

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 989
HOUSE BILL 266

AN ACT TO ADOPT THE REVISED UNIFORM LIMITED PARTNERSHIP ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"§ 59-30.1. No limited partnership shall be formed under this Article after September 30, 1986."

Sec. 2. Chapter 59 of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Revised Uniform Limited Partnership Act.

"Part 1. General Provisions.

"§ 59-101. Short Title. – This Article may be cited as the Revised Uniform Limited Partnership Act.

"§ 59-102. Definitions. – As used in this Article, unless the context otherwise requires:

- (1) 'Certificate of limited partnership' means the certificate referred to in G.S. 59-201, and the certificate as amended.
- (2) 'Conformed Copy' shall include a photostatic or other photographic copy of the original document.
- (3) 'Contribution' means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.
- (4) 'Event of withdrawal of a general partner' means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.
- (5) 'Foreign limited partnership' means a partnership formed under the laws of any state, province, country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners.
- (6) '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.
- (7) 'Limited partner' means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

- (8) '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.
- (9) 'Partner' means a limited or general partner.
- (10) '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.
- (11) 'Partnership interest' means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.
- (12) 'Person' means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.
- (13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"§ 59-103. Name. – (a) The name of the limited partnership shall contain without abbreviation the words 'limited partnership';

(b) The limited partnership name shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner;

(c) The limited partnership name shall not contain any word or phrase which is likely to mislead the public or which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its certificate of limited partnership;

(d) The limited partnership name shall not be the same as, or deceptively similar to, the name of any domestic corporation or limited partnership or of any foreign corporation or limited partnership authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved or registered by some other person in the manner prescribed by G.S. 59-104.

"§ 59-104. Reservation of name. – (a) The exclusive right to a limited partnership name not prohibited by G.S. 59-103 may be reserved for a period of 90 days by:

- (1) any person intending to organize a limited partnership under this act;
- (2) any domestic limited partnership intending to change its name;
- (3) any foreign limited partnership intending to make application for a certificate of authority to transact business in this State;
- (4) any foreign limited partnership authorized to transact business in this State and intending to change its name;
- (5) any person intending to organize a foreign limited partnership and intending to have such limited partnership make application for a certificate of authority to transact business in this State.

(b) The same name shall not be reserved for two or more consecutive 90-day periods by the same applicant or for the use and benefit of the same applicant; nor shall

such consecutive reservations be made of names so similar as to fall within the prohibition of this section.

(c) The reservation of name, pursuant to subsection (a), shall be made by filing with the Secretary of State an executed application therefor stating the name and address of the applicant, and the Secretary of State shall, upon tender of the fee hereinafter prescribed, reserve the name exclusively for the applicant unless he finds that the name is not available under the provisions of this section.

(d) The exclusive right to a specified limited partnership name reserved hereunder, may, on tender of the fee hereinafter prescribed, be transferred to any other limited partnership by filing in the office of the Secretary of State a notice of such transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(e) The Secretary of State may revoke any reservation of a limited partnership name if he finds, upon a hearing held not less than five days after written notice has been sent by registered mail to the person or limited partnership who made the reservation, that the application therefor or any transfer thereof was not made in good faith or that any statement contained in the application for reservation was false when such application was filed or has thereafter become false.

(f) The use by a limited partnership of a name in violation of this section may be enjoined notwithstanding the filing of its certificate of limited partnership by the Secretary of State.

(g) The filing of a certificate of limited partnership by any domestic limited partnership shall not authorize the use in this State of the limited partnership name in violation of the rights of any third party under the federal Trademark Act, the Trademark Act of this State, or the common law; and the filing of such certificate shall not be a defense to an action for violation of any such rights.

"§ 59-105. Registered office and registered agent. – Each limited partnership shall have and continuously maintain in this State:

- (1) a registered office, which may be, but need not be, its place of business;
- (2) a registered agent, which agent may be either an individual resident of this State whose business office is identical with such registered office, or, a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office.

"§ 59-106. Records to be kept. – (a) Each limited partnership shall keep in this State at its registered office:

- (1) a current list of the full name and last known mailing address of each partner set forth in alphabetical order;
- (2) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;
- (3) copies of the limited partnership's federal, State and local income tax returns and reports, if any, for the three most recent years;

- (4) copies of any then effective written partnership agreements and copies of any financial statements of the limited partnership for the three most recent years; and
- (5) unless contained in a written partnership agreement:
 - (i) the amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;
 - (ii) 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;
 - (iii) any right of a partner to receive distribution of property, including cash from the limited partnership; and
 - (iv) events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) The books and records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

"§ 59-107. **Nature of business.** – A limited partnership may carry on any business that a partnership without limited partners may carry on.

