

ACT 288

S.B. NO. 556

A Bill for an Act Relating to Partnerships.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM LIMITED PARTNERSHIP ACT**

**ARTICLE 1
GENERAL PROVISIONS**

§ -101 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Certificate of limited partnership” means the certificate referred to in section -201, and the certificate as amended or restated.

“Contribution” means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in the capacity as a partner.

“Director” means the director of commerce and consumer affairs.

“Event of withdrawal of a general partner” means an event that causes a person to cease to be a general partner as provided in section -402.

“Foreign limited partnership” means a partnership formed under laws other than the laws of this State and having as partners one or more general partners and one or more limited partners.

“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.

“Limited partner” means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

“Limited partnership” and “domestic limited partnership” mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

“Partner” means a limited or general partner.

“Partnership agreement” means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

“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.

“Person” means a natural person, partnership, limited partnership (domestic or foreign), business trust, trust, estate, association, or corporation, or any other legal or commercial entity.

“State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or any foreign state or country.

§ -102 **Name.** (a) The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) May not contain the name of a limited partner unless:
 - (A) It is also the name of a general partner or the corporate name of a corporate general partner, or
 - (B) The business of the limited partnership had been carried on under that name before the admission of that limited partner;
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation or partnership existing under the laws of this State, any foreign corporation or partnership authorized to transact business in this State, any trade name, trademark or service mark previously registered in this State, or a name the exclusive right to which is, at the time, reserved, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter, except that this provision shall not apply if the applicant filed with the director either of the following:
 - (A) The written consent of the other partnership or holder of a reserved or registered name to use the same or substantially identical name, and one or more words may be added to make the name distinguishable from the other name, or
 - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.

(b) The director may make, amend, and repeal such rules as may be necessary to carry out the purpose of this section.

§ -103 **Reservation of name.** (a) The exclusive right to the use of a name may be reserved by:

- (1) Any person intending to organize a limited partnership under this chapter and to adopt that name;
- (2) Any domestic limited partnership or any foreign limited partnership registered in this State which, in either case, intends to adopt that name;
- (3) Any foreign limited partnership intending to register in this State and adopt that name; and
- (4) Any person intending to organize a foreign limited partnership and intending to have it registered in this State and to adopt that name.

(b) The reservation shall be made by delivering to the director an application, executed by the applicant, to reserve a specified partnership name. If the director finds that the name is available for use by a domestic or foreign limited partnership, the director shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days.

(c) The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the director a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

§ -104 **Specified office.** Each limited partnership shall continuously maintain in this State an office, which may but need not be a place of its business in this State, at which shall be kept the records required by section -105.

§ -105 **Records to be kept.** (a) Each limited partnership shall keep at the office referred to in section -104 the following:

- (1) A current list of the full name and last known address of each partner separately identifying the general partners in alphabetical order and the limited partners in alphabetical order;
- (2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any power of attorney pursuant to which any certificate has been executed;
- (3) Copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (4) Copies of any then effective written partnership agreement and of any financial statements of the limited partnership for the three most recent years; and
- (5) Unless contained in a written partnership agreement, a writing setting out:
 - (A) The amount of cash, and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;
 - (B) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
 - (C) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and
 - (D) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

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

§ -106 **Nature of business.** A limited partnership may carry on any business that a partnership without limited partners may carry on.

§ -107 **Business transactions of partner with partnership.** Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

ARTICLE 2 FORMATION: CERTIFICATE OF LIMITED PARTNERSHIP

§ -201 **Certificate of limited partnership.** (a) In order to form a limited partnership, a certificate of limited partnership must be executed and delivered to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The address of the principal office;
- (3) The name and the residence address of each general partner;
- (4) The name and address of each limited partner;
- (5) The latest date upon which the limited partnership is to dissolve; and
- (6) Any other matter the general partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the director or at any later time, not more than thirty days after being filed, specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

§ -202 Amendment to certificate. (a) A certificate of limited partnership is amended by delivering a certificate of amendment thereto to the office of the director for filing. The certificate shall set forth:

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

(b) Within thirty days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be delivered to the director for filing:

- (1) The admission of a new general partner;
- (2) The withdrawal of a general partner; or
- (3) The continuation of the business under section -801 after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this section, if the amendment is filed within the thirty-day period specified in subsection (b).

