10. Majority in interest of the limited partners. "Majority in interest of the limited partners" means, unless otherwise defined in the partnership agreement, limited partners whose unreturned contributions constitute more than 1/2 of the aggregate unreturned contributions of all limited partners.

11. Partner. "Partner" means a limited or general partner.

12. Partnership agreement. "Partnership agreement" means any written or oral agreement of the partners as to the affairs of a limited partnership and the conduct of its business.

13. Partnership interest. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

14. Person. "Person" means a natural person; partnership, whether general or limited and whether domestic or foreign; trust; estate; association; corporation; custodian; nominee; or any other individual or entity in its own or any representative capacity.

15. Profits and losses. "Profits and losses" includes, without limitation, all items of deduction, income, credit, gain and loss, except as otherwise defined in a partnership agreement.

§403. Limited partnership name

1. Requirements. The limited partnership name:

A. Must contain the words "Limited Partnership";

B. May not contain the name of a limited partner unless:

(1) It is also the name of a general partner; or

(2) The business of the limited partnership had been carried on under that name before the admission of that limited partner.

C. May not be the same as, or deceptively similar to:

(1) The name of any domestic corporation or limited partnership organized under the laws of this State or any foreign corporation or foreign limited partnership authorized to transact business or to carry on activities in this State;

(2) A name the exclusive right to which is, at the time, reserved under section 404; Title 13-A, section 302; or Title 13-B, section 302;

(3) A name that is registered under section 406; Title 13-A, section 303; or Title 13-B, section 303;

(4) The assumed name of a corporation or limited partnership as provided in section 405; Title 13-A, section 307; or Title 13-B, section 308; or

(5) A mark registered under Title 10, chapter 301-A.

2. Exceptions. Notwithstanding subsection 1, paragraph C, the name may be the same or deceptively similar:

A. If the registered owner or holder of the name or mark executes and files with the Secretary of State

proof of authorization of the use of the same or a deceptively similar name by the limited partnership seeking to use the name;

B. If the limited partnership seeking to file under the same or deceptively similar name executes and files with the Secretary of State proof that it will not do business in this State under that same or deceptively similar name but instead will do business under an assumed name that is not the same or similar to any corporate name, reserved name, registered name or assumed name under this chapter or Title 13-A or 13-B or any mark under Title 10; or

C. If the limited partnership was organized under the laws of this State prior to January 1, 1992 or the foreign limited partnership was authorized to do business in this State prior to January 1, 1992 and had the right to use the name as its legal name prior to January 1, 1992.

§404. Reservation of name

1. Right to reserve a name. The exclusive right to the use of a name may be reserved by:

A. Any person intending to organize a limited partnership under this chapter and to adopt that name;

B. Any domestic limited partnership, or any foreign limited partnership authorized to do business in this State, intending to change its name;

C. Any foreign limited partnership intending to apply for a certificate of authority to transact business in this State and to adopt that name;

D. Any domestic limited partnership or any foreign limited partnership authorized to do business in this State intending to utilize the name as an assumed name; or

E. Any person intending to organize a foreign limited partnership and intending to have that partnership apply for a certificate of authority to transact business in this State and adopt that name.

2. Reservation procedure. The reservation of a name is made by filing with the Secretary of State an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant.

A. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, the Secretary of State shall reserve the name for the exclusive use of the applicant for a period of 120 days.

B. Once having reserved a name, the same applicant may again reserve the same name for successive 120-day periods.

C. The right to the exclusive use of a reserved name may be transferred to any other person by filing with the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee.

D. The reservation of a specified name may be canceled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee.

§405. Assumed name of limited partnership

1. Definition. As used in this section, "assumed name" includes a trade name and any name other than the true name of a limited partnership.

2. Right to transact business under assumed name. Upon complying with this section, any domestic limited partnership or foreign limited partnership authorized to do business in this State may transact its business in this State under one or more assumed names.

3. Procedure to use assumed name. Before transacting any business in this State under an assumed name, the domestic or foreign limited partnership shall execute and deliver for filing a statement setting forth:

A. The name of the limited partnership and the address of its registered office;

B. That it intends to transact business under an assumed name;

C. The assumed name that it proposes to use; and

D. If the assumed name will be used at less than all of the limited partnership's places of business in this State, the locations where it will be used.

A separate statement must be executed and delivered for filing with respect to each assumed name that the limited partnership proposes to use.

4. Requirements for name. Each assumed name must comply with the requirements of section 403, except for similarity with the true name of the limited partnership proposing to use the assumed name.

5. Termination of name. A domestic or foreign limited partnership may terminate an assumed name by executing and delivering for filing a statement setting forth:

A. The name of the limited partnership and the address of its registered office;

B. That it no longer intends to transact business under the assumed name; and

C. The assumed name that it intends to terminate.

6. Noncompliance; injunction. If a domestic or foreign limited partnership uses an assumed name without complying with the requirements of this section, the continued use of the name may be enjoined upon suit by the Attorney General or by any person adversely affected by the use.

7. Deceptively similar names; injunction. Notwithstanding its compliance with the requirements of this section, the use of an assumed name may be enjoined upon suit by the Attorney General or by any person adversely affected by such use, if:

A. The assumed name did not, at the time the statement required by subsection 3 was filed, comply with the requirements of section 403, subsection 1, paragraph C; or

B. The assumed name is deceptively similar to a name in which a person has prior rights by virtue of the common law or statutory law of unfair competition, unfair trade practices, common law copyright or similar law.

The mere filing of a statement pursuant to subsection 3 does not constitute actual use of the assumed name set out in the statement, for purposes of determining priority of rights.

§406. Registered name and renewal for foreign limited partnership

1. Name registered. Any foreign limited partnership may register its name under this chapter provided that the name meets the requirements of section 403, subsection 1.

2. Application. The registration must be made by delivering for filing an application for registration setting forth:

A. The name of the limited partnership;

B. The state or territory under the laws of which it is organized;

C. The date of its organization;

D. A statement that it is actually engaged in business activities;

E. A brief statement of the activities in which it is engaged; and

F. A certificate of good standing or its equivalent from the proper officer of its jurisdiction of organization. The certificate of good standing must have been made not more than 90 days prior to the delivery of the application for filing.

3. Registration effective. The registration is effective until the close of the calendar year in which the application is filed.

4. Renewal of registration. A limited partnership that has registered its name under this section may renew the registration from year to year by annually filing an application for renewal. The application for renewal must set forth the information required in subsection 2. The renewal application for the next calendar year may be filed between the first day of October and the 31st day of December in each year.

§407. Registered office; registered agent

1. Requirements of registered office and registered agent. Each limited partnership shall have and maintain:

A. A registered office in this State, which may, but need not, be the same as its place of business; and

B. A registered agent for service of process on the limited partnership. The agent may be either:

(1) An individual resident of this State whose business office or residential address is identical with the limited partnership's registered office; or

(2) A domestic or foreign corporation, whether business or nonprofit, authorized to do business or carry on activities in this State and having a business or registered office identical with the limited partnership's registered office.

2. Change in registered office or registered agent. The registered office and registered agent may be changed by:

A. Filing a certificate of amendment under section 422; or

B. Executing and filing a certificate by the registered agent. The certificate must include:

(1) For the change of address of the registered office of one or more limited partnerships for which the agent is the registered agent to another address in this State:

(a) The names of all limited partnerships;

(b) The address at which the registered agent has maintained the registered office for each of those limited partnerships; and

(c) The new address to which the registered office will be changed; or

(2) For a change in the name of any person acting as the registered agent:

(a) The new name of the registered agent;

(b) The name of the registered agent before it was changed;

(c) The names of all the limited partnerships; and

(d) The address at which the registered agent has maintained the registered office for each of these limited partnerships.

Any registered agent filing a certificate under this paragraph shall upon filing promptly mail or otherwise deliver a copy of the certificate to a general partner of each limited partnership affected by the change.

3. Resignation of registered agent. A registered agent may resign by filing a certificate with the Secretary of State. The certificate must include:

A. When the registered agent appoints a successor:

(1) A statement of resignation;

(2) The names of the limited partnerships;

(3) The name and address of the successor registered agent; and

(4) An attached statement executed by each affected limited partnership, signed by a general partner, ratifying and approving the change of registered agent; or

B. When the registered agent does not appoint a successor:

(1) A statement of resignation;

(2) The names of all the limited partnerships; and

(3) An attached affidavit stating that at least 30 days prior to and again on or about the date of the filing of certificate of resignation, notices were sent by certified or registered mail to each limited partnership from which the registered agent is resigning as registered agent. The notices must be sent to the principal office of each partnership within or outside this State, if known to the registered agent or, if not, to the last known address of the individual at whose request the registered agent was appointed.

The resignation takes effect under this paragraph 30 days after the certificate is filed.

4. Secretary of State. The Secretary of State shall furnish to the current registered agent an attested copy of any certificate filed under this section.