"§ 59-108. **Business transactions of partner with the 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 G.S. 59-804 and other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

"Part 2. Formation; Certificate of Limited Partnership.

"§ 59-201. **Certificate of limited partnership.** – (a) In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the Secretary of State and set forth:

- (1) the name of the limited partnership;
- (2) the address, including county and city or town, and street and number, if any, of the registered office and the name of the registered agent at such address for service of process required to be maintained by G.S. 59-105;
- (3) the latest date upon which the limited partnership is to dissolve; and
- (4) the name and the address, including county and city or town, and street and number, if any, of each general partner.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

"§ 59-202. **Amendment to certificate.** – (a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate shall set forth:

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

(b) Within 30 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 filed:

- (1) the admission of a new general partner;
- (2) the withdrawal of a general partner; or
- (3) the continuation of the business under G.S. 59-801 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 any 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 partners may determine.

"§ 59-203. Cancellation of certificate. – (a) A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State 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 certain not more than 20 days from the date of filing) of cancellation if it is not to be effective upon the filing of the certificate; and
- (5) any other information the partners filing the certificate determine.

"§ 59-204. Execution of certificates. – (a) Each certificate required by this Article to be filed in the office of the Secretary of State 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 all general partners and by each other partner designated in the certificate as a new general partner; and
- (3) a certificate of cancellation must be signed by all general partners.

(b) Any person may sign a certificate by an attorney-in-fact.

(c) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

"§ 59-205. Amendment or cancellation by judicial act. – If a person required by G.S. 59-204 to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office is located to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that any person so designated has

failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate of amendment or cancellation.

"§ 59-206. Filing in office of Secretary of State. – (a) Whenever the provisions of this Article require any document relating to a limited partnership to be executed and filed in accordance with this Article, unless otherwise specifically stated in this Article:

- (1) There shall be an original executed document and also one conformed copy.
- (2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. Unless he finds that it does not conform to law, the Secretary of State shall, when the proper taxes and fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in his office. The Secretary of State shall thereupon immediately compare the copy with the original and if he finds that they are identical he shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in his office and showing the date of such filing. He shall thereupon return the copy so certified to the limited partnership or its representatives.
- (3) The copy certificate as aforesaid, shall, within 60 days after the receipt by the limited partnership or its representative be delivered to the register of deeds of the county wherein the limited partnership has its registered office, and, when the proper fees shall have been tendered, it shall be recorded and properly indexed as is customary for partnerships. Promptly after the recordation, the register of deeds shall note the fact of recordation on the said copy and return it to the limited partnership or its representatives.

(b) Any such document required to be filed shall be completely effective when endorsed by the Secretary of State as provided in subsection (a)(2) above and the transaction to be effectuated thereby shall thereupon be deemed to be completely consummated as if all the required recording had been perfected, provided, however, that in lieu of the time of such endorsement by the Secretary of State, such document may fix an hour, day, month and year not more than 20 days subsequent to the endorsement of the Secretary of State and the transaction shall be deemed to be completely consummated at the time fixed by such document as if all the required recording had been perfected.

(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any such document on file in his office, or if such be the request, to make or cause to be made typewritten or photostatic copies of such documents and to certify the same as aforesaid.

"§ 59-207. 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 his 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 G.S. 59-205.

"§ 59-208. Notice. – The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact.

"Part 3.

"Limited Partners.

"§ 59-301. Admission of additional limited partners. – 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 G.S. 59-704, 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.

"§ 59-302. Voting. – Subject to G.S. 59-303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

"§ 59-303. Liability to third parties. – (a) Except as provided in subsection (d), a limited partner is not bound by the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(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 an officer, director, or shareholder of a corporate general partner;

- (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;
- (4) proposing, approving or disapproving an amendment to the partnership agreement;
- (5) proposing or voting on one or more of the following matters:
 - (i) the dissolution and winding up of the limited partnership;
 - (ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;
 - (iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;
 - (iv) a change in the nature of the business; or
 - (v) the addition, removal or substitution of general partners;
- (6) bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to Part 10 of this Article;
- (7) approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership; or
- (8) requesting or attending a meeting of partners.