(f) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment. The restated certificate shall set forth all of the operative provisions of the certificate as theretofore amended.

§ -203 Cancellation of certificate. (a) A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or when there are no limited partners. A certificate of cancellation shall be delivered to the director for filing and set forth:

- (1) The name of the limited partnership;
- (2) The date of filing of its certificate of limited partnership;
- (3) The reason for filing the certificate of cancellation;
- (4) The effective date, which shall be a date and time certain, of cancellation, if it is not to be effective upon the filing of the certificate; and
- (5) Any other information the general partners filing the certificate determine.

(b) If a partnership has terminated by the expiration of its term of existence, the partners, may, at any time within two years of such termination, by taking action consistent with the partnership agreement and by amending the partnership's certificate of limited partnership, extend the term of partnership. Such extension shall be effective from the original filing of the certificate unless otherwise stated in the amended certificate.

§ -203.5 Annual statement. Every limited partnership shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year containing the following information:

- (1) The name of the limited partnership;
- (2) The name and residence address of each general partner;
- (3) The name and address of each limited partner;
- (4) The nature of the limited partnership business;

- (5) The location of the principal place of business of the limited partnership in this State; and
- (6) The fact the none of the partners is either a minor or an incompetent person.

Each annual statement shall be certified as correct by any general partner.

§ -203.6. **Cancellation of registration.** (a) If any limited partnership neglects for a period of two years to file any annual statement as required by this chapter, the director may cancel the certificate of such limited partnership. The cancellation of such certificate shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.

(b) Within ninety days after the involuntary cancellation of a limited partnership under this section, the limited partnership may be reinstated by the director upon written application executed by any general partner of the limited partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all reports due and unfilled. Within the ninety-day period, should the name of the limited partnership, or a name substantially identical thereto be registered or reserved by another corporation or partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily cancelled limited partnership pursuant to the amendment provisions of this chapter.

§ -204 **Execution of certificates.** (a) Each certificate required by this chapter to be filed in the office of the director shall be executed in the following manner:

- (1) An original certificate of limited partnership must be signed by all general partners;
 - (2) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; and
 - (3) A certificate of cancellation must be signed by all general partners.
 - (4) Any other certificate or document must be signed by all general partners.
- (b) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.
- (c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

§ -205 **Execution by judicial act.** If a person required by section -204 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the circuit court of the circuit in which the principal place of business of the limited partnership is situated to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the director to record an appropriate certificate, and shall also cause to be filed in the office of the director a certified copy of its order setting forth the certificate.

§ -206 **Filing in office of the director.** (a) A certified and executed certificate of limited partnership, any certificate of amendment or cancellation, or

of any judicial decree of amendment or cancellation, an application for registration as a foreign limited partnership, or any certificate relating thereto, shall be delivered to the director for filing. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Unless the director finds that any certificate does not conform to law, upon receipt of all filing fees required by law, the director shall:

- (1) Stamp the word "Filed" and the date of delivery thereof; and
- (2) File the document in the director's office.

(b) Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the director, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership is canceled.

§ -206.5 Filing requirements; filing duty of the director. (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the director.

(b) The document must contain the information required by this chapter. It may contain other information as well.

(c) If the director has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(d) The director's duty to file documents under this chapter is ministerial. The filing or refusal to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§ -206.6 Correcting a filed document. (a) A domestic or foreign partnership may correct a document filed by the director if the document:

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing a certificate of correction that:

- (A) Describes the document including its file date or attaches a copy of it to the certificate;
- (B) Specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
- (C) Corrects the incorrect statement or defective execution; and

(2) By delivering the certificate to the director for filing.

(c) A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a certificate of correction is effective when filed.

§ -207 Liability for false statement in certificate. If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

- (1) Any person who executes the certificate, or causes another to execute it on that person's behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

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

§ -208 **Notice.** The fact that a certificate of limited partnership is on file in the office of the director is notice that the partnership is a limited partnership and that the persons designated therein as general partners are general partners, but it is not notice of any other fact.