5. Resignation of agent; appointment by partnership; service of process. After receipt of the notice of the resignation of its registered agent under subsection 3, paragraph B, a limited partnership shall file a certificate of amendment designating a new registered agent. Until the partnership duly files a certificate appointing a new registered agent, legal process against the limited partnership may be served upon the Secretary of State in accordance with section 409.

§408. Suspension by Secretary of State

1. Secretary of State's authority to suspend. The Secretary of State:

A. Shall suspend a domestic limited partnership when:

(1) The limited partnership has failed to pay any fees or penalties as prescribed by this chapter when they become due and payable;

(2) The limited partnership fails to appoint or name a registered agent in this State;

(3) The limited partnership, after change of its registered office or registered agent, fails to file with the Secretary of State a notification of such a change; or

(4) A misrepresentation has been made of a material fact in any application, report, affidavit or other document required by this chapter; or

B. May suspend a domestic limited partnership when the partnership fails to file a list of the names and addresses of the limited partners under section 437.

2. Procedures. The Secretary of State shall use the procedures set forth in section 498, subsection 2 relative to the revoking of the right of a foreign limited partnership to do business in this State for suspending domestic limited partnerships.

3. Reinstatement. A domestic limited partnership that has been suspended under this section may be reinstated by filing proper notification of change of registered agent or registered office, or both, with the Secretary of State, correcting any misrepresentation or providing a list of limited partners and paying all delinquent fees and the penalty as set forth in section 526, subsection 6.

4. Liability of limited partners. A limited partner of a domestic limited partnership is not liable as a general

partner of the limited partnership solely by reason of the limited partnership having been suspended under this section.

5. Validity of contracts; right to be sued; right to defend suit. The suspension of a domestic limited partnership under this section does not impair:

- A. The validity of any contract or act of the domestic limited partnership;
- B. The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or
- C. The right of the domestic limited partnership to defend any action, suit or proceeding in any court of this State.

§409. Service of process upon domestic limited partnerships

1. Serving process; general provisions. Legal process on a domestic limited partnership may be served upon:

- A. Any general partner of the limited partnership in this State;
- B. The registered agent of the limited partnership; or
- C. Any liquidating trustee of the limited partnership.

2. Service on Secretary of State. If a domestic limited partnership fails to appoint or maintain a registered agent in this State, or its registered agent can not with reasonable diligence be found at the registered office, then the Secretary of State is an agent of that limited partnership upon whom any process, notice or demand may be served. Service on the Secretary of State of any such process, notice or demand must be made as provided by the Maine Rules of Civil Procedure, Rule 4(d)(8) as amended.

3. Other means of service. Nothing in this section limits or impairs the right to serve any process, notice or demand required or permitted by law to be served upon a domestic limited partnership in any other manner permitted by law or rule of court.

§410. Service of nonresident general partners of domestic limited partnerships

1. Secretary of State; agent to receive service. Each general partner of a domestic limited partnership who is a nonresident of this State at the time of appointment or who becomes a nonresident during the period of appointment, by acceptance of appointment or by continuing to serve in the capacity of general partner, is deemed to have appointed the Secretary of State as an agent to receive service of process upon that general partner in any action or proceeding

relating to actions of such limited partnership and arising while that general partner was serving in the capacity of general partner.

2. Method of serving process. Service of any such process upon the Secretary of State must be made in the same manner as is provided by the Maine Rules of Civil Procedure, Rule 4(d)(8) as amended, in the case of service upon the Secretary of State as an agent of a foreign limited partnership.

A. A copy of the process must be mailed to the nonresident general partner at the business, residence or mailing address of the general partner shown on the certificate of limited partnership.

3. Service on nonresident general partner. Service under this section may also be made by delivery of a copy of the process to the nonresident general partner at that general partner's address outside the State. Proof of such delivery must be made by affidavit of the person making delivery and the affidavit must be filed with the clerk of the court in which the action or proceeding is pending.

§411. Nature of business permitted

A limited partnership may carry on any business that a partnership without limited partners may carry on, except as otherwise prohibited by law.

§412. Business transactions of partner with partnership

Unless otherwise provided in the partnership agreement, a partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the limited partnership. Subject to other applicable law, the partner has the same rights and obligations with respect thereto as a person who is not a partner.

§413. Rules

The Secretary of State may adopt rules not inconsistent with this chapter pertaining to the filing of documents with the Secretary of State. These may include, but are not limited to, rules to:

1. Forms. Prescribe forms for any or all documents required or permitted to be delivered for filing under this chapter, and to refuse to file documents not utilizing these prescribed forms;

2. Approve filing. Refuse to file any document that is not clearly legible, or that may not be clearly reproducible photographically;

3. Appoint designee. Appoint a designee or other agent to receive documents for filing and to file documents on behalf of the Secretary of State;

4. Electronic filings; facsimile signatures. Permit the filing of documents by electronic transmission and permit facsimile signatures on documents to be filed;

5. Deceptively similar. Set forth criteria to define the term "deceptively similar"; and

6. Effective dates of filings. Unless specifically stated in this chapter, set forth the effective dates of filings required by this chapter.

§414. Expedited service

The Secretary of State may provide an expedited service for the processing of documents in accordance with this chapter. If the service is provided, the Secretary of State shall establish by rule a fee schedule and governing procedures in accordance with the Maine Administrative Procedure Act. All fees collected for expedited service must be deposited into a fund for the use by the Secretary of State in providing an improved filing service.

SUBCHAPTER II

FORMATION AND CERTIFICATE OF LIMITED PARTNERSHIP

§421. Certificate of limited partnership

1. Certificate of limited partnership. In order to form a limited partnership, a certificate of limited partnership must be filed with the Secretary of State. The certificate must set forth:

- A. The name of the limited partnership;**
- B. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 407;**
- C. The name and the business, residence or mailing address of each general partner; and**
- D. Any other matters the partners determine to include therein.**

2. Date of formation. A limited partnership is formed at the time of the filing of the initial certificate of limited partnership with the Secretary of State if there has been substantial compliance with the requirements of this section. A limited partnership formed under this chapter is a separate legal entity, the existence of which as a separate legal entity continues until cancellation of the limited partnership's certificate of limited partnership.

§422. Amendment to certificate

1. Certificate of amendment. A certificate of limited partnership is amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment must set forth:

- A. The name of the limited partnership; and**
- B. The amendment or amendments to the certificate.**

2. Inaccuracies. A general partner who becomes aware that any statement in a certificate of limited partnership, or any certificate filed under this section, was inaccurate when made, or, as a result of subsequent events, has become inaccurate in any material respect, shall promptly amend the certificate.

3. Amendment required. No later than 90 days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed by a general partner:

- A. The admission of a new general partner;**
- B. The withdrawal of a general partner; or**
- C. A change in the name of the limited partnership, or, except as provided in section 407, subsections 2 and 3, a change in the address of the registered office or a change in the name or address of the registered agent of the limited partnership.**

4. Right to amend at any time. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

5. Between dissolution and cancellation. If after the dissolution of a limited partnership but prior to the filing of a certificate of cancellation as provided in section 423 a certificate of limited partnership has been amended to reflect the withdrawal of all general partners of a limited partnership, or a person other than an individual shown on a certificate of limited partnership as a general partner is winding up the limited partnership's affairs, then the certificate of limited partnership must be amended to set forth the name and the business, residence or mailing address of each person winding up the limited partnership's affairs. Each person winding up the affairs shall execute and file a certificate of amendment. Such a person is not subject to liability as a general partner by reason of such amendment. A general partner who is not winding up a limited partnership's affairs need not execute a certificate of amendment under this subsection.

6. Restated certificate of limited partnership. A limited partnership may at any time file a restatement of its certificate of limited partnership that integrates into a single document all of the provisions of its certificate of limited partnership, giving effect to all amendments previously adopted and, if authorized, any further amendments. A restated certificate of limited partnership, either in its heading or in an introductory paragraph, must set forth:

- A. That it is a restatement;**

B. The limited partnership's present name;

C. If the name has been changed, the name under which it was originally filed; and

D. The date of filing of the initial certificate of limited partnership.

A restated certificate of limited partnership must be executed and filed in the manner provided for any other amendment to a certificate of limited partnership. Upon filing of the restated certificate by the Secretary of State, the restatement, including any further amendments made as a result of the restatement, constitutes the certificate of limited partnership of the limited partnership pursuant to section 421.

§423. Cancellation of certificate

1. Cancellation upon dissolution. A certificate of limited partnership is canceled upon the dissolution and the completion of winding up of the partnership, or at any other time there are no limited partners. A certificate of cancellation must be filed with the Secretary of State and must set forth:

A. The name of the limited partnership;

B. The date of filing of its certificate of limited partnership;

C. The reason for filing the certificate of cancellation;

D. The future effective date or time, which must be a date or time certain, of cancellation if it is not to be effective upon the filing of the certificate; and

E. Any other information the person filing the certificate of cancellation determines.

§424. Execution

Each certificate delivered to the Secretary of State for filing pursuant to this chapter must be executed in the following manner.

