

CHAPTER 251

UNIFORM PARTNERSHIP ACT

S. F. 460

AN ACT providing for enactment of the uniform partnership Act.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. **Short title.** This Act may be cited as the "Uniform
2 Partnership Act".

1 SEC. 2. **Definitions.** As used in this Act the terms:

2 1. "Court" includes every court and judge having jurisdiction in
3 the case.

4 2. "Business" includes every trade, occupation, or profession.

5 3. "Person" includes individuals, partnerships, corporations, and
6 other associations, trusts, trustees and other fiduciaries.

7 4. "Bankrupt" includes bankrupt under the Federal Bankruptcy
8 Act or insolvent under any state insolvent act.

9 5. "Conveyance" includes every assignment, lease, mortgage, or
10 encumbrance.

11 6. "Real property" includes land and any interest or estate in land.

1 SEC. 3. **Interpretation of knowledge and notice.**

2 1. A person has "knowledge" of a fact within the meaning of this
3 Act not only when he has actual knowledge thereof, but also when
4 he has knowledge of such other facts as in the circumstances shows
5 bad faith.

6 2. A person has "notice" of a fact within the meaning of this Act
7 when the person who claims the benefit of the notice:

8 a. States the fact to the person, or

9 b. Delivers through the mail, or by other means of communication,
10 a written statement of the fact to such person or to a proper person
11 at his place of business or residence.

1 SEC. 4. **Rules of Construction.**

2 1. The rule that statutes in derogation of the common law are to be
3 strictly construed shall have no application to this Act.

4 2. The law of estoppel shall apply under this Act.

5 3. The law of agency shall apply under this Act.

6 4. This Act shall be so interpreted and construed as to effect its
7 general purpose to make uniform the law of those states which enact it.

8 5. This Act shall not be construed so as to impair the obligations
9 of any contract existing when the Act goes into effect, nor to affect
10 any action or proceedings begun or right accrued before this Act takes
11 effect.

1 SEC. 5. **Rules for cases not provided for in this Act.** In any case
2 not provided for in this Act the rules of law and equity, including the
3 law merchant, shall govern.

1 SEC. 6. **Partnership defined.**

2 1. A partnership is an association of two or more persons to carry
3 on as co-owners a business for profit.

4 2. But any association formed under any other statute of this state,
5 or any statute adopted by authority, other than the authority of this

6 state, is not a partnership under this Act, unless the association
7 would have been a partnership in this state prior to the adoption of
8 this Act; but this Act shall apply to limited partnerships except in
9 so far as the statutes relating to such partnerships are inconsistent
10 herewith.

1 **SEC. 7. Rules for determining the existence of a partnership.** In
2 determining whether a partnership exists, these rules shall apply:

3 1. Except as provided by section sixteen (16) of this Act, persons
4 who are not partners as to each other are not partners as to third
5 persons.

6 2. Joint tenancy, tenancy in common, tenancy by the entireties,
7 joint property, common property, or part ownership does not of itself
8 establish a partnership, whether such co-owners do or do not share
9 any profits made by the use of the property.

10 3. The sharing of gross returns does not of itself establish a part-
11 nership, whether or not the persons sharing them have a joint or com-
12 mon right or interest in any property from which the returns are
13 derived.

14 4. The receipt by a person of a share of the profits of a business is
15 prima facie evidence that he is a partner in the business, but no such
16 inference shall be drawn if such profits were received in payment:

17 a. As a debt by installments or otherwise,

18 b. As wages of an employee or rent to a landlord,

19 c. As an annuity to a widow or representative of a deceased part-
20 ner,

21 d. As interest on a loan, though the amount of payment vary with
22 the profits of the business,

23 e. As the consideration for the sale of a good-will of a business or
24 other property by installments or otherwise.

1 **SEC. 8. Partnership property.**

2 1. All property originally brought into the partnership stock or
3 subsequently acquired by purchase or otherwise, on account of the
4 partnership, is partnership property.

5 2. Unless the contrary intention appears, property acquired with
6 partnership funds is partnership property.

7 3. Any estate in real property may be acquired in the partnership
8 name. Title so acquired can be conveyed only in the partnership
9 name.

10 4. A conveyance to a partnership in the partnership name, though
11 without words of inheritance, passes the entire estate of the grantor
12 unless a contrary intent appears.

1 **SEC. 9. Partner agent of partnership as to partnership business.**

2 1. Every partner is an agent of the partnership for the purpose of
3 its business, and the act of every partner, including the execution in
4 the partnership name of any instrument, for apparently carrying on
5 in the usual way the business of the partnership of which he is a
6 member binds the partnership, unless the partner so acting has in
7 fact no authority to act for the partnership in the particular matter,
8 and the person with whom he is dealing has knowledge of the fact
9 that he has no such authority.