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

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

"§ 59-304. Person erroneously believing himself 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 he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

- (1) causes an appropriate certificate of limited partnership to be executed and filed; or
- (2) withdraws from future equity participation in the enterprise.

(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 (i) before the person withdraws from the enterprise, or (ii) before the person gives notice to the partnership of his withdrawal from future equity participation, but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

"§ 59-305. Information. – Each limited partner has the right to:

- (1) inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and
- (2) obtain from the general partners from time to time upon reasonable demand (i) information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

"Part 4. General Partners.

"§ 59-401. Admission of additional general partners. – Unless otherwise provided in the partnership agreement, after the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only with the specific written consent of each partner.

"§ 59-402. 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 G.S. 59-602;
- (2) the general partner ceases to be a member of the limited partnership as provided in G.S. 59-702;
- (3) the general partner is removed as a general partner in accordance with the partnership agreement;
- (4) unless otherwise provided in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or (vi) 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 his properties;
- (5) unless otherwise provided in the partnership agreement, 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 his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 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,
 - (i) his death; or
 - (ii) the entry or an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;
- (7) in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- (8) in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;
- (9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or
- (10) in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

"§ 59-403. General powers and liabilities. – Except as provided in this act or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

"§ 59-404. Contributions by a general partner. – A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

"§ 59-405. 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.

"Part 5. Finance.

"§ 59-501. 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.

"§ 59-502. Liability for contributions. – (a) Except as provided in the agreement of limited partnership, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if he 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, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value of the stated contribution that has not been made.

(b) 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 act may be compromised only by consent of all the partners. Any such compromise, however, shall not affect the rights of a creditor whose claim arose prior to the date of the compromise.

(c) No promise by a limited partner to contribute to the limited partnership is enforceable unless in a writing signed by the limited partner.

"§ 59-503. Sharing income, gain, loss, deduction or credit. – Allocation of the income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

"§ 59-504. Sharing of distributions. – Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

"Part 6. Distribution and Withdrawal.

"§ 59-601. Interim distributions. – Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

"§ 59-602. Withdrawal of general partner. – After filing of the original certificate of limited partnership 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, in addition to its other remedies, and damages for breach of the partnership agreement.

"§ 59-603. 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 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 six months prior written notice to each general partner at his address on the books of the limited partnership at its registered office in this State.

"§ 59-604. Distribution upon withdrawal. – Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal.

"§ 59-605. Distribution in kind. – Except as provided in writing in the limited partnership agreement, (1) a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash; and (2) 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 him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

"§ 59-606. Right to distribution. – Subject to the provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

"§ 59-607. Limitations on distribution. – A partner shall 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.

"§ 59-608. Liability upon return of contribution. – (a) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this Article, he 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 his contribution in violation of the partnership agreement or this Article, he 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 his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value of his contribution which has not been distributed to him.

"Part 7. Assignment of Partnership Interest.

"§ 59-701. Nature of partnership interest. – A partnership interest is personal property.

"§ 59-702. Assignment of partnership interest. – Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general partner ceases to be a general partner upon assignment of all his partnership interest.

"§ 59-703. 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. The general partners shall have no liability to a partner for payments to a judgment creditor pursuant to this provision. To the extent so charged, the judgment creditor has only the

rights of an assignee of the partnership interest. This Article does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

"§ 59-704. 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 Article. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Part 6 of this Article. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the partnership agreement.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under G.S. 59-207, 59-502, and 59-608.

"§ 59-705. Power of estate of deceased or incompetent partner. – If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his 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 his estate or administering his 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.

"Part 8. Dissolution.

"§ 59-801. 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 or upon the happening of events specified in writing in the partnership agreement;
- (2) written consent of all partners;
- (3) an event of withdrawal of a general partner unless at the time there is at least one other general partner and the 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 90 days after the withdrawal, all remaining 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
- (4) entry of a decree of judicial dissolution under G.S. 59- 802.

"§ 59-802. **Judicial dissolution.** – On application by or for a partner the 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.

"§ 59-803. **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 court may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee.

"§ 59-804. **Distribution of assets.** – Upon the winding up of a limited partnership, the assets shall be distributed as follows:

- (1) to creditors, including limited partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under G.S. 59-601 or G.S. 59-604;
- (2) to general partners who are creditors to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under G.S. 59- 601 or G.S. 59-604;
- (3) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under G.S. 59-601 or G.S. 59-604; and
- (4) 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.