1. Signatures. The documents must be signed as follows:

A. In the case of an initial certificate of limited partnership, by all general partners;

B. In the case of a certificate of amendment or restatement or certificate of correction:

(1) By at least one general partner; and

(2) By each other general partner designated in the certificate of amendment as a new general partner.

If the certificate of amendment reflects the withdrawal of a general partner as a general partner, it need not be signed by that former general partner; or

C. In the case of a certificate of cancellation or other certificate filed after the dissolution of a limited partnership:

(1) By all general partners;

(2) If neither the general nor the limited partners are winding up the limited partnership's affairs, then by all liquidating trustees; or

(3) If the limited partners are winding up the limited partnership's affairs, then by a majority in interest of the limited partners.

2. Signature by agent. Unless otherwise provided in the partnership agreement, any person may sign any certificate or amendment to a certificate or enter in a partnership agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment to a certificate or to enter into a partnership agreement or amendment to an agreement need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed with the Secretary of State, but if in writing, must be retained by a general partner.

3. Oath; false swearing. The execution of a certificate constitutes an oath or affirmation, under the penalties of false swearing under Title 17-A, section 452, that, to the best of the signer's knowledge and belief, the facts stated in the certificate are true.

§425. Execution, amendment or cancellation by judicial order

If a person required to execute a partnership agreement or amendment to the agreement or required by section 424 to execute any certificate fails or refuses to do so, then any other person who is adversely affected by the failure or refusal may petition the Superior Court to direct the execution of the agreement, amendment or certificate as follows.

1. Agreement or amendment. If the court finds that the partnership agreement or amendment to the agreement should be executed and that the person designated to execute the agreement or amendment has failed or refused to do so, it shall enter an order granting appropriate relief.

2. Certificate. If the court finds that the certificate should be executed and that the person or persons designated to execute the certificate have failed or refused to do so, it shall order the Secretary of State to record an appropriate certificate.

3. Venue. Venue for any action under this section lies in the county in this State in which the registered office of the limited partnership is located or, if

there is no registered office in this State, then in the Superior Court of Kennebec County.

§426. Filing

1. Original filing. An original signed copy of any certificate or other document authorized to be filed under any provision of this chapter must be delivered to the Secretary of State.

A. A person who executes a document as an agent or fiduciary need not exhibit evidence of authority as a prerequisite to filing.

B. Unless the Secretary of State finds that the certificate or other document on its face does not conform to law, upon receipt of all filing fees required by law, the Secretary of State shall attest that the document has been filed with the Secretary of State by endorsing thereon the word "filed" and the day, month and year of the filing, and by signing or initialing such endorsement in person or by agent. If the person delivering the document for filing so requests, the endorsement must further include the hour and minute of the filing of the document.

C. The endorsement is known as the "filing date" of the document, and is conclusive of the date, and the time if included in the endorsement, of filing in the absence of actual fraud.

D. The Secretary of State may use an identifying mark in lieu of signing or initialing.

E. The filing date is the date first received unless otherwise specified by statute or rule.

F. The Secretary of State shall file and index the original.

2. Attested copy. The Secretary of State shall promptly make a copy of the original, and shall attest the copy by marking upon it the same endorsement that is required to appear upon the original, together with a further endorsement that the copy is a true copy of the original document. The attested copy must be returned to the person submitting the document for filing, or that person's representative.

§427. Materially inaccurate statement

1. Liability. If any certificate of limited partnership or certificate of amendment or cancellation contains a materially inaccurate statement, one who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

A. Any general partner who executes the certificate and knew or should have known the statement to be inaccurate in any material respect at the time the certificate was executed; and

B. Any general partner who thereafter knows that any arrangement or other fact described in the certificate is inaccurate in any material respect or has changed, making the statement inaccurate in any material respect, if that general partner had sufficient time to amend or cancel the certificate, or to file a petition for its amendment or cancellation, before the statement was reasonably relied upon.

2. Exception. Notwithstanding subsection 1, no general partner has any liability for failing to cause the amendment or cancellation of a certificate to be filed or failing to file a petition for its amendment or cancellation pursuant to subsection 1 if the certificate of amendment, certificate of cancellation or petition is filed within 90 days of when that general partner knew or should have known the certificate was inaccurate in any material respect.

§428. Notice

The fact that a certificate of limited partnership is on file with the Secretary of State is notice that the partnership is a limited partnership and is notice of all other facts set forth in the certificate that are required to be set forth in a certificate of limited partnership by section 421, subsection 1, paragraphs A to B and by section 422, subsection 6.

SUBCHAPTER III

LIMITED PARTNERS

§431. Admission of limited partners

1. Date of admission. A person acquiring a partnership interest as a limited partner is admitted as a limited partner of the limited partnership:

A. In connection with the formation of a limited partnership, upon the later to occur of:

(1) The formation of the limited partnership; or

(2) The time provided in and upon compliance with the partnership agreement; or

B. After the formation of a limited partnership:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership:

(a) At the time provided in and upon compliance with the partnership agreement; or

(b) If the partnership agreement does not so provide, upon the consent of all partners and when the person's admission is reflected in the records of the limited partnership; or

(2) In the case of an assignee of a partnership interest, as provided in section 474:

(a) At the time provided in and upon compliance with the partnership agreement; or

(b) If the partnership agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited partnership.

2. Contribution not required. A person may be admitted to a limited partnership as a limited partner of the limited partnership and may receive a partnership interest in the limited partnership without making a contribution or being obligated to make a contribution to the limited partnership.

3. Written agreement. A written partnership agreement or other written agreement or writing:

A. May provide that a person is admitted as a limited partner of a limited partnership, or becomes an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned, and becomes bound by the partnership agreement if that person, or a representative authorized by that person orally, in writing or by other action such as payment for a partnership interest:

(1) Executes the partnership agreement or any other writing evidencing the intent of that person to become a limited partner or assignee; or

(2) Does not execute the agreement or writing but complies with the conditions for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing and requests, orally, in writing or by other action such as payment for a partnership interest, that the records of the limited partnership reflect the admission or assignment; and

B. May not be unenforceable by reason of its not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in paragraph A, subparagraph (1), or by reason of its having been signed by a representative as provided in this chapter.

§432. Classes and voting

1. Provision to establish classes or groups of limited partners. A partnership agreement may:

A. Provide for classes or groups of limited partners having such relative rights, powers and duties as the partnership agreement may provide;

B. Make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of limited partners having those relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of limited partners; or

C. Provide for the taking of an action by all or a class or group of general partners, without other general or limited partners having the right to participate, including the amendment of the partnership agreement to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding.

2. Voting. The partnership agreement may grant to all or certain identified limited partners or a specified class or group of the limited partners the right to vote separately or with all or any class or group of the limited partners or the general partners, on any matter. Voting by limited partners may be on a per capita, number, financial interest, class, group or any other basis.

3. Notice of meetings. A partnership agreement that grants a right to vote may set forth provisions relating to:

A. Notice of the time, place or purpose of any meeting at which any matter is to be voted on by any limited partners;

B. Waiver of any such notice;

C. Action by consent without a meeting;

D. The establishment of a record date;

E. Quorum requirements;

F. Voting in person or by proxy; or

G. Any other matter with respect to the exercise of any such right to vote.

§433. Powers and liabilities

1. Participation in management. Except as provided in the partnership agreement or applicable law, a limited partner may not participate in the management of the partnership's business.

2. Limited liability. A limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of rights and powers as a limited partner, the limited partner participates in the control of the business. If the limited partner does participate in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably

believing, based upon the limited partner's conduct, that the limited partner is a general partner.