10 2. An act of a partner which is not apparently for the carrying on

11 of the business of the partnership in the usual way does not bind the
12 partnership unless authorized by the other partners.

13 3. Unless authorized by the other partners or unless they have
14 abandoned the business, one or more but less than all the partners
15 have no authority to:

16 a. Assign the partnership property in trust for creditors or on the
17 assignee's promise to pay the debts of the partnership,

18 b. Dispose of the good-will of the business,

19 c. Do any other act which would make it impossible to carry on
20 the ordinary business of a partnership,

21 d. Confess a judgment,

22 e. Submit a partnership claim or liability to arbitration or refer-
23 ence.

24 4. No act of a partner in contravention of a restriction on author-
25 ity shall bind the partnership to persons having knowledge of the
26 restriction.

1 **SEC. 10. Conveyance of real property of the partnership.**

2 1. Where title to real property is in the partnership name, any part-
3 ner may convey title to the property by a conveyance executed in the
4 partnership name; but the partnership may recover such property
5 unless the partner's act binds the partnership under the provisions
6 of section nine (9), subsection one (1) of this Act, or unless the
7 property has been conveyed by the grantee or a person claiming
8 through the grantee to a holder for value without knowledge that the
9 partner, in making the conveyance, has exceeded his authority.

10 2. Where title to real property is in the name of the partnership,
11 a conveyance executed by a partner, in his own name, passes the
12 equitable interest of the partnership, provided the act is within the
13 authority of the partner under the provisions of section nine (9),
14 subsection one (1) of this Act.

15 3. Where title to real property is in the name of one or more but
16 not all the partners, and the record does not disclose the right of the
17 partnership, the partners in whose name the title stands may convey
18 title to the property, but the partnership may recover the property
19 if the partners' act does not bind the partnership under the provisions
20 of section nine (9), subsection one (1) of this Act, unless the pur-
21 chaser or his assignee, is a holder for value, without knowledge.

22 4. Where the title to real property is in the name of one or more
23 or all the partners, or in a third person in trust for the partnership,
24 a conveyance executed by a partner in the partnership name, or in his
25 own name, passes the equitable interest of the partnership, provided
26 the act is one within the authority of the partner under the provisions
27 of section nine (9), subsection one (1) of this Act.

28 5. Where the title to real property is in the names of all the part-
29 ners a conveyance executed by all the partners passes all their rights
30 in the property.

1 **SEC. 11. Partnership bound by admission of partner.** An admis-
2 sion or representation made by any partner concerning partnership
3 affairs within the scope of his authority as conferred by this Act is
4 evidence against the partnership.

1 **SEC. 12. Partnership charged with knowledge of or notice to part-**
2 **ner.** Notice to any partner of any matter relating to partnership af-

3 fairs, and the knowledge of the partner acting in the particular mat-
4 ter, acquired while a partner or then present to his mind, and the
5 knowledge of any other partner who reasonably could and should have
6 communicated it to the acting partner, operates as notice to or knowl-
7 edge of the partnership, except in the case of a fraud on the partner-
8 ship committed by or with the consent of that partner.

1 **SEC. 13. Partnership bound by partner's wrongful act.** Where, by
2 any wrongful act or omission of any partner acting in the ordinary
3 course of the business of the partnership or with the authority of his
4 co-partners, loss or injury is caused to any person, not being a partner
5 in the partnership, or any penalty is incurred, the partnership is liable
6 therefor to the same extent as the partner so acting or omitting to
7 act.

1 **SEC. 14. Partnership bound by partner's breach of trust.** The part-
2 nership is bound to make good the loss:

3 1. Where one partner acting within the scope of his apparent au-
4 thority receives money or property of a third person and misapplies
5 it.

6 2. Where the partnership in the course of its business receives
7 money or property of a third person and the money or property so
8 received is misapplied by any partner while it is in the custody of
9 the partnership.

1 **SEC. 15. Nature of partner's liability.** All partners are liable:

2 1. Jointly and severally for everything chargeable to the partner-
3 ship under sections thirteen (13) and fourteen (14) of this Act.

4 2. Jointly for all other debts and obligations of the partnership;
5 but any partner may enter into a separate obligation to perform a
6 partnership contract.