§ -209 **Delivery of certificates to limited partners.** Upon filing, the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

ARTICLE 3 LIMITED PARTNERS

§ -301 **Admission of limited partners.** (a) A person becomes a limited partner:

- (1) At the time the limited partnership is formed; or
 - (2) The date stated in the records of the limited partnership as the date that person becomes a limited partner.
- (b) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:
- (1) In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and
 - (2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in section -704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

§ -302 **Voting.** Subject to section -303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter on a per capita or other basis.

§ -303 **Liability to third parties.** (a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates 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.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

- (1) Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

- (2) Consulting with and advising a general partner with respect to the business of the limited partnership;
- (3) Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;
- (4) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;
- (5) Requesting or attending a meeting of partners;
- (6) Proposing, approving, or disapproving by voting or otherwise, one or more of the following matters:
 - (A) The dissolution and winding up of the limited partnership;
 - (B) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;
 - (C) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;
 - (D) A change in the nature of the business;
 - (E) The admission or removal of a general partner;
 - (F) The admission or removal of a limited partner;
 - (G) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;
 - (H) An amendment to the partnership agreement or certificate of limited partnership; or
 - (I) Matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;
- (7) Winding up the limited partnership pursuant to section -803; or
- (8) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other power by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

(d) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by section -102, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

§ -304 Person erroneously believing to be limited partner. (a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any right of a limited partner, if, on ascertaining the mistake, the person:

- (1) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or
- (2) Withdraws from future equity participation in the enterprise by executing and filing with the director a certificate declaring withdrawal under this section.

(b) A person who makes a contribution of the kind described in subsection (a) is liable as a general partner to any third party who transacts business with the enterprise:

- (1) Before the person withdraws and an appropriate certificate is filed to show withdrawal; or
- (2) Before an appropriate certificate is filed to show that the limited partner is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

§ -305 **Information.** Each limited partner has the right to:

- (1) Inspect and copy any of the partnership records required to be maintained by section -105; and
- (2) Obtain from the general partners from time to time upon reasonable demand:
 - (A) True and full information regarding the state of the business and financial condition of the limited partnership;
 - (B) Promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and
 - (C) Other information regarding the affairs of the limited partnership as is just and reasonable.

ARTICLE 4 GENERAL PARTNERS

§ -401 **Admission of additional general partners.** After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional partners, with the written consent of all partners.

§ -402 **Events of withdrawal.** Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

- (1) The general partner withdraws from the limited partnership as provided in section -602;
- (2) The general partner ceases to be a member of the limited partnership as provided in section -702;
- (3) The general partner is removed as a general partner in accordance with the partnership agreement;
- (4) Unless otherwise provided in writing in the partnership agreement, the general partner:
 - (A) Makes an assignment for the benefit of creditors;
 - (B) Files a voluntary petition in bankruptcy;
 - (C) Is adjudicated bankrupt or insolvent;
 - (D) Files a petition or answer seeking for that general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law or rule;
 - (E) Files an answer or pleading admitting or failing to contest the material allegations of a petition filed against that general partner in any proceeding of this nature; or
 - (F) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that general partner's properties;

- (5) Unless otherwise provided in writing in the partnership agreement, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law or rule, the proceeding has not been dismissed, or if within ninety days after the appointment without that general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that general partner's properties, the appointment is not vacated or stayed or within ninety days after the expiration of any such stay, the appointment is not vacated;
- (6) In the case of a general partner who is a natural person:
 - (A) That general partner's death; or
 - (B) The entry of an order by a court of competent jurisdiction adjudicating the general partner incompetent to manage that general partner's person or estate;
- (7) In the case of a general partner who is acting as general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;
- (8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;
- (9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or
- (10) In the case of an estate, the distribution by the legal representative of the estate of the estate's entire interest in the limited partnership.

§ -403 General powers and liabilities. (a) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

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

§ -404 Contributions by general partner. A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of that person's participation in the partnership as a limited partner.