3. Participation in control of business, defined. A limited partner does not participate in the control of the business within the meaning of subsection 2 by virtue of the limited partner possessing, or regardless of whether or not the limited partner has the rights or powers, exercising or attempting to exercise one or more of the following rights or powers; or regardless of whether or not the limited partner has the rights or powers, having acted or attempting to act in one or more of the following capacities:

A. To be an independent contractor for or to transact business with, including being a contractor for, or to be an agent or employee of, the limited partnership or a general partner, or to be an officer, director or stockholder of a corporate general partner, or to be a limited partner of a partnership that is a general partner of the limited partnership, or to be a trustee, administrator, executor, custodian or other fiduciary or beneficiary of an estate or trust that is a general partner, or to be a trustee, officer, advisor, stockholder or beneficiary of a business trust that is a general partner;

B. To consult with or advise a general partner with respect to any matter, including the business of the limited partnership;

C. To act as surety, guarantor or endorser for the limited partnership or a general partner, to guaranty or assume one or more obligations of the limited partnership or a general partner, to borrow money from the limited partnership or a general partner, to lend money to the limited partnership or a general partner or to provide collateral for the limited partnership or a general partner;

D. To call, request, attend or participate at a meeting of the partners or the limited partnership;

E. To wind up a limited partnership pursuant to section 483;

F. To take any action required or permitted by law to bring, pursue or settle or otherwise terminate a derivative action in the right of the limited partnership;

G. To serve on a committee of the limited partnership or the limited partners;

H. To act or cause the taking or refraining from the taking of any action, including by proposing, approving, consenting or disapproving, by voting or otherwise, with respect to one or more of the following matters:

(1) The dissolution and winding up of the limited partnership or an election to continue the

limited partnership or an election to continue the business of the limited partnership;

(2) The sale, exchange, lease, mortgage, assignment, pledge or other transfer of, or granting of a security interest in, any asset or assets of the limited partnership;

(3) The incurrence, renewal, refinancing or payment or other discharge of indebtedness by the limited partnership;

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

(5) The admission, removal or retention of a general partner;

(6) The admission, removal or retention of a limited partner;

(7) A transaction or other matter involving an actual or potential conflict of interest;

(8) An amendment to the partnership agreement or certificate of limited partnership;

(9) In respect of a limited partnership that is registered as an investment company under the Investment Company Act of 1940, 15 United States Code, Section 81a-1 et seq., as amended, any matter required by the Investment Company Act of 1940, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder, to be approved by the holders of beneficial interests in an investment company, including the electing of directors or trustees of the investment company, the approving or terminating of investment advisory or underwriting contracts and the approving of auditors;

(10) The indemnification of any partner or other person; or

(11) Such other matters as are stated in the partnership agreement or in any other agreement or in writing;

I. To serve on the board of directors or a committee of, to consult with or advise, to be an officer, director, stockholder, partner, agent or employee of, or to be a fiduciary for, any person in which the limited partnership has an interest; or

J. To exercise any right or power granted or permitted to limited partners under this chapter and not specifically enumerated in this subsection.

4. Other powers. The enumeration in subsection 3 does not mean that the possession or exercise of any other powers or having or acting in other capacities by a limited

partner constitutes participation by the limited partner in the control of the business of the partnership.

5. Use of name in name of limited partnership.

A limited partner does not participate in the control of the business within the meaning of subsection 2 by virtue of the fact that all or any part of the name of such limited partner is included in the name of the limited partnership.

6. Rights or powers not created. This section does not create rights or powers of limited partners. Such rights and powers may be created only by a certificate of limited partnership, a partnership agreement or any other agreement or in writing, or other sections of this chapter.

7. Frequency. A limited partner does not participate in the control of the business within the meaning of subsection 2 regardless of the nature, extent, scope, number or frequency of the limited partner's possessing or, regardless of whether or not the limited partner has the rights or powers, exercising or attempting to exercise one or more of the rights or powers or having acted or, regardless of whether or not the limited partner has the rights or powers, acting or attempting to act in one or more of the capacities permitted under this section.

§434. Person erroneously believing self to be a limited partner

1. Not a general partner. Except as provided in subsection 2, a person who erroneously but in good faith believes that the person has become a limited partner in the limited partnership is not a general partner in the partnership and is not bound by the obligations of a general partner by reason of making a contribution to a partnership, receiving distributions from the partnership or exercising any rights of a limited partner, if, within a reasonable time after ascertaining the mistake, the person causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed, or files or causes to be filed with the Secretary of State a writing entitled "Filing Pursuant to Title 31, section 434" that sets forth:

A. In the case of a person who wishes to be a limited partner:

- (1) The name of the limited partnership;
- (2) The name and mailing address of the person signing the writing;
- (3) That the person signing the writing acquired a limited partnership interest in the partnership;
- (4) That the person signing the writing has done one or both of the following:

(a) Requested a general partner of the limited partnership to file an accurate certificate of limited partnership required by this chapter; and

(b) Instituted a proceeding pursuant to section 425 to cause the general partner to file an amended certificate, which proceeding has not been concluded; and

(5) That the writing is being filed pursuant to paragraph A, and that the person signing the writing is claiming not to be a general partner of the limited partnership named in the writing; or

B. In the case of a person who wishes to withdraw from the partnership:

(1) The information described in paragraph A, subparagraphs (1) to (3);

(2) That the person signing the writing has renounced future equity participation in the enterprise; and

(3) That the writing is being filed pursuant to this paragraph and that the person signing the writing is claiming status as a limited partner of the enterprise for the period including and prior to the filing of the certificate pursuant to this subsection.

2. Liable to 3rd party. A person who makes a contribution of the kind described in subsection 1 is liable as a general partner to any 3rd party who transacts business with the partnership only if the 3rd party actually believes in good faith that the person was a general partner at the time of the transaction and acted in reasonable reliance on that belief in entering the transaction:

A. Before the person withdraws and an appropriate certificate is filed to show withdrawal; or

B. Before an appropriate certificate is filed to show that the person is not a general partner.

§435. Access to information

1. Right to information. Each limited partner has the right, subject to such reasonable standards, including standards governing what information and documents are to be furnished, at what time and location and at whose expense, as may be set forth in the partnership agreement or otherwise established by the general partners, to obtain from the general partners from time to time upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner:

A. True and full information regarding the status of the business and financial condition of the limited partnership;

B. Promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year;

C. A current list of the name and last known business, residence or mailing address of each partner;

D. A copy of any written partnership agreement and certificate of limited partnership and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the partnership agreement and any certificate and all amendments thereto have been executed;

E. True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and that each partner has agreed to contribute in the future, and the date on which each became a partner; and

F. Other information regarding the affairs of the limited partnership as is just and reasonable.

2. Confidential information. Except for those items contained in subsection 1, paragraphs A to E and those items specifically required to be disclosed by the partnership agreement, a general partner has the right to keep confidential from limited partners for such a period of time as the general partner deems reasonable, any information not required to be disclosed by the partnership agreement that the general partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the general partner in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its business or that the limited partnership is required by law or by agreement with a 3rd party to keep confidential.

3. Records; medium. A limited partnership may maintain its records in other than written form if such form is capable of conversion into written form within a reasonable time.

4. Demands in writing. Except for information or documents requested under subsection 1, paragraphs B to E, any demand under this section must be in writing and must state the purpose of the demand.

5. Actions; Superior Court. Any action to enforce any right arising under this section must be brought in Superior Court of the county in which the principal office of the limited partnership is located or in Superior Court in Kennebec County.

6. Court costs. In any action under this section, if the court finds the failure of the partnership to comply with

the requirements of this section to have been without justification, the court may award an amount sufficient to reimburse the partners bringing the action for the reasonable expenses incurred by the partners, including attorney's fees, in connection with the action or proceeding.

§436. Remedies for breach of partnership agreement by limited partner

A partnership agreement may provide that a limited partner who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement is subject to specified penalties or specified consequences. The agreement may also specify at what time or upon the happening of which events the penalties or consequences take effect.

§437. Disclosure of limited partners

1. Required by Secretary of State. A limited partnership shall file with the Secretary of State a written list of the names and addresses of its limited partners upon request by the Secretary of State. The Secretary of State shall request the list if the Secretary of State is requested in writing to do so by a 3rd party. The request must state the purpose for the request.

2. Use of information; oath. The list of the names and addresses filed under subsection 1 may not be used for commercial solicitation purposes. The Secretary of State may require persons requesting the list under subsection 1 to state under oath that the list will not be used for commercial solicitation purposes.

3. Penalty. If the limited partnership fails to file the list under subsection 1 within 10 working days after requested by the Secretary of State, the Secretary of State may assess a fine of \$10 a day for each day the information is not filed. In no case may the penalty exceed \$500. The Secretary of State may, at any time, suspend the limited partnership under section 408, subsection 1, paragraph B for noncompliance with this section.

4. Rules. The Secretary of State may adopt rules in accordance with the Maine Administrative Procedure Act that establish procedures governing this section.

5. Fee. The Secretary of State may charge a fee to cover the cost of processing requests under subsection 1.

SUBCHAPTER IV

GENERAL PARTNERS

§441. Admission of general partners

1. Written consent of partners. After the filing of a limited partnership's initial certificate of limited partnership, unless otherwise provided in the partnership agreement, additional general partners may be admitted only with the written consent of each partner.

2. Contribution not required. A person may be admitted to a limited partnership as a general partner of the limited partnership and may receive a partnership interest in the limited partnership without making a contribution or being obligated to make a contribution to the limited partnership. Nothing contained in this subsection affects the first sentence of section 443, subsection 2.