1 **SEC. 16. Partner by estoppel.**

2 1. When a person, by words spoken or written or by conduct, rep-
3 resents himself, or consents to another representing him to any one,
4 as a partner in an existing partnership or with one or more persons
5 not actual partners, he is liable to any person to whom the representa-
6 tion has been made, who has, on the faith of the representation, given
7 credit to the actual or apparent partnership, and if he has made a
8 representation or consented to its being made in a public manner he
9 is liable to the person, whether the representation has or has not been
10 made or communicated to the person so giving credit by or with the
11 knowledge of the apparent partner making the representation or con-
12 senting to its being made.

13 a. When a partnership liability results, he is liable as though he
14 were an actual member of the partnership.

15 b. When no partnership liability results, he is liable jointly with
16 the other persons, if any, so consenting to the contract or represen-
17 tation as to incur liability, otherwise separately.

18 2. When a person has been thus represented to be a partner in an
19 existing partnership, or with one or more persons not actual part-
20 ners, he is an agent of the persons consenting to the representation
21 to bind them to the same extent and in the same manner as though
22 he were a partner in fact, with respect to persons who rely upon the
23 representation. Where all the members of the existing partnership

24 consent to the representation, a partnership act or obligation results;
25 but in all other cases it is the joint act or obligation of the person
26 acting and the persons consenting to the representation.

1 **SEC. 17. Liability of incoming partner.** A person admitted as a
2 partner into an existing partnership is liable for all the obligations of
3 the partnership arising before his admission as though he had been
4 a partner when such obligations were incurred, except that this liabil-
5 ity shall be satisfied only out of partnership property.

1 **SEC. 18. Rules determining rights and duties of partners.** The
2 rights and duties of the partners in relation to the partnership shall
3 be determined, subject to any agreement between them, by the follow-
4 ing rules:

5 1. Each partner shall be repaid his contributions, whether by way
6 of capital or advances to the partnership property and share equally
7 in the profits and surplus remaining after all liabilities, including
8 those to partners, are satisfied; and must contribute towards the
9 losses, whether of capital or otherwise, sustained by the partnership
10 according to his share in the profits.

11 2. The partnership must indemnify every partner in respect of
12 payments made and personal liabilities reasonably incurred by him
13 in the ordinary and proper conduct of its business, or for the preser-
14 vation of its business or property.

15 3. A partner, who in aid of the partnership makes any payment or
16 advance beyond the amount of capital which he agreed to contribute,
17 shall be paid interest from the date of the payment or advance.

18 4. A partner shall receive interest on the capital contributed by
19 him only from the date when repayment should be made.

20 5. All partners have equal rights in the management and conduct
21 of the partnership business.

22 6. No partner is entitled to remuneration for acting in the partner-
23 ship business, except that a surviving partner is entitled to reasonable
24 compensation for his services in winding up the partnership affairs.

25 7. No person can become a member of a partnership without the
26 consent of all the partners.

27 8. Any difference arising as to ordinary matters connected with
28 the partnership business may be decided by a majority of the part-
29 ners; but no act in contravention of any agreement between the part-
30 ners may be done rightfully without the consent of all the partners.

1 **SEC. 19. Partnership books.** The partnership books shall be kept,
2 subject to any agreement between the partners, at the principal place
3 of business of the partnership, and every partner shall at all times
4 have access to and may inspect and copy any of them.

1 **SEC. 20. Duty of partners to render information.** Partners shall
2 render on demand true and full information of all things affecting
3 the partnership to any partner or the legal representative of any de-
4 ceased partner or partner under legal disability.

1 **SEC. 21. Partner accountable as a fiduciary.**

2 1. Every partner must account to the partnership for any benefit,
3 and hold as trustee for it any profits derived by him without the con-
4 sent of the other partners from any transaction connected with the

5 formation, conduct, liquidation of the partnership or use of its prop-
6 erty.

7 2. This section also applies to the representatives of a deceased
8 partner engaged in the liquidation of the affairs of the partnership as
9 the personal representatives of the last surviving partner.

1 **SEC. 22. Right to an account.** Any partner shall have the right to
2 a formal account as to partnership affairs:

3 1. If he is wrongfully excluded from the partnership business or
4 possession of its property by his co-partners.

5 2. If the right exists under the terms of any agreement.

6 3. As provided by section twenty-one (21) of this Act.

7 4. Whenever other circumstances render it just and reasonable.

1 **SEC. 23. Continuation of partnership beyond fixed term.**

2 1. When a partnership for a fixed term or particular undertaking
3 is continued after the termination of such term or particular under-
4 taking, without any express agreement, the rights and duties of the
5 partners remain the same as they were at such termination, so far
6 as is consistent with a partnership at will.