§ -405 Voting. The partnership agreement may grant to all or certain identified general partners the right to vote on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

ARTICLE 5 FINANCE

§ **-501 Form of contribution.** The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

§ **-502 Liability for contribution.** (a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

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

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

§ **-503 Sharing of profits and losses.** The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to section -105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

§ **-504 Sharing of distributions.** Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to section -105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

ARTICLE 6 DISTRIBUTIONS AND WITHDRAWAL

§ **-601 Interim distributions.** Except as provided in this chapter, a partner is entitled to receive distributions from a limited partnership before that partner's withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the time or upon the happening of the events specified in the partnership agreement.

§ **-602 Withdrawal of general partner.** A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership

may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to the withdrawing general partner.

§ -603 Withdrawal of limited partner. A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at each general partner's address on the books of the limited partnership at its office in this State.

§ -604 Distribution upon withdrawal. Except as provided in this chapter, upon withdrawal any withdrawing partner is entitled to receive any distribution to which the withdrawing partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within a reasonable time after withdrawal, the fair value of that withdrawing partner's interest in the limited partnership as of the date of withdrawal based upon that withdrawing partner's right to share in distributions from the limited partnership.

§ -605 Distribution in kind. Except as provided in writing in the partnership agreement, a partner, regardless of the nature of that 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 writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to that partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the limited partnership.

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

§ -607 Limitations on distribution. A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

§ -608 Liability upon return of contribution. (a) If a partner has received the return of any part of that partner's contribution without violation of the partnership agreement or this chapter, the partner is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of that partner's contribution in violation of the partnership agreement or this chapter, the partner is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of that partner's contribution to the extent that a distribution to that partner reduces that partner's share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership

records required to be kept pursuant to section -105, of that partner's contribution which has not been distributed to that partner.

ARTICLE 7 ASSIGNMENT OF PARTNERSHIP INTERESTS

§ -701 **Nature of partnership interest.** A partnership interest is personal property.

§ -702 **Assignment of partnership interest.** Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any right of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all that partner's partnership interest.

§ -703 **Rights of creditor.** On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption law applicable to that partner's partnership interest.

§ -704 **Right of assignee to become limited partner.** (a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

- (1) The assignor gives the assignee that right in accordance with authority described in the partnership agreement; or
- (2) All other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of that assignee's assignor to make and return contributions as provided in this chapter. However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from that assignor's liability to the limited partnership under sections -207 and -502.

§ -705 **Power of estate of deceased or incompetent partner.** If a partner who is an individual dies or a court of competent jurisdiction adjudges that partner to be incompetent to manage that partner's person or property, the partner's legal representative may exercise all the partner's rights for the purpose of settling that partner's estate or administering that 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.

ARTICLE 8 DISSOLUTION

§ -801 **Nonjudicial dissolution.** A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) At the time specified in the certificate of limited partnership;
- (2) Upon the happening of events specified in writing in the partnership agreement;
- (3) Written consent of all partners;
- (4) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
- (5) Entry of a decree of judicial dissolution under section -802.

§ **-802 Judicial dissolution.** On application by or for a partner, the circuit court of the circuit in which the principal place of business of the limited partnership is located may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

§ **-803 Winding up.** Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the circuit court of the circuit in which the principal place of business of the limited partnership is located may wind up the limited partnership's affairs upon application of any partner or any partner's legal representative or assignee.

§ **-804 Distribution of assets.** Upon the winding up of a limited partnership, the assets shall be distributed as follows:

- (1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section -601 or -604;
- (2) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section -601 or -604; and
- (3) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

ARTICLE 9 FOREIGN LIMITED PARTNERSHIPS

§ **-901 Law governing.** Subject to the Constitution of this State:

- (1) The laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and
- (2) A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

§ **-902 Registration.** Before transacting business in this State, a foreign limited partnership shall register with the director. In order to register, a foreign

limited partnership shall submit to the director an application for registration as a foreign limited partnership, certified and signed by a general partner and setting forth:

- (1) The name of the foreign limited partnership;
- (2) The state and date of its formation;
- (3) The name and address of any qualified agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this State or a domestic corporation;
- (4) A statement that the director is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under paragraph (3) or, if appointed, the agent's authority has been revoked, or if the agent cannot be found or served with the exercise of reasonable diligence;
- (5) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;
- (6) The name and residence address of each general partner; and
- (7) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this State is cancelled or withdrawn.