§442. Events of withdrawal

1. Reasons for withdrawal of general partner. A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

A. The general partner withdraws from the limited partnership as provided in section 462;

B. The general partner ceases to be a general partner of the limited partnership as provided in section 472;

C. The general partner is removed as a general partner in accordance with the partnership agreement;

D. Unless otherwise provided in the partnership agreement, or with the written consent of all partners, the general partner:

(1) Makes an assignment for the benefit of creditors;

(2) Files a voluntary petition in bankruptcy;

(3) Is adjudged bankrupt or insolvent or is a person against whom an order of relief has been entered in any bankruptcy or insolvency proceeding;

(4) Files a petition or answer seeking for the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(5) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding of this nature; or

(6) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of the general partner's properties;

E. Unless otherwise provided in the partnership agreement, or with the written consent of all partners, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment liquidation, dissolution or similar relief under any statute, law or

regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without the general partner's consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of the general partner's properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;

F. In the case of a general partner who is a natural person:

(1) The general partner's death; or

(2) The entry by court of competent jurisdiction adjudicating the general partner incompetent to manage the general partner's person or the general partner's property;

G. In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust; but not merely the substitution of a new trustee;

H. In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

I. In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the suspension of its charter and the expiration of 90 days after the date of notice to the corporation of suspension without a reinstatement of its charter; or

J. Unless otherwise provided in the partnership agreement, or with the written consent of all partners, in the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership.

2. Notification in writing. A general partner who suffers an event that with the passage of the specified period becomes an event of withdrawal under subsection 1, paragraph D or E shall notify each other general partner, or in the event that there are no other general partners, each limited partner, of the occurrence of the event within 30 days after the date of occurrence of the event of withdrawal.

§443. General powers and liabilities

1. Rights and powers. Except as provided in this chapter or in the partnership agreement, a general partner but not a limited partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

2. Liabilities. Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to per-

sons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

§444. Contributions by a general partner

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

§445. Classes and voting

1. Classes or groups of general partners. A partnership agreement may provide for classes or groups of general partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of general partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of general partners. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any general partner or class or group of general partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding.

2. Voting. The partnership agreement may grant to all or certain identified general partners or a specified class or group of the general partners the right to vote, separately or with all or any class or group of the limited partners or the general partners, on any matter. Voting by general partners may be on a per capita, number, financial interest, class, group or any other basis.

3. Notice of meetings. A partnership agreement that grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any general partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

§446. Nature of general partner's services

A general partner's services are deemed to be personal in nature and, unless the partnership agreement otherwise provides, may not be assumed by another party without the consent of all partners.

§447. Remedies for breach of partnership agreement by general partner

A partnership agreement may provide that:

1. Failure to comply. A general partner who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement is subject to specified penalties or specified consequences; and

2. Subject to penalties. At the time or upon the happening of events specified in the partnership agreement, a general partner is subject to specified penalties or specified consequences.

SUBCHAPTER V

FINANCE

§451. Form of contribution

The contribution of a partner may be in cash, tangible or intangible property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

§452. Liability for contribution

1. Contribution. Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value as stated in the records of the limited partnership of the contribution that has not been made. The option of the limited partnership is in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited partnership may have against such a partner under the partnership agreement or applicable law.

2. Liability limited. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution, or to pay any interest payable on the contribution, or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who acts or refrains from acting in reasonable reliance on that obligation, and who does not know of such compromise, may enforce the obligation. A conditional obligation of a partner to make a contribution or

return money or other property to a limited partnership may not be enforced unless the conditions to the obligation have been satisfied or waived as to or by that partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership or a general partner prior to the time the call occurs.

3. Penalty. A partnership agreement may provide that the interest of any partner who fails to make any contribution that the partner is obligated to make is subject to specified penalties for, or specified consequences of, such a failure. The penalty or consequence may take the form of reducing or eliminating the defaulting partner's proportionate interest in the limited partnership, subordinating the partner's partnership interest to that of nondefaulting partners, a forced sale of the partner's partnership interest, forfeiture of the partner's partnership interest, the lending by other partners of the amount necessary to meet the partner's commitment, a fixing of the value of the partner's partnership interest by appraisal or by formula and redemption or sale of the partner's partnership interest at that value, or other penalty or consequence.

§453. Allocation of profits and losses

The profits and losses of a limited partnership must be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, the profits and losses must be allocated on the basis of the agreed value, as stated in the records of the limited partnership, of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

§454. Allocation of distributions

Distributions of cash or other assets of a limited partnership must be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement.

If the partnership agreement does not so provide, distributions must be made on the basis of the agreed value, as stated in the records of the limited partnership, of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

SUBCHAPTER VI

DISTRIBUTIONS AND WITHDRAWAL

§461. Interim distributions

Except as provided in this subchapter, to the extent and at the times or upon the happening of the events specified in the partnership agreement, a partner is entitled to receive from a limited partnership distributions before the partner's withdrawal from the limited partnership and be-

fore the dissolution and winding up of the limited partnership.

§462. Withdrawal of general partner and assignment of general partner's partnership interest

1. Terms of withdrawal in partnership agreement. A general partner may withdraw from a limited partnership at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement.

2. Penalty, violation of withdrawal terms in partnership agreement. A partnership agreement may provide that a general partner does not have the right to withdraw as a general partner of a limited partnership. Notwithstanding that a partnership agreement provides that a general partner does not have the right to withdraw as a general partner of a limited partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners. If the withdrawal of a general partner violates the partnership agreement, in addition to any remedies otherwise available under applicable law, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against any amounts otherwise distributable or payable to the withdrawing general partner under the partnership agreement or otherwise.

3. Prohibition on assignment of interest. Notwithstanding anything to the contrary set forth in this chapter, a partnership agreement may provide that a general partner may not assign a partnership interest in a limited partnership prior to the dissolution and winding up of the limited partnership.

§463. Withdrawal of limited partner

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement. If the partnership agreement does not specify the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than 6 months' prior written notice to each general partner at the general partner's address as set forth in the certificate of limited partnership filed with the Secretary of State. Notwithstanding anything to the contrary set forth in this chapter, a partnership agreement may provide that a limited partner may not withdraw from a limited partnership or assign a partnership interest in a limited partnership prior to the dissolution and winding up of the limited partnership.

§464. Distribution upon withdrawal

Except as provided in this subchapter, upon withdrawal any withdrawing partner is entitled to receive any

distribution to which the partner is entitled under the partnership agreement and, if not otherwise provided in the partnership agreement, the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the partner's interest in the limited partnership as of the date of withdrawal.

§465. Distribution in kind

Except as provided in the partnership agreement, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset that is equal to the percentage in which the partner shares in distributions from the limited partnership.

§466. Right to distribution

Subject to sections 467 and 484, and unless otherwise provided in the partnership agreement, at the time a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. A partnership agreement may provide for the establishment of a record date with respect to allocations and distributions by the limited partnership.

§467. Limitations on distribution

1. Limit on distributions. A limited partnership may not make a distribution to a partner to the extent that at the time of the distributions, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the assets of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited is included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.

2. Liability for receipt of distributions in excess of allowable amount. A partner who receives a distribution in violation of subsection 1 is liable to the limited partnership for the amount of the distribution. Subject to subsection 3, this subsection does not affect any obligation or liability of a limited partner under a partnership agreement or under applicable law for the amount of a distribution.

3. Limited partners liability for receipt of distributions in excess of the allowable amount. Unless otherwise agreed, a limited partner who receives a distribution from a

limited partnership has no liability under this chapter or other applicable law for the amount of the distribution after the expiration of 6 years from the date of the distribution.

SUBCHAPTER VII

ASSIGNMENT OF PARTNERSHIP INTERESTS

§471. Nature of partnership interest

A partnership interest is personal property. A partner has no interest in specific limited partnership property.

§472. Assignment of partnership interest

1. General rules. Unless otherwise provided in the partnership agreement:

A. A partnership interest is assignable in whole or in part;

B. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights or powers of a partner;

C. An assignment entitles the assignee to share in profits and losses, to receive distribution or distributions and to receive such allocation of income, gain, loss, deduction or credit or similar item to which the assignor was entitled, to the extent assigned. An assignment is not binding upon the partnership unless it has notice of the assignment; and

D. Until the assignee of a partnership interest becomes a partner, the assignor partner continues to be a partner and to have the power to exercise any rights or powers of a partner, except to the extent those rights or powers are assigned. On the assignment by a general partner of all of the general partner's rights as a general partner, the general partner's status as a general partner may be terminated by the affirmative vote of a majority in interest of the limited partners.

2. Evidence of interest. The partnership agreement may provide that a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership and may also provide for the assignment or transfer of any partnership interest represented by such a certificate and make other provisions with respect to the certificates.

3. Liability of assignee. Unless otherwise provided in a partnership agreement and to the extent assumed by agreement, until an assignee of a partnership interest becomes a partner, the assignee has no liability as a partner solely as a result of the assignment.

§473. Rights of judgment creditor

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

§474. Right of assignee to become limited partner

1. Right to become limited partner. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

- A. The partnership agreement so provides; or
- B. All other partners and the assignee consent.