7 2. A continuation of the business by the partners or such of them
8 as habitually acted therein during the term, without any settlement
9 or liquidation of the partnership affairs, is prima facie evidence of a
10 continuation of the partnership.

1 **SEC. 24. Extent of property rights of a partner.** The property
2 rights of a partner are:

3 1. His rights in specific partnership property.

4 2. His interest in the partnership.

5 3. His right to participate in the management.

1 **SEC. 25. Nature of a partner's right in specific partnership prop-**
2 **erty.**

3 1. A partner is co-owner with his partners of specific partnership
4 property holding as a tenant in partnership.

5 2. The incidents of this tenancy are such that:

6 a. A partner, subject to the provisions of this Act and to any
7 agreement between the partners, has an equal right with his partners
8 to possess specific partnership property for partnership purposes;
9 but he has no right to possess the property for any other purpose
10 without the consent of his partners.

11 b. A partner's right in specific partnership property is not assign-
12 able except in connection with the assignment of rights of all the part-
13 ners in the same property.

14 c. A partner's right in specific partnership property is not subject
15 to attachment or execution, except on a claim against the partner-
16 ship. When partnership property is attached for a partnership debt
17 the partners, or any of them, or the representatives of a deceased
18 partner, cannot claim any right under the homestead or exemption
19 laws.

20 d. On the death of a partner his right in specific partnership prop-
21 erty vests in the surviving partner or partners, except where the de-
22 ceased was the last surviving partner, when his rights in the property
23 vest in his legal representative. Such surviving partner or partners,
24 or the legal representative of the last surviving partner, has no right

25 to possess the partnership property for any but a partnership purpose.
26 e. A partner's right in specific partnership property is not subject
27 to dower, courtesy, or allowances to widows, heirs, or next of kin.

1 **SEC. 26. Nature of partner's interest in the partnership.** A part-
2 ner's interest in the partnership is his share of the profits and sur-
3 plus, and the same is personal property.

1 **SEC. 27. Assignment of a partner's interest.**
2 1. A conveyance by a partner of his interest in the partnership
3 does not of itself dissolve the partnership, nor as against the other
4 partners in the absence of agreement, entitle the assignee, during the
5 continuance of the partnership, to interfere in the management or
6 administration of the partnership business or affairs, or to require
7 any information or account of partnership transactions, or to inspect
8 the partnership books; but it merely entitles the assignee to receive
9 in accordance with his contract the profits to which the assigning
10 partner would otherwise be entitled.

11 2. In case of a dissolution of the partnership, the assignee is en-
12 titled to receive his assignor's interest and may require an account
13 from the date only of the last account agreed to by all the partners.

1 **SEC. 28. Partner's interest subject to charging order.**

2 1. On due application to a competent court by any judgment credi-
3 tor of a partner, the court which entered the judgment, order, or de-
4 cree, or any other court, may charge the interest of the debtor part-
5 ner with payment of the unsatisfied amount of the judgment debt
6 with interest thereon; and may then or later appoint a receiver of his
7 share of the profits, and of any other money due or to fall due to him
8 in respect of the partnership, and make all other orders, directions,
9 accounts and inquiries which the debtor partner might have made,
10 or which the circumstances of the case may require.

11 2. The interest charged may be redeemed at any time before fore-
12 closure, or in case of a sale being directed by the court may be pur-
13 chased without thereby causing a dissolution:

14 a. With separate property, by any one or more of the partners, or

15 b. With partnership property, by any one or more of the partners
16 with the consent of all the partners whose interests are not so
17 charged or sold.

18 3. Nothing in this Act shall be held to deprive a partner of his
19 right, if any, under the exemption laws, as regards his interest in the
20 partnership.

1 **SEC. 29. Dissolution defined.** The dissolution of a partnership is
2 the change in the relation of the partners caused by any partner
3 ceasing to be associated in the carrying on as distinguished from the
4 winding up of the business.

1 **SEC. 30. Partnership not terminated by dissolution.** On dissolu-
2 tion the partnership is not terminated, but continues until the wind-
3 ing up of partnership affairs is completed.