§ -903 Issuance of registration. (a) If the director finds that an application for registration conforms to law and all requisite fees have been paid, the director shall issue a certificate of registration to transact business in this State.

(b) The certificate of registration shall be returned to the person who filed the application or that person's representative.

§ -904 Name. (a) No registration for a foreign limited partnership shall be accepted by the director if the name of such foreign limited partnership:

- (1) Is the same as, or substantially identical to, the name of any corporation or partnership, whether general or limited, domestic or foreign, previously authorized or registered to do business under the laws of the State, or with any trade name, service mark, or trademark previously registered under the laws of the State, or a name the exclusive right to which is, at the time, reserved, except that this provision shall not apply if the foreign limited partnership applying for registration files with the director any one of the following:
 - (A) The written consent of the holder of the registered or reserved name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name; or
 - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited partnership to the use of the name in this State; and
- (2) Is not transliterated into letters of the English alphabet, if the name is not in English.

(b) If a foreign limited partnership is unable to change its name to a name which is available to it under the laws of this State, it may deliver to the director a copy of a certificate of registration of trade name for the foreign limited partnership's file and thereafter become registered to transact business in the State under that name.

§ **-905 Changes and amendments.** If any statement in the application for registration of a foreign limited partnership was false when made or any arrangement or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the director a certificate, certified and signed by a general partner, correcting such statement.

§ **-906 Cancellation of registration.** (a) A foreign limited partnership registered to transact business in this State may withdraw from the State upon procuring from the director a certificate of withdrawal. In order to procure a certificate of withdrawal, the foreign limited partnership shall deliver to the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

- (1) The name of the foreign limited partnership and the state or country under the laws of which it is formed;
- (2) That the foreign limited partnership is not transacting business in this State;
- (3) That the foreign limited partnership surrenders its authority to transact business in this State;
- (4) That the foreign limited partnership revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- (5) The name and residence address of each general partner;
- (6) The dates that notice of the foreign limited partnership's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State. The foreign limited partnership, with the approval of the director, may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;
- (7) That all taxes, debts, obligations, and liabilities of the foreign limited partnership in the State have been paid and discharged or that adequate provision has been made therefore;
- (8) A mailing address to which the director may mail a copy of any process against the foreign limited partnership that may be served on the director; and
- (9) Such additional information as may be necessary or appropriate in order to enable the director to determine and assess any unpaid fees payable by the foreign limited partnership.

(b) After the filing of the application of withdrawal, the director shall issue a certificate of withdrawal which shall be effective as of the date of the filing of the application of withdrawal, and the authority of the foreign limited partnership to transact business in this State shall cease.

(c) A cancellation does not terminate the authority of the director to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this State.

§ **-906.5 Annual statement.** Every foreign limited partnership registered in this State shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year containing the following information:

- (1) The name of the limited partnership;
 - (2) The name and residence address of each general partner;
 - (3) The name and address of each limited partner;
 - (4) The nature of the limited partnership business;
 - (5) The name of the jurisdiction where the limited partnership was formed and the location of the principal place of business of the partnership; and
 - (6) The fact that none of the partners is either a minor or incompetent.
- Each annual statement shall be certified as correct by any general partner.

§ **-906.6 Cancellation of registration.** If any foreign limited partnership neglects for a period of two years to file any annual statement as required by this chapter, the director may cancel the registration of such limited partnership. The cancellation of such registration shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.

§ **-907 Transaction of business without registration.** (a) A foreign limited partnership transacting business in this State may not maintain any action, suit, or proceeding in any court of this State until it has registered in this State.

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

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

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

§ **-908 Action by director.** The director may bring an action to restrain a foreign limited partnership from transacting business in this State in violation of this chapter.

ARTICLE 10 DERIVATIVE ACTIONS

§ **-1001 Right of action.** A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

§ **-1002 Proper plaintiff.** In a derivative action, the plaintiff must be a partner at the time of bringing the action and:

- (1) Must have been a partner at the time of the transaction of which the plaintiff complains; or
- (2) The plaintiff's status as a partner must have devolved upon the plaintiff by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

§ **-1003 Pleading.** In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

§ **-1004 Expenses.** If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited partnership the remainder of those proceeds received by the plaintiff.