2. Rights; powers; restrictions; liabilities of assignee who becomes limited partner. An assignee who has become a limited partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a limited partner under the partnership agreement and this chapter. Notwithstanding the foregoing, unless otherwise provided in the partnership agreement, an assignee who becomes a limited partner is liable for the obligations of the assignee's assignor to make contributions as provided in section 452, but is not liable for the obligations of the assignee's assignor under subchapter VI. The assignee is not obligated for liabilities, including the obligations of the assignee's assignor to make contributions as provided in section 452, unless these liabilities are known to the assignee at the time the assignee became a limited partner or could have been ascertained from the partnership agreement.

3. Assignor's continuing liabilities. Unless otherwise provided in the partnership agreement, whether or not an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under subchapters V and VI.

§475. Powers of estate of deceased or incompetent partner

If a partner who is an individual dies or a court of competent jurisdiction adjudges the partner to be incompetent to manage the partner's person or property, the partner's executor, administrator, guardian, conservator or other legal representative may exercise all of the partner's rights for the purpose of settling the partner's estate or administering the partner's property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

SUBCHAPTER VIII**DISSOLUTION****§481. Nonjudicial dissolution**

A limited partnership is dissolved and its affairs are wound up upon the first to occur of the following:

1. Specified time or event. At the time or upon the happening of events specified in the partnership agreement;

2. Consent. Written consent of all partners;

3. Withdrawal of general partner. An event of withdrawal of a general partner, unless at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so; but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment, effective as of the date of withdrawal, of one or more additional general partners if necessary or desired; or

4. Judicial dissolution. Entry of decree of judicial dissolution under section 482.

§482. Judicial dissolution

On application by or for a partner, the Superior Court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

§483. Winding up

1. Persons authorized to wind up a partnership. Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners or one or more liquidating trustees approved by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case by a majority in interest of the limited partners, may wind up the limited partnership's affairs; but the Superior Court, upon cause shown, may wind up the limited partnership's affairs upon application of any partner or a partner's legal representative or assignee, and in connection with the winding up, may appoint a liquidating trustee.

2. Liquidation process. Upon dissolution of a limited partnership and until the filing of a certificate of cancellation as provided in section 423, the persons winding up the limited partnership's affairs may, in the name of, and for and on behalf of, the limited partnership prosecute and defend suits, whether civil, criminal or administrative, settle and close the limited partnership's business, dispose

of and convey the limited partnership's property, discharge or make reasonable provision for the limited partnership's liabilities and distribute to the partners any remaining assets of the limited partnership, all without affecting the liability of limited partners and without imposing the liability of a general partner on the liquidating trustee.

§484. Distribution of assets

1. Priority of distribution. Upon the winding up of a limited partnership, the assets must be distributed as follows:

A. To the creditors, including partners who are creditors, in satisfaction of liabilities of the limited partnership, whether by payment or the making of reasonable provision for payment, other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to partners under section 461 or 464;

B. Unless otherwise provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section 461 or 464; and

C. Unless otherwise provided in the partnership agreement, to partners:

(1) For the return of their contributions; and

(2) Respecting their partnership interests, in the proportions in which the partners share in distributions.

2. Payment or provisions for payment for liabilities. A limited partnership that has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the limited partnership and all claims and obligations that are known to the limited partnership but for which the identity of the claimant is unknown. If there are sufficient assets, the claims and obligations must be paid in full and any such provision for payment made must be made in full. If there are insufficient assets, the claims and obligations must be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefore. Unless otherwise provided in a partnership agreement, any remaining assets must be distributed as provided in this chapter. Any liquidating trustee winding up a limited partnership's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited partnership by reason of that person's actions in winding up the limited partnership.

SUBCHAPTER IX

FOREIGN LIMITED PARTNERSHIPS

§491. Law governing

1. Law governing. Unless otherwise provided by the Constitution of Maine:

A. The laws of the state, territory, possession or other jurisdiction, including the District of Columbia or the Commonwealth of Puerto Rico, or country under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and

B. A foreign limited partnership may not be denied the authority to do business by reason of any difference between the laws referred to in this subsection and the laws of this State.

2. Type of business. A foreign limited partnership may transact any business in this State that may be transacted by a domestic limited partnership.

§492. Authority to do business required; application

Before doing business in this State, a foreign limited partnership must obtain authority to do business from the Secretary of State.

1. Definitions. As used in this subchapter, "doing business," "the doing of business" or "business done in this State," by any foreign limited partnership means the course or practice of carrying on any business activities in this State. Without excluding other activities that may not constitute transacting business in this State, a foreign limited partnership is not considered to be transacting business in this State, exclusively for the purpose of qualification under this subchapter, solely by reason of carrying on in this State any one or more of the following activities:

A. Maintaining or defending any action or administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

B. Holding meetings of its partners or carrying on other activities concerning its internal affairs;

C. Maintaining bank accounts, share accounts in savings and loan associations, custodial or agency arrangements with a bank or trust company or stock or bond brokerage accounts;

D. Maintaining offices or agencies for the transfer, exchange and registration of its partnership interests or appointing and maintaining trustees or depositaries with relation to its partnership interests;

E. Effecting sales through independent contractors;

F. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, when the orders require acceptance outside this State before becoming binding contracts and when the contracts

do not involve any local performance other than delivery and installation;

G. Making loans or creating or acquiring evidences of debt, mortgages or liens on real or personal property, or recording same;

H. Securing or collecting debts or enforcing any rights in property securing the same;

I. Effecting transactions in interstate or foreign commerce;

J. Owning or controlling a subsidiary corporation incorporated in or transacting business within this State;

K. Owning or controlling a general or limited partnership organized or transacting business within this State;

L. Conducting an isolated transaction not in the course of a number of repeated transactions of like nature;

M. Serving as trustee, executor, administrator or guardian, or in like fiduciary capacity, when permitted so to serve by the laws of this State; or

N. Being a partner in a domestic limited partnership.

2. General partner. The foreign limited partnership shall submit an application for authority to do business to the Secretary of State executed by a general partner on a form prescribed by or furnished by the Secretary of State.

3. Contents of the application. The application must include:

A. The name of the foreign limited partnership and, if different, the name under which it proposes to apply for authority to do business in this State;

B. The state, territory, possession or other jurisdiction, including the District of Columbia or the Commonwealth of Puerto Rico, or country where organized, the date of its organization and a statement that, as of the date of filing, the foreign limited partnership validly exists as a limited partnership under the laws of the jurisdiction of its organization;

C. The nature of the business or purposes to be conducted or promoted in this State;

D. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 494, subsection 2;

E. A statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process;

F. The name and business, residence or mailing address of each of the general partners;

G. The date on which the foreign limited partnership first did, or intends to do, business in this State; and

H. A certificate of good standing or its equivalent from the proper officer of its jurisdiction of organization. The certificate of good standing or its equivalent must have been made not more than 90 days prior to the delivery of the application for filing.

§493. Evidence of authority to do business

If the Secretary of State finds that an application for the authority to do business conforms to the requirements of this chapter and all requisite fees have been paid, the Secretary of State shall:

1. Attest application. Attest that the application has been filed by:

A. Endorsing upon the original application the word "filed" and the day, month and year of the filing. The person delivering the application for filing may have the endorsement include the hour and minute of the filing of the application. This endorsement is conclusive of the date, and time if included in the endorsement, and of its filing, in the absence of actual fraud; and

B. Signing, initialing or placing an identifying mark on the endorsement in paragraph A in person or by agent.

2. File the application. File and index the endorsed application; and

3. Copy to limited partnership. Furnish to the registered agent an attested copy of the application.

§494. Name; registered office; registered agent

1. Name. A foreign limited partnership may apply to the Secretary of State to do business in this State under any name that conforms with the requirements of section 403. The name does not need to be the same as the name under which it is authorized to do business in the jurisdiction of its organization.

2. Registered office and registered agent. Each foreign limited partnership must have and maintain in this State:

A. A registered office, which may, but need not, be a place of its business in this State; and

B. A registered agent for service of process on the limited partnership. The agent may be either:

(1) An individual resident of this State whose business office or residential address is identi-

cal with the limited partnership's registered office; or

(2) A domestic or foreign corporation, whether business or nonprofit, authorized to do business or carry on activities in this State having a business or registered office identical with the limited partnership's registered office.

3. Change in registered office or registered agent. The registered office and registered agent may be changed by:

A. Filing a certificate of amendment under section 495; or

B. Executing and filing a certificate by the registered agent. The certificate must include:

(1) For the change of address of the registered office of the limited partnerships for which the agent is the registered agent to another address in this State:

(a) A list of the names of all the limited partnerships represented by that registered agent;

(b) The address at which the registered agent has maintained the registered office for each of the limited partnerships; and

(c) The new address to which the registered office will be changed; or

(2) For a change in the name of any person acting as the registered agent:

(a) The new name of the registered agent;

(b) The name of the registered agent before it was changed;

(c) A list of the names of all the limited partnerships represented by the agent; and

(d) The address at which the registered agent has maintained the registered office for each of the limited partnerships.