1 **SEC. 31. Causes of dissolution.** Dissolution is caused:

2 1. Without violation of the agreement between the partners:

3 a. By the termination of the definite term or particular undertak-
4 ing specified in the agreement,

- 5 b. By the express will of any partner when no definite term or
6 particular undertaking is specified,
- 7 c. By the express will of all the partners who have not assigned
8 their interests or suffered them to be charged for their separate debts,
9 either before or after the termination of any specified term or par-
10 ticular undertaking,
- 11 d. By the expulsion of any partner from the business bona fide in
12 accordance with such a power conferred by the agreement between
13 the partners;
- 14 2. In contravention of the agreement between the partners, where
15 the circumstances do not permit a dissolution under any other provi-
16 sion of this section, by the express will of any partner at any time;
- 17 3. By any event which makes it unlawful for the business of the
18 partnership to be carried on or for the members to carry it on in
19 partnership;
- 20 4. By the death of any partner, unless the partnership agreement
21 provides otherwise;
- 22 5. By the bankruptcy of any partner or the partnership;
- 23 6. By decree of court under section thirty-two (32) of this Act.

1 **SEC. 32. Dissolution by decree of court.** The court shall decree a
2 dissolution:

- 3 1. On application by or for a partner whenever:
- 4 a. A partner has been declared a mentally ill person in any judicial
5 proceeding, or is shown to be of unsound mind,
- 6 b. A partner becomes in any other way incapable of performing
7 his part of the partnership contract,
- 8 c. A partner has been guilty of conduct as tends to affect prejudi-
9 cially the carrying on of the business,
- 10 d. A partner willfully or persistently commits a breach of the part-
11 nership or agreement, or otherwise so conducts himself in matters
12 relating to the partnership business that it is not reasonably practica-
13 ble to carry on the business in partnership with him,
- 14 e. The business of the partnership can only be carried on at a loss,
15 f. Other circumstances render a dissolution equitable.
- 16 2. On application of the purchaser of a partner's interest under
17 section twenty-seven (27) or twenty-eight (28) of this Act:
- 18 a. After the termination of the specified term or particular under-
19 taking,
- 20 b. At any time if the partnership was a partnership at will when the
21 interest was assigned or when the charging order was issued.

1 **SEC. 33. General effect of dissolution on authority of partner.** Ex-
2 cept so far as may be necessary to wind up partnership affairs or to
3 complete transactions begun but not then finished, dissolution termi-
4 nates all authority of any partner to act for the partnership:

- 5 1. With respect to the partners,
- 6 a. When the dissolution is not by the act, bankruptcy or death of
7 a partner, or
- 8 b. When the dissolution is by such act, bankruptcy or death of a
9 partner, in cases where section thirty-four (34) of this Act, so re-
10 quires.
- 11 2. With respect to persons not partners, as declared in section
12 thirty-five (35) of this Act.

1 **SEC. 34. Right of partner to contribution from co-partners after**
2 **dissolution.** Where the dissolution is caused by the act, death or
3 bankruptcy of a partner, each partner is liable to his co-partners for
4 his share of any liability created by any partner acting for the part-
5 nership as if the partnership had not been dissolved unless:
6 1. The dissolution being by act of any partner, the partner acting
7 for the partnership had knowledge of the dissolution, or
8 2. The dissolution being by the death or bankruptcy of a partner,
9 the partner acting for the partnership had knowledge or notice of
10 the death or bankruptcy.

1 **SEC. 35. Power of partner to bind partnership to third persons**
2 **after dissolution.**
3 1. After dissolution a partner can bind the partnership except as
4 provided in subsection three (3) of this section:
5 a. By any act appropriate for winding up partnership affairs or
6 completing transactions unfinished at dissolution.
7 b. By any transaction which would bind the partnership if disso-
8 lution had not taken place, provided the other party to the transac-
9 tion:
10 (1) Had extended credit to the partnership prior to dissolution and
11 had no knowledge or notice of the dissolution; or
12 (2) Though he had not so extended credit, had nevertheless known
13 of the partnership prior to dissolution, and, having no knowledge or
14 notice of dissolution, the fact of dissolution had not been advertised
15 in a newspaper of general circulation in the place (or in each place if
16 more than one) at which the partnership business was regularly car-
17 ried on.
18 2. The liability of a partner under paragraph b of subsection one
19 (1) of this section shall be satisfied out of partnership assets alone
20 when such partner had been prior to dissolution:
21 a. Unknown as a partner to the person with whom the contract is
22 made; and
23 b. So far unknown and inactive in partnership affairs that the
24 business reputation of the partnership could not be said to have been
25 in any degree due to his connection with it.
26 3. The partnership is in no case bound by any act of a partner
27 after dissolution:
28 a. Where the partnership is dissolved because it is unlawful to
29 carry on the business, unless the act is appropriate for winding up
30 partnership affairs; or
31 b. Where the partner has become bankrupt; or
32 c. Where the partner has no authority to wind up partnership
33 affairs; except by a transaction with one who:
34 (1) Had extended credit to the partnership prior to dissolution and
35 had no knowledge or notice of his want of authority; or
36 (2) Had not extended credit to the partnership prior to dissolution,
37 and, having no knowledge or notice of his want of authority, the fact
38 of his want of authority has not been advertised in the manner pro-
39 vided for advertising the fact of dissolution in paragraph b of sub-
40 section one (1) of this section.
41 4. Nothing in this section shall affect the liability under section
42 sixteen (16) of this Act of any person who after dissolution repre-

43 sends himself or consents to another representing him as a partner
44 in a partnership engaged in carrying on business.