ARTICLE 11 MISCELLANEOUS

§ **-1101 [Reserved]**

§ **-1102 Short title.** This chapter may be cited as the Uniform Limited Partnership Act (1985) (Modified).

§ **-1103 Severability.** If any provision of this chapter or the application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ **-1104** This Act shall take effect on January 1, 1990; provided that:

- (1) Sections -501, -502 and -608 apply only to contributions and distributions made after the effective date of this Act;
- (2) Section -704 applies only to assignments made after the effective date of this Act; and
- (3) Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses rather than the provisions of section -503, distributions to a withdrawing partner rather than the provisions of section -604, and distributions of assets upon the winding up of a limited partnership rather than the provisions of section -804 govern limited partnerships formed before the effective date of this Act.

§ **-1105 Savings clause.** The repeal of any statutory provisions by this Act does not impair or otherwise affect the organization or the continued existence of a limited partnership existing at the effective date of this Act, nor does the repeal of any existing statutory provisions by this Act impair any contract or affect any right accrued before the effective date of this Act.

§ **-1106 Rules for cases not provided for in this part.** In any case not provided for in this chapter the provisions of the Uniform Partnership Act govern.

§ **-1107 Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$25;
- (2) Any certificate of amendment, restatement, or correction, \$10;
- (3) Certificate of cancellation, \$10;
- (4) Annual statement for domestic or foreign limited partnership, \$3;
- (5) Any other certificate or document of domestic or foreign limited partnership, \$10;
- (6) Application for registration as a foreign limited partnership, \$50;
- (7) Any certificate of amendment or agent change for foreign limited partnership, \$10;

- (8) Certificate of cancellation of registration of foreign limited partnership, \$10;
- (9) Reservation of name, \$10;
- (10) Transfer of reservation of name, \$10;
- (11) Good standing certificate, \$15;
- (12) Special handling fee for review of any limited partnership document, \$40;
- (13) Special handling fee for certificates issued by the director, \$10 per certificate; and
- (14) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to the special fund authorized by section 415-128.

§ -1108 Personal liability and penalty. (a) Every general partner who neglects or fails to comply with any provision of this chapter shall be liable severally and individually for all debts and liabilities of the limited partnership, and may be severally sued therefore, without the necessity of joining the other members in any action and shall also severally forfeit to the State \$25 for each and every month while the default shall continue, to be recovered by action brought in the name of the State by the director of commerce and consumer affairs; provided that as to the forfeiture penalty, the director may, for good cause shown, reduce or waive the same.

(b) Any person who signs or certifies as correct any statement or certificate filed pursuant to this chapter, knowing the same to be false in any material particular, shall be guilty of a class C felony.

(c) Any person who negligently but without intent to defraud signs or certifies as correct any statement or certificate filed pursuant to this chapter, which statement or certificate is false in any material particular, shall be punished by a fine not exceeding \$500."

SECTION 2. Section 425-8, Hawaii Revised Statutes, is amended to read as follows:

"§425-8 Reservation of partnership name. The exclusive right to the use of a partnership name may be reserved by any person intending to organize a domestic partnership, by any domestic partnership intending to change its name, by any foreign partnership intending to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein, by any foreign partnership authorized to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein and intending to change its name, or by any person intending to organize a foreign partnership and intending to have the partnership to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein. Reservations shall be made by filing with the director of commerce and consumer affairs an application in such form as the director may prescribe to reserve a specified partnership name, and payment to the director of a fee equivalent to that paid by a corporation for the same service. If the director finds that the name is available for partnership use, the director shall reserve the name for the exclusive use of the applicant for a period of [sixty] one hundred twenty days. The right to the exclusive use of a specified partnership name so reserved may be transferred to any other person or partnership by filing in the office of the director a notice of a transfer executed by the applicant for whom the name is reserved specifying the name and address of the transferee."

SECTION 3. Parts II and III of chapter 425, Hawaii Revised Statutes, are repealed.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 1990.

(Approved June 13, 1989.)