Any registered agent filing a certificate under this paragraph shall upon filing promptly mail or otherwise deliver a copy of the certificate to a general partner of each limited partnership affected by the change.

4. Resignation of registered agent. A registered agent may resign by filing a certificate with the Secretary of State. The certificate must include:

A. When the registered agent appoints a successor:

(1) A statement of resignation;

(2) A list of the names of all the limited partnerships represented by the agent for which the agent is resigning as agent;

(3) The name and address of the successor registered agent; and

(4) An attached statement executed by each affected limited partnership, signed by a general partner, ratifying and approving the change of registered agent; or

B. When the registered agent does not appoint a successor:

(1) A statement of resignation;

(2) A list of the names of all the limited partnerships represented by the agent; and

(3) An attached affidavit stating that at least 30 days prior to and again on or about the date of the filing of certificate of resignation, notices that the registered agent is resigning as registered agent were sent by certified or registered mail to the principal office of each limited partnership within or outside this State, if known to the registered agent or, if not, to the last known address of the individual at whose request the registered agent was appointed.

The resignation takes effect under this paragraph 60 days after the certificate is filed.

5. Secretary of State. The Secretary of State shall furnish to the current registered agent an attested copy of any certificate filed under this section.

6. Resignation of agent; appointment by partnership; service of process. After receipt of the notice of the resignation of its registered agent under subsection 3, paragraph B, a limited partnership shall file a certificate of amendment designating a new registered agent. If the partnership fails to appoint a new registered agent within the 60-day period after the filing of the certificate of resignation:

A. The authority of that foreign limited partnership to carry out business in this State is canceled and the foreign limited partnership may not carry out business in this State; and

B. Legal process against the limited partnership may be served upon the Secretary of State in accordance with section 501.

§495. Amendments to application

If any statement in the application for authority to do business of a foreign limited partnership was materially inaccurate when made or has become materially inaccurate as a result of subsequent events, the foreign limited partnership shall promptly file with the Secretary of State a certificate, executed by a general partner, correcting the statement.

§496. Cancellation of authority to do business

A foreign limited partnership may cancel its authority to do business by filing with the Secretary of State a certificate of cancellation. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to causes of action arising out of the doing of business in this State.

§497. Doing business without authority; right to sue and be sued; liability of limited partners; penalties

1. Prohibition against bringing an action, suit or proceeding. A foreign limited partnership doing business in this State may not maintain any action, suit or proceeding in this State until it is granted authority to do business in this State and pays to the State all fees and penalties for the years or parts of years during which it did business in this State without having been granted the authority to do business.

2. Validity of contracts; right to be sued; right to defend suit. The failure of a foreign limited partnership to obtain authority to do business in this State in accordance with this chapter does not impair:

A. The validity of any contract or act of the foreign limited partnership;

B. The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

C. The right of the foreign limited partnership to defend any action, suit or proceeding in any court of this State.

3. Liability of limited partners. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the limited partnership having done business in this State without being granted the authority to do business in this State.

4. Penalty. The Secretary of State may fine any foreign limited partnership doing business in this State without first having been granted the authority to do business in this State \$750 for each year or part of a year during which the foreign limited partnership failed to obtain authority to do business in this State.

§498. Doing business without authority; court injunction; revocation by Secretary of State

1. Enjoin from doing business. The Superior Court has jurisdiction to enjoin any foreign limited partnership or any agent of the foreign limited partnership from doing any business in this State if the foreign limited partnership has not been granted the authority to do business under this subchapter. The Attorney General may file a complaint in any county in which the foreign limited partnership is doing or has done business for the purpose of obtaining an injunction under this subsection.

2. Revocation by Secretary of State. The Secretary of State may revoke a foreign limited partnership's authority to do business in the State in accordance with this subsection.

A. Notwithstanding Title 4, chapter 25 and Title 5, chapter 375, the authority of a foreign limited partnership to do business in this State may be revoked by the Secretary of State as provided in paragraphs C and D when:

(1) The foreign limited partnership fails to pay any fees or penalties as prescribed by this subchapter when they become due and payable;

(2) The foreign limited partnership fails to appoint and maintain a registered agent in this State as required by section 494;

(3) The foreign limited partnership fails, after change of its registered office or registered agent, to file with the Secretary of State a statement of the change required by section 494;

(4) The foreign limited partnership has failed to file with the Secretary of State an amended application for authority required by section 495; or

(5) A misrepresentation of a material fact is made in any application, report, affidavit or other document required by this subchapter.

B. The authority of a foreign limited partnership may be revoked only after:

(1) The Secretary of State has mailed to the partnership's last registered office in this State at least 60 days' notice of pending revocation of its authority to do business in this State. The notice must specify the default; and

(2) The partnership has not, prior to revocation, removed the ground of default specified in the notice.

C. After the expiration of the 60-day notice period, if a foreign limited partnership has not corrected the specified default or convinced the Secretary of State, by affidavit or otherwise, that there was no misrepresentation relative to paragraph A, subparagraph (5), the Secretary of State shall issue and file a certificate revoking the foreign limited partnership's authority to do business in this State and shall mail copies of the certificate of revocation to the foreign limited partnership's last registered office in this State.

D. The partnership may appeal the action of the Secretary of State in revoking its authority to do business to the Superior Court in Kennebec County. The appeal is governed by the Maine Rules of Civil Procedure, Rule 80B, as amended.

E. The authority of the foreign limited partnership to do business in this State ceases as of the date of filing of the certificate of revocation, unless stayed by the court.

F. A foreign limited partnership that has its authority to do business in this State revoked may be requalified by applying for authority to do business under this subchapter.

§499. Execution of documents; liability for false statements

Section 424, subsection 3 governing false swearing and section 427 on liability for false statements apply to foreign limited partnerships as if the application for authority to do business were a certificate of limited partnership.

§500. Service of process on foreign limited partnerships authorized to do business in State

1. General partner. Process may be served on any general partner that is present or found in this State.

2. Registered agent. Process may be served on the registered agent of the foreign limited partnership.

3. Service on Secretary of State. If a foreign limited partnership authorized to do business in this State fails to appoint or maintain a registered agent in this State, any such registered agent can not with reasonable diligence be found at the registered office or the authority of a foreign limited partnership is revoked, the Secretary of State is an agent of that foreign limited partnership upon whom any such process, notice or demand may be served. Service on the Secretary of State of any such process, notice or demand must be made as provided in section 502.

4. Other means of service. Nothing in this section limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a foreign limited partnership in any other manner permitted by statute or rule of court.

§501. Service of process on foreign limited partnerships not authorized to do business in State

1. Service on Secretary of State. Every foreign limited partnership that does any business in this State without having been authorized to do business in this State thereby submits itself to the jurisdiction of the courts of this State, and also thereby designates the Secretary of State as its agent upon whom any process, notice or demand upon it may be served in any action or proceeding arising out of or in connection with the doing of any business in this State.

2. Method of serving process. In addition to other methods of service that may be authorized by statute or by rule, service of process may be made as provided in section 502.

§502. Service of process on Secretary of State for foreign limited partnership

When any process, notice or demand is to be served on the Secretary of State as the agent of a foreign limited partnership pursuant to a provision of this chapter:

1. Delivery to Secretary of State. The process, notice or demand must be served by delivering it to the Secretary of State or to any person designated by the Secretary of State to receive such service;

2. Copy; foreign limited partnership. The party serving the process shall promptly send a duplicate copy of the process, notice or demand via registered or certified mail, return receipt requested, marked "deliver to addressee only," to the foreign limited partnership at:

A. Its last registered office in this State on file in the office of the Secretary of State, if any; and

B. Its last registered or principal office in the jurisdiction of its formation on file in the office of the Secretary of State, if any; or if no such office has been listed in the office of the Secretary of State, at the last address of the foreign limited partnership known to the person serving the process.

3. Proof of service. Proof of service must be by return of service on the Secretary of State and by an affidavit of the person serving the process or that person's attorney setting forth compliance with subsection 2. The affidavit must be appended by the return receipt signed by the foreign limited partnership or other official proof of delivery or, if acceptance was refused or the addressee was not found at the address given, the original envelope bearing the notation of the postal authorities showing the reason for nondelivery. Service is complete when subsections 1 and 2 have been complied with.