1 **SEC. 36. Effect of dissolution on partner's existing liability.**

2 1. The dissolution of the partnership does not of itself discharge
3 the existing liability of any partner.

4 2. A partner is discharged from any existing liability upon dissolution
5 of the partnership by an agreement to that effect between him-
6 self, the partnership creditor and the person or partnership continu-
7 ing the business; and such agreement may be inferred from the course
8 of dealing between the creditor having knowledge of the dissolution
9 and the person or partnership continuing the business.

10 3. Where a person agrees to assume the existing obligations of a
11 dissolved partnership, the partners whose obligations have been as-
12 sumed shall be discharged from any liability to any creditor of the
13 partnership who, knowing of the agreement, consents to a material
14 alteration in the nature or time of payment of the obligations.

15 4. The individual property of a deceased partner shall be liable for
16 all obligations of the partnership incurred while he was a partner but
17 subject to the prior payment of his separate debts.

1 **SEC. 37. Right to wind up.** Unless otherwise agreed the partners
2 who have not wrongfully dissolved the partnership or the legal rep-
3 resentative of the last surviving partner, not bankrupt, has the right
4 to wind up the partnership affairs; provided, however, that any part-
5 ner, his legal representative or his assignee, upon cause shown, may
6 obtain winding up by the court.

1 **SEC. 38. Rights of partners to application of partnership property.**

2 1. When dissolution is caused in any way, except in contravention
3 of the partnership agreement, each partner, as against his co-part-
4 ners and all persons claiming through them in respect of their inter-
5 ests in the partnership, unless otherwise agreed, may have the part-
6 nership property applied to discharge its liabilities, and the surplus
7 applied to pay in cash the net amount owing to the respective part-
8 ners. But if dissolution is caused by expulsion of a partner, bona fide
9 under the partnership agreement and if the expelled partner is dis-
10 charged from all partnership liabilities, either by payment or agree-
11 ment under subsection two (2) of section thirty-six (36) of this Act,
12 he shall receive in cash only the net amount due him from the part-
13 nership.

14 2. When dissolution is caused in contravention of the partnership
15 agreement the rights of the partners shall be as follows:

16 a. Each partner who has not caused dissolution wrongfully shall
17 have:

18 (1) All the rights specified in subsection one (1) of this section,
19 and

20 (2) The right, as against each partner who has caused the disso-
21 lution wrongfully, to damages for breach of the agreement.

22 b. The partners who have not caused the dissolution wrongfully,
23 if they all desire to continue the business in the same name, either
24 by themselves or jointly with others, may do so, during the agreed
25 term for the partnership and for that purpose may possess the part-
26 nership property, provided they secure the payment by bond approved

27 by the court, or pay to any partner who has caused the dissolution
 28 wrongfully, the value of his interest in the partnership at the dissolu-
 29 tion, less any damages recoverable under subparagraph two (2) of
 30 paragraph a of section two (2) of this section, and in like manner
 31 indemnify him against all present or future partnership liabilities.

32 c. A partner who has caused the dissolution wrongfully shall have:

33 (1) If the business is not continued under the provisions of para-
 34 graph b of subsection two (2) of this section, all the rights of a part-
 35 ner under subsection one (1) of this section, subject to subparagraph
 36 two (2) of paragraph a of subsection two (2) of this section,

37 (2) If the business is continued under paragraph b of subsection
 38 two (2) of this section the right as against his co-partners and all
 39 claiming through them in respect of their interests in the partner-
 40 ship, to have the value of his interest in the partnership, less any
 41 damages caused to his co-partners by the dissolution, ascertained and
 42 paid to him in cash, or the payment secured by bond approved by the
 43 court, and to be released from all existing liabilities of the partner-
 44 ship; but in ascertaining the value of the partner's interest the value
 45 of the good-will of the business shall not be considered.

1 **SEC. 39. Rights where partnership is dissolved for fraud or mis-**
 2 **representation.** Where a partnership contract is rescinded on the
 3 ground of the fraud or misrepresentation of one of the parties there-
 4 to, the party entitled to rescind is, without prejudice to any other
 5 right, entitled:

6 1. To a lien on, or a right of retention of, the surplus of the part-
 7 nership property after satisfying the partnership liabilities to third
 8 persons for any sum of money paid by him for the purchase of an
 9 interest in the partnership and for any capital or advances contrib-
 10 uted by him; and

11 2. To stand, after all liabilities to third persons have been satisfied,
 12 in the place of the creditors of the partnership for any payments
 13 made by him in respect of the partnership liabilities; and

14 3. To be indemnified by the person guilty of the fraud or making
 15 the representation against all debts and liabilities of the partnership.

1 **SEC. 40. Rules for distribution.** In settling accounts between the
 2 partners after dissolution, the following rules shall be observed, sub-
 3 ject to any agreement to the contrary:

4 1. The assets of the partnership are:

5 a. The partnership property,

6 b. The contributions of the partners necessary for the payment of
 7 all the liabilities specified in subsection two (2) of this section.

8 2. The liabilities of the partnership shall rank in order of payment,
 9 as follows:

10 a. Those owing to creditors other than partners,

11 b. Those owing to partners other than for capital and profits,

12 c. Those owing to partners in respect of capital,

13 d. Those owing to partners in respect of profits.

14 3. The assets shall be applied in order of their declaration in sub-
 15 section one (1) of this section to the satisfaction of the liabilities.

16 4. The partners shall contribute, as provided by subsection one (1)
 17 of section eighteen (18) of this Act, the amount necessary to satisfy
 18 the liabilities; but if any, but not all of the partners are insolvent, or,

19 not being subject to process, refuse to contribute, the other partners
20 shall contribute their share of the liabilities, and, in the relative
21 proportions in which they share the profits, the additional amount
22 necessary to pay the liabilities.

23 5. An assignee for the benefit of creditors or any person appointed
24 by the court shall have the right to enforce the contributions specified
25 in subsection four (4) of this section.

26 6. Any partner or his legal representative shall have the right to
27 enforce the contributions specified in subsection four (4) of this sec-
28 tion, to the extent of the amount which he has paid in excess of his
29 share of the liability.

30 7. The individual property of a deceased partner shall be liable for
31 the contributions specified in subsection four (4) of this section.

32 8. When partnership property and the individual properties of the
33 partners are in possession of a court for distribution, partnership
34 creditors shall have priority on partnership property and separate
35 creditors on individual property, saving the rights of lien or secured
36 creditors as heretofore.

37 9. Where a partner has become bankrupt or his estate is insolvent
38 the claims against his separate property shall rank in the following
39 order:

- 40 a. Those owing to separate creditors,
- 41 b. Those owing to partnership creditors,
- 42 c. Those owing to partners by way of contribution.

1 **SEC. 41. Liability of persons continuing the business in certain**
2 **cases.**

3 1. When any new partner is admitted into an existing partnership,
4 or when any partner retires and assigns, or the representative of the
5 deceased partner assigns his rights in partnership property to two
6 or more of the partners, or to one or more of the partners and one or
7 more third persons, if the business is continued without liquidation
8 of the partnership affairs, creditors of the first or dissolved partner-
9 ship are also creditors of the partnership so continuing the business.

10 2. When all but one partner retire and assign, or the representa-
11 tive of a deceased partner assigns their rights in partnership property
12 to the remaining partner, who continues the business without liquida-
13 tion of partnership affairs, either alone or with others, creditors of the
14 dissolved partnership are also creditors of the person or partnership
15 so continuing the business.

16 3. When any partner retires or dies and the business of the dis-
17 solved partnership is continued as set forth in subsections one (1)
18 and two (2) of this section, with the consent of the retired partners
19 or the representative of the deceased partner, but without any as-
20 signment of his right in partnership property, rights of creditors of
21 the dissolved partnership and of the creditors of the person or part-
22 nership continuing the business shall be as if such assignment had
23 been made.

24 4. When all the partners or their representatives assign their rights
25 in partnership property to one or more third persons who promise to
26 pay the debts and who continue the business of the dissolved partner-
27 ship, creditors of the dissolved partnership are also creditors of the
28 person or partnership continuing the business.

29 5. When any partner wrongfully causes a dissolution and the re-

30 maining partners continue the business under the provisions of para-
31 graph b of subsection two (2) of section thirty-eight (38) of this Act,
32 either alone or with others, and without liquidation of the partnership
33 affairs, creditors of the dissolved partnership are also creditors of the
34 person or partnership continuing the business.

35 6. When a partner is expelled and the remaining partners continue
36 the business either alone or with others, without liquidation of the
37 partnership affairs, creditors of the dissolved partnership are also
38 creditors of the person or partnership continuing the business.

39 7. The liability of a third person becoming a partner in the part-
40 nership continuing the business, under this section, to the creditors of
41 the dissolved partnership shall be satisfied out of partnership prop-
42 erty only.

43 8. When the business of a partnership after dissolution is continued
44 under any conditions set forth in this section the creditors of the
45 dissolved partnership, as against the separate creditors of the retir-
46 ing or deceased partner or the representative of the deceased partner,
47 have a prior right to any claim of the retired partner or the repre-
48 sentative of the deceased partner against the person or partnership
49 continuing the business, on account of the retired or deceased part-
50 ner's interest in the dissolved partnership or on account of any con-
51 sideration promised for such interest or for his right in partnership
52 property.

53 9. Nothing in this section shall be held to modify any right of cred-
54 itors to set aside any assignment on the ground of fraud.

55 10. The use by the person or partnership continuing the business
56 of the partnership name, or the name of a deceased partner as part
57 thereof, shall not of itself make the individual property of the de-
58 ceased partner liable for any debts contracted by the person or part-
59 nership.

1 **SEC. 42. Rights of retiring or estate of deceased partner when the**
2 **business is continued.** When any partner retires or dies, and the busi-
3 ness is continued under any of the conditions set forth in subsections
4 one (1), two (2), three (3), five (5), and six (6) of section forty-
5 one (41) or paragraph b of subsection two (2) of section thirty-eight
6 (38) of this Act, without any settlement of accounts as between him
7 or his estate and the person or partnership continuing the business,
8 unless otherwise agreed, he or his legal representative as against such
9 persons or partnership may have the value of his interest at the date
10 of dissolution ascertained, and shall receive as an ordinary creditor an
11 amount equal to the value of his interest in the dissolved partnership
12 with interest, or, at his option or at the option of his legal representa-
13 tive, in lieu of interest, the profits attributable to the use of his right
14 in the property of the dissolved partnership; provided that the credi-
15 tors of the dissolved partnership as against the separate creditors, or
16 the representative of the retired or deceased partner, shall have prior-
17 ity on any claim arising under this section, as provided by subsection
18 eight (8) of section forty-one (41) of this Act.

1 **SEC. 43. Accrual of actions.** The right to an account of his inter-
2 est shall accrue to any partner, or his legal representative, as against
3 the winding up partners or the surviving partners or the person or

4 partnership continuing the business, at the date of dissolution, in the
5 absence of any agreement to the contrary.

1 SEC. 44. Section six hundred twenty-six point thirty-two (626.32),
2 Code 1971, is amended as follows:

3 **626.32 Joint or partnership property.** When an officer has an ex-
4 ecution against a person who owns property jointly, *or* in common
5 [or in partnership] with another, such officer may levy on and take
6 possession of the property owned jointly, *or* in common [or in part-
7 nership], sufficiently to enable him to appraise and inventory the
8 same, and for that purpose shall call to his assistance three disinter-
9 ested persons, which inventory and appraisal shall be returned
10 by the officer with the execution, and shall state in his return who
11 claims to own the property.

1 SEC. 45. Section six hundred thirty-nine point thirty-seven
2 (639.37), Code 1971, is amended as follows:

3 **639.37 Common, or joint [or partnership] property.** In executing
4 an attachment against a person who owns property jointly or in com-
5 mon with another, [or who is a member of a partnership,] the officer
6 may take possession of such property so owned jointly, *or* in common,
7 [or in partnership,] sufficiently to enable him to inventory and ap-
8 praise the same, and for that purpose shall call to his assistance three
9 disinterested persons; which inventory and appraisal shall be re-
10 turned by the officer with the attachment, and such return shall state
11 who claims to own such property.

Approved May 27, 1971.

Italics indicate new material added to existing statutes; brackets indicate deletions from existing statutes.
However, see Editor's note, page iii.

CHAPTER 252

DILUTION OF A MARK

S. F. 473

AN ACT relating to remedies for the dilution of the distinctiveness of a mark.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Section five hundred forty-eight point eleven (548.11),
2 subsection two (2), Code 1971, is amended by striking the subsection
3 and inserting in lieu thereof the following:

4 2. Likelihood of injury to business reputation or to a trade name
5 valid at common law, or of dilution of the distinctive quality of a
6 mark, whether registered or not registered under this chapter, shall
7 be a ground for injunctive relief notwithstanding the absence of com-
8 petition between the parties or the absence of confusion as to the
9 source of goods or services.

Approved June 4, 1971.