"Part 9. Foreign Limited Partnerships.

"§ 59-901. **Law governing.** – Subject to the Constitution of this State, (1) the laws of the jurisdiction 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.

"§ 59-902. **Registration.** – (a) Before transacting business in this State, a foreign limited partnership shall procure a certificate of authority to transact business in this State from the Secretary of State. No foreign limited partnership shall be entitled to transact in this State any business which a limited partnership organized under this Article is not permitted to transact. In order to register, a foreign limited partnership shall deliver to the Secretary of State an original and one conformed copy of an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

- (1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this State;
- (2) the jurisdiction and date of its formation;
- (3) the date of formation and the period of duration;

- (4) the address, including county and city or town, and street and number, if any, of the principal office of the foreign limited partnership in the jurisdiction under the laws of which it is formed;
- (5) the address, including county and city or town, and street and number, if any, of the proposed registered office of the foreign limited partnership in this State, and the name of its proposed registered agent in this State at such address; the agent must be an individual resident of this State, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in this State;
- (6) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and addresses of the partners, a list of the names and addresses or, at the election of the foreign limited partnership, a list of the names and addresses of the general partners and the address, including county and city or town, and street and number, of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep such records until such foreign limited partnership's registration in this State is cancelled;
- (7) a statement that in consideration of the issuance of a certificate of authority to transact business in this State, the foreign limited partnership appoints the Secretary of State of North Carolina as the agent to receive service of process, notice, or demand, whenever the foreign limited partnership fails to appoint or maintain a registered agent in this State or whenever any such registered agent cannot with reasonable diligence be found at the registered office;
- (8) the names and addresses including county and city or town, and street and number, if any, of all of the general partners;
- (9) the execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

(b) Without excluding other activities which may not constitute transacting business in this State, a foreign limited partnership shall not be considered to be transacting business in this State, for the purpose of this Article, by reason of carrying on in this State any one or more of the following activities:

- (1) maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (2) holding meetings of its partners or carrying on other activities concerning its internal affairs;
- (3) maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

- (4) maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;
- (5) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts;
- (6) making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sale, the acquiring of property at foreclosure sale and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;
- (7) taking security for or collecting debts due to it or enforcing any rights in property securing the same;
- (8) transacting business in interstate commerce;
- (9) conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature.

"§ 59-903. Issuance of registration. – (a) If the Secretary of State finds that an application conforms to law he shall, when all requisite taxes and fees have been tendered as in this Article prescribed:

- (1) endorse on the application the word 'Filed', and the hour, day, month and year of the filing thereof;
- (2) file in his office the application;
- (3) issue a certificate of authority to transact business in this State to which he shall affix the conformed copy of the application; and
- (4) send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto.

"§ 59-904. Name. – A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words 'limited partnership' and that could be registered by a domestic limited partnership.

"§ 59-905. Changes and amendments. – If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State an original and one conformed copy of a certificate, signed by a general partner, correcting such statement.

"§ 59-906. Cancellation of registration. – A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed by a general partner. A cancellation does not terminate the authority of the Secretary of State

to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this State.

"§ 59-907. Transaction of business without registration. – (a) No foreign limited partnership transacting business in this State without permission obtained through a certificate of authority under this Article shall be permitted to maintain any action or proceeding in any court of this State unless such foreign limited partnership shall have obtained a certificate of authority prior to trial.

(b) The failure of a foreign limited partnership to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract act of the foreign limited partnership and shall not prevent the foreign limited partnership from defending any action or proceeding in any court of this State.

(c) A foreign limited partnership failing to obtain permission to transact business in this State as required by this Article or by prior statutes then applicable shall be liable to the State for the years or parts thereof during which it transacted business in this State without such permission in an amount equal to all fees and taxes which would have been imposed by law upon such foreign limited partnership had it duly applied for and received such permission plus interest and all penalties imposed by law for failure to pay such fees and taxes, plus five hundred dollars (\$500.00) and costs. The Attorney General shall bring actions to recover all amounts due the State under the provisions of this section.

(d) The Secretary of State is hereby directed to require that every foreign limited partnership transacting business in this State comply with the provisions of this Article. The Secretary of State is authorized to employ such assistants as shall be deemed necessary in his office for the purpose of enforcing the provisions of this Article and for making such investigations as shall be necessary to ascertain foreign limited partnerships now transacting business in this State which may have failed to comply with the provisions of this Article.

(e) 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.

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

"§ 59-908. Action by Attorney General. – The Attorney General may bring an action to restrain a foreign limited partnership from transacting business in this State in violation of this Article.

"Part 10. Derivative Actions.

"§ 59-1001. Right of action. – A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

"§ 59-1002. Proper plaintiff. – In a derivative action, the plaintiff must be a partner at the time of bringing the action and (1) at the time of the transaction of which he complains or (2) his status as a partner had devolved upon him 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.

"§ 59-1003. **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.

"§ 59-1004. **Expenses.** – (a) 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 action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

(b) In any such action, the court, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the defendant or defendants the reasonable expenses, including attorneys' fees, incurred by them in defense of the action.

"§ 59-1005. **Dismissal of action.** – Such action shall not be discontinued, dismissed, compromised or settled without the approval of the court. If the court shall determine that the interest of the partners or of the creditors of the partnership will be substantially affected by such discontinuance, dismissal, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to such partners or creditors whose interest it determines will be so affected. If notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall be awarded as costs of the action.

"§ 59-1006. **Construction.** – The provisions of this Article shall not be construed to deprive a partner of whatever rights of action he may possess in his individual capacity.

"Part 11. Miscellaneous.

"§ 59-1101. **Construction and application.** – This Article shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"§ 59-1102. **Rules for cases not provided for in this Article.** – In any case not provided for in this Article the provisions of Article 2 of this Chapter govern.

"§ 59-1103. **Severability.** – If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

"§ 59-1104. **Effective date and repeal.** – (a) Except as set forth below, the effective date of this act is October 1, 1986, and Article 1 of Chapter 59 of the North Carolina General Statutes is hereby repealed subject to the following:

- (1) G.S. 59-501, 59-502, and 59-608 shall apply only to contributions and distributions made after the effective date;
- (2) G.S. 59-704 applies only to admissions made after the effective date;
- (3) G.S. 59-804 shall not be construed so as to change the priority of creditors for transactions entered into prior to the effective date;

- (4) Unless agreed otherwise by the partners, the applicable provisions of existing law governing allocation of profits and losses (rather than the provisions of G.S. 59-503), distribution to a withdrawing partner (rather than the provisions of G.S. 59-604), and the distribution of assets upon the winding up of a limited partnership (rather than the provisions of G.S. 59-804) shall govern limited partnerships formed before the effective date of this act herein.
- (5) The repeal of any prior statutory provision by this act shall not impair, or otherwise affect, the organization or continued existence of a limited partnership existing at the effective date of this act, nor shall the repeal by this act of any such prior provision be construed so as to impair any contract or to affect any right accrued prior to the effective date of this act.

(b) Any foreign limited partnership formed under the laws of another jurisdiction doing business in this State prior to the effective date shall within two years thereafter comply with Part 9 of Article 5 of Chapter 59.

"§ 59-1105. **Forms.** – The Department of the Secretary of State shall prescribe forms to be used for all filings required to be made with the Office of the Secretary of State pursuant to this act and shall furnish copies of such forms upon request.

"§ 59-1106. **Fees.** – The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing a certificate of limited partnership (G.S. 59-201)	\$50.00
(2)	For filing a certificate of amendment (G.S. 59-202; 59-905)	25.00
(3)	For filing a certificate of cancellation (G.S. 59-203; 59-906)	25.00
(4)	For filing an application for reservation of name (G.S. 59-104(a))	10.00
(5)	For filing a transfer of name (G.S. 59-104(d))	10.00
(6)	For filing an application for registration as foreign limited partnership (G.S. 59-502)	50.00
(7)	For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c))	
	For the first page thereof	1.00
	For each additional page	.40
	For affixing his certificate and official seal thereto	2.00
(8)	For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership For each page	.20
(9)	For filing any other document not herein specifically provided for	10.00."

Sec. 2.1. There is hereby appropriated from the General Fund the sum of one hundred and sixty-five thousand and seventy- nine dollars (\$165,079) for fiscal year 1986-87 to the Secretary of State for the implementation of this act. Provided, however, nothing in this act shall be construed to obligate the General Assembly to appropriate more than is generated by these fees to implement the provisions of this act.

Sec. 3. This act shall become effective October 1, 1986.

In the General Assembly read three times and ratified, this the 12th day of July, 1986.