SUBCHAPTER X

DERIVATIVE ACTIONS

§511. Right to bring action

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

§512. Proper plaintiff

In a derivative action, the plaintiff must:

1. At time of action. Be a partner at the time of bringing the action; and

2. At time of transaction. Either:

A. Have been a partner at the time of the transaction to which the action relates; or

B. Have acquired the status of partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

§513. Complaint

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

§514. Expenses

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees. The court shall order that any such award be paid out of the proceeds received by the plaintiff, if any, in which case the plaintiff shall remit to the limited partnership the remainder. If those proceeds are insufficient to reimburse plaintiff's reasonable expenses, the court may direct that any such award of plaintiff's expenses or a portion thereof be paid by the limited partnership.

SUBCHAPTER XI**MISCELLANEOUS****§521. Construction and application of chapter**

1. Promote uniformity. This chapter must be so applied and construed to effectuate its general purpose to promote uniformity of the law with respect to the subject of this chapter among states enacting the Revised Uniform Limited Partnership Act.

2. Not strictly construed. The rule that statutes in derogation of the common law are to be strictly construed has no application to this chapter.

§522. Construction and application of partnership agreement

1. Principles. It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements.

2. Partner's duties and liabilities. To the extent that, at law or in equity, a partner has duties, including fiduciary duties, and liabilities relating to those duties, to a limited partnership or to another partner:

A. That partner acting under a partnership agreement is not liable to the limited partnership or to any other partner for the partner's good faith reliance on the provisions of the partnership agreement; and

B. The partner's duties and liabilities may be expanded or restricted by provisions in a partnership agreement.

§523. Effective date

This Act takes effect January 1, 1992. All limited partnerships formed on or after that date and all foreign limited partnerships applying for authority to transact business within this State on or after that date are governed by this Act.

§524. Application to existing limited partnership; definition

1. Exemptions from requirements of chapter. Except as provided in subsection 2, all limited partnerships formed before January 1, 1992 and all foreign limited partnerships having obtained the authority to do business in this State before January 1, 1992 are governed by this Act on and after January 1, 1992, except that:

A. The provisions of law in former chapter 7 governing distributions to a withdrawing partner, rather than the provisions of section 464, and distribution of assets upon the winding up of a limited partnership, rather than the provisions of section 484, apply to a limited partnership formed before January 1, 1992;

B. The provisions of section 403, subsection 1, paragraph A requiring that the name of all limited partnerships contain the words "Limited Partnership" do not apply to a limited partnership formed before January 1, 1992 or a foreign limited partnership having obtained the authority to do business in this State before January 1, 1992 until such time as the limited partnership has filed an amendment to its certificate of limited partnership or application for authority to do business as a foreign limited partnership pursuant to subsection 2;

C. The provisions of section 407, subsection 1 and section 494, subsection 2 requiring that all limited partnerships have and maintain in this State a registered office and a registered agent for service of process apply to limited partnerships formed before January 1, 1992 and foreign limited partnerships that obtain authority to do business in this State before January 1, 1992 as follows.

(1) By April 1, 1992 a general partner of each limited partnership shall pay a fee of \$40 and file with the Secretary of State:

(a) If the limited partnership does not have a registered agent and registered office, a certificate designating the registered agent and registered office for the limited partnership; or

(b) If the limited partnership has a registered agent and registered office, a certificate confirming that the name and address of its current registered agent and registered office are correct.

A limited partnership that files a certificate of limited partnership, an application for authority to do business in this State or a restated certificate under section 422, subsection 6 after January 1, 1992 but before April 1, 1992 is not required to file a certificate or pay the fee required under this subparagraph.

(2) Until a registered agent and a registered office are designated under subparagraph (1), the general partner first named in the partnership's certificate of limited partnership and having an address within this State is deemed the partnership's registered agent and that general partner's address as stated in the certificate is deemed the partnership's registered office.

(3) If the limited partnership has not filed a certificate designating a registered agent and registered office by April 1, 1992, the Secretary of State may suspend the limited partnership under section 408 or revoke the authority of the limited partnership to do business in this State under section 498; and

D. The provisions of law in former section 163 governing loans by and transactions with limited partners continue to apply for the benefit of any creditors of any limited partnership whose claims arise before January 1, 1992.

2. Application of chapter to existing limited partnerships. Any domestic limited partnership formed, and any foreign limited partnership granted authority to do

business in this State, before January 1, 1992 may at any time, and must at the first time after January 1, 1992 when such a limited partnership files any amendment to its certificate of limited partnership or any amendment to its application for authority to do business in this State as a foreign limited partnership, file with the Secretary of State a certificate of limited partnership or an application for authority to do business as a foreign limited partnership that complies with this chapter, or a certificate of amendment or amendment to its application for authority to do business that would cause its certificate of limited partnership or application to comply with this chapter.

§525. Cases not provided for in chapter

In any case not provided for in this chapter, the Uniform Partnership Act and the rules of law and equity govern.

§526. Fees, penalties

A document required to be filed under this chapter is not effective until the applicable fee required by this section is paid. The following fees or penalties must be paid to and collected by the Secretary of State:

1. Reservation. For filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to section 404, a fee in the amount of \$20 for each limited partnership affected;

2. Assumed name. For filing of an application for an assumed name under section 405, a fee in the amount of \$105. The addition of the words "Limited Partnership" to a foreign corporation's name for use in this State is not, for the purpose of this section, deemed an assumed name;

3. Termination of assumed name. For a termination of an assumed name under section 405, a fee of \$20;

4. Registered name. For filing and application for a registered name of a foreign limited partnership under section 406, a fee of \$20 per month for the number of months or fraction of a month remaining in the calendar year when first filing. For filing applications to renew the registration of a registered name, a fee of \$155;

5. Change of registered agent or registered office for domestic limited partnerships. For filing of a certificate by a registered agent under section 407, changing the registered agent or address of the registered office or resigning, a fee in the amount of \$20;

6. Penalty. As a penalty prior to being reinstated as a domestic limited partnership under section 408, a fee of \$100;

7. Certificate of limited partnership, amendment or cancellation. For filing of a certificate of limited

partnership under section 421, a certificate of amendment under section 422 or a certificate of cancellation under section 423, a fee in the amount of \$250;

8. Foreign limited partnerships. For filing of an application for authority to do business as a foreign limited partnership under section 492, a certificate of amendment under section 495 or a certificate of cancellation under section 496, a fee in the amount of \$250;

9. Change of registered agent or registered office for foreign limited partnerships. For filing of a certificate by a registered agent under section 494, changing the registered agent or address of the registered office or resigning, a fee in the amount of \$30;

10. Photocopies. For all photocopies, whether certified or not, a fee in the amount of \$2 per page. The Secretary of State may issue photocopies of instruments on file as well as other copies;

11. Certified copies. For providing certified copies of any paper on file as provided for by this chapter, a fee in the amount of \$5 for each copy certified in addition to any fee due under subsection 10;

12. Issuing certificate. For issuing any certificate of the Secretary of State, including but not limited to a certificate of existence, other than a certification of a copy under subsection 11, a fee in the amount of \$25;

13. Preclearance of document. For preclearance of any document for filing, a fee in the amount of \$100; and

14. All other filings. For receiving and filing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the amount of \$20.

All fees collected as provided by this chapter must be remitted to the Treasurer of State for the use of the State with the exception of those fees established by rule and collected for expedited service. Fees for expedited service are deposited into a fund for use by the Secretary of State in providing an improved filing service.

§527. Reserved power of State to alter or repeal chapter

All provisions of this chapter may be altered from time to time or repealed and all rights of partners are subject to this reservation.

§528. Duty of Secretary of State

The Secretary of State's duty to file documents under this chapter is ministerial. The filing or refusal to file a document does not:

1. Validity of documents. Affect the validity or invalidity of the document in whole or in part;

2. Correctness of information. Relate to the correctness or incorrectness of information contained in the document; or

3. Presumption of validity or correctness. Create a presumption that the document is valid or invalid or that the information in the document is correct or incorrect.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1991-92

**SECRETARY OF STATE,
DEPARTMENT OF THE**

Administration - Secretary of State

Personal Services	\$14,284
All Other	3,000

Provides funds for a limited-period position and printing and postage costs to comply with the provisions of this Act.

**DEPARTMENT OF THE SECRETARY
OF STATE**
TOTAL \$17,284

Sec. 4. Effective date. This Act takes effect on January 1, 1992.

Effective January 1, 1992.

CHAPTER 553

H.P. 136 - L.D. 196

An Act to Expand the Blaine House Scholars Program to Assist in Teacher Certification

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

Sec. 1. 20-A MRSA §12501, sub-§1, as amended by PL 1989, c. 911, §4, is further amended to read:

1. Academic achievement. "Academic achievement" means graduation in the top 1/2 of the class for graduating high school seniors, or earning a grade point average of 3.0 or more, based on a 4.0 grade point system, or the equivalent, for currently enrolled college students and all other postsecondary applicants. Eligibility for applicants not currently enrolled must be based upon their most recent cumulative grade point average.

Sec. 2. 20-A MRSA §12501, sub-§6-A is enacted to read: