

CHAPTER 188**LIMITED PARTNERSHIPS AND LIMITED LIABILITY COMPANIES***H.F. 642*

AN ACT relating to the organization and operation of certain legal entities, including limited partnerships and the rights and duties of limited partners, partnership agreements, duties of the secretary of state with respect to limited partnerships, and other related matters affecting foreign and domestic limited partnerships, and including limited liability companies and the conversion of other entities to limited liability companies, and the rights, duties, obligations, and interests of members and managers with respect to such companies, and establishing fees and penalties.

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

Section 1. Section 487.101, subsections 1 and 6, Code 1997, are amended to read as follows:

1. "Certificate of limited partnership" means the certificate referred to in section 487.201, and the certificate as amended or restated.

6. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement ~~and named in the certificate of limited partnership as a limited partner~~.

Sec. 2. Section 487.101, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 11. "Person" means as defined in section 4.1.

NEW SUBSECTION. 12. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Sec. 3. Section 487.102, subsection 3, Code 1997, is amended by striking the subsection.

Sec. 4. Section 487.102, subsection 4, Code 1997, is amended to read as follows:

4. Shall be distinguishable upon the records of the secretary of state from the name of a registered limited liability partnership, corporation, limited liability company, or limited partnership organized under the law of this state or licensed or registered as a foreign registered limited liability partnership, foreign corporation, foreign limited liability company, or foreign limited partnership in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, without the written consent of the registered limited liability partnership, corporation, limited liability company, or limited partnership, which consent shall be filed with the secretary of state, and provided the name is not identical.

Sec. 5. Section 487.102, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 6. This chapter does not control the use of fictitious names. However, a limited partnership which uses a fictitious name in this state shall deliver to the secretary of state for filing a copy of the resolution of the limited partnership certified by its general partners, adopting the fictitious name.

Sec. 6. Section 487.103, subsection 2, Code 1997, is amended to read as follows:

2. The reservation shall be made by filing with the secretary of state an application to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, the secretary shall reserve the name for the exclusive use of the applicant for a period of ~~ninety~~ one hundred twenty days. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Sec. 7. Section 487.104, subsection 3, Code 1997, is amended to read as follows:

3. An agent for service of process may resign as agent upon filing and recording in accordance with section ~~487.206~~ 487.108 a written notice of resignation, executed in duplicate, with the secretary of state. The secretary of state shall forthwith mail a copy of the resignation to the limited partnership at its principal place of business. The appointment of the agent terminates upon the expiration of thirty days after receipt of the notice by the secretary of state.

Sec. 8. Section 487.105, Code 1997, is amended to read as follows:

487.105 RECORDS TO BE KEPT.

A limited partnership shall keep at the office required under section 487.104, subsection 1, all of the following:

1. A current list of the full name and last known business address of each partner separately identifying the general partners and the limited partners, each list being in alphabetical order.

2. A copy of the certificate of limited partnership and all ~~amendments to the certificate~~ certificates of amendment to the certificate of limited partnership, together with any executed copies of any powers of attorney pursuant to which a ~~any certificate or amendment~~ 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 currently effective written partnership agreements ~~in effect~~ and of any financial statements of the limited partnership for the three most recent years.

~~Any partner may inspect and copy the records required to be kept under subsections 1 to 4 provided that the partner's request to inspect and copy is reasonable and done at the partner's expense.~~

5. Unless contained in a written partnership agreement, a writing setting out all of the following:

a. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute.

b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made.

c. Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution.

d. Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

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

Sec. 9. NEW SECTION. 487.108 FILING REQUIREMENTS.

1. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document shall be filed in the office of the secretary of state.

3. The document shall contain the information required by this chapter. It may contain other information as well.

4. The document shall be typewritten or printed. The typewritten or printed portion shall be black. Manually signed photocopies, or other reproduced copies, including facsimiles or other electronically or computer-generated copies of typewritten or printed documents, may be filed.

5. The document shall be in the English language. A limited partnership name need not be in English if written in English letters or Arabic or Roman numerals.

6. Except as provided in section 487.205, the document shall be executed by one of the following methods:

a. If a domestic limited partnership, the documents shall be executed by all of its general partners.

b. If a foreign limited partnership, the document shall be subscribed and sworn to by a general partner.

c. If the general partner is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The secretary of state may accept for filing a document containing a copy of a signature, however made.

8. If, pursuant to any provision of this chapter, the secretary of state has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

9. The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by the correct filing fee.

10. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

Sec. 10. NEW SECTION. 487.109 FEES.

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

a. Certificate of limited partnership	\$100
b. Application for registration of foreign limited partnership and also issuance of a certificate of registration to transact business in this state	\$100
c. Amendment to certificate of limited partnership	\$100
d. Amendment to application for registration of foreign limited partnership	\$100
e. Cancellation of certificate of limited partnership	\$ 20
f. Cancellation of registration of foreign limited partnership	\$ 20
g. A consent required to be filed under this chapter	\$ 20
h. Application to reserve a limited partnership name	\$ 10
i. A notice of transfer of reservation of name	\$ 10
j. Articles of correction	\$ 5
k. Application for certificate of existence or registration	\$ 5
l. Any other document required or permitted to be filed	\$ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign limited partnership:

- a. One dollar per page for copying.
- b. Five dollars for the certificate.

Sec. 11. NEW SECTION. 487.110 EFFECTIVE TIME AND DATE OF DOCUMENTS.

1. Except as provided in subsection 2 and section 487.112, subsection 3, a document accepted for filing is effective at the later of the following times:

a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective

date for a document shall not be later than the ninetieth day after the date it is filed.

Sec. 12. NEW SECTION. 487.111 CORRECTING FILED DOCUMENTS.

1. A domestic or foreign limited partnership may correct a document filed by the secretary of state if the document satisfies one or both of the following requirements:

- a. Contains an incorrect statement.
- b. Was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by preparing articles of correction that satisfy all of the following requirements:

- a. Describe the document, including its filing date, or attach a copy of it to the articles.
- b. Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.
- c. Correct the incorrect statement or defective execution.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Sec. 13. NEW SECTION. 487.112 FILING DUTY OF SECRETARY OF STATE.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 487.108, the secretary of state shall file it.

2. The secretary of state files a document by stamping or otherwise endorsing "filed", together with the secretary's name and official title and the date and time of receipt, on both the document and the receipt for the filing fee. After filing a document, and except as provided in section 487.104A, subsection 3, and section 487.909, the secretary of state shall deliver the document, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached to the domestic or foreign limited partnership or its representative.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign limited partnership or its representative within ten days after the document was received by the secretary of state, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not do any of the following:

- a. Affect the validity or invalidity of the document in whole or part.
- b. Relate to the correctness or incorrectness of information contained in the document.
- c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Sec. 14. NEW SECTION. 487.113 APPEAL FROM SECRETARY OF STATE'S REFUSAL TO FILE DOCUMENT.

1. If the secretary of state refuses to file a document delivered to the secretary's office for filing, the domestic or foreign limited partnership may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the limited partnership's principal office or, if none in this state, its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

Sec. 15. NEW SECTION. 487.114 EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.

A certificate attached to a copy of a document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of the secretary of

state, is conclusive evidence that the original document is on file with the secretary of state.

Sec. 16. NEW SECTION. 487.115 CERTIFICATE OF EXISTENCE.

1. Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic limited partnership or a certificate of registration for a foreign limited partnership.

2. A certificate of existence or a certificate of registration shall set forth all of the following:

a. The domestic limited partnership's name or the foreign limited partnership's name used in this state.

b. That one of the following apply:

(1) If it is a domestic limited partnership, that it is duly organized under the law of this state, the date of its organization, and the period of its duration.

(2) If it is a foreign limited partnership, that it is authorized to transact business in this state.

c. That all fees required by this chapter have been paid.

d. That a certificate of cancellation has not been filed.

e. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or certificate of registration issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign limited partnership is in existence or is registered to transact business in this state.

Sec. 17. NEW SECTION. 487.116 PENALTY FOR SIGNING FALSE DOCUMENT.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

Sec. 18. NEW SECTION. 487.117 SECRETARY OF STATE — POWERS.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

Sec. 19. Section 487.201, subsection 1, Code 1997, is amended to read as follows:

1. In order to form a limited partnership, ~~two or more persons shall execute~~ a certificate of limited partnership. ~~The certificate shall be~~ must be executed and filed in the office of the secretary of state ~~and set forth all of the following.~~ The certificate shall set forth all of the following:

a. The name of the limited partnership.

b. ~~The general character of its business.~~

e. ~~b.~~ The address of the office and the name and address of the agent for service of process required to be maintained by section 487.104, subsection 1, ~~and the address of its principal place of business.~~

d. ~~c.~~ The name and the business address of each general partner, ~~specifying separately the general partners and limited partners.~~

e. ~~The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future.~~

f. ~~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.~~

g. ~~A power of a limited partner to grant the right to become a limited partner to an assignee of any part of the partner's partnership interest, and the terms and conditions of the power.~~

~~h. If agreed upon, the time at which or the events on the happening of which a partner may withdraw from the limited partnership and the amount of, or the method of determining the amount of, the distribution to which the partner may be entitled respecting the partnership interest, and the terms and conditions of the termination and distribution.~~

~~i. A right of a partner to receive distributions of property, including cash from the limited partnership.~~

~~j. A right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution.~~

~~k. A time at which, or an event upon the happening of which,~~

~~d. The latest date upon which the limited partnership is to be dissolved and its affairs wound up dissolve.~~

~~l. A right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner.~~

~~m. e. Other Any other matters the general partners determine to include in the certificate.~~

Sec. 20. Section 487.202, Code 1997, is amended to read as follows:

487.202 AMENDMENT TO CERTIFICATE.

1. A certificate of limited partnership is amended by filing a certificate of amendment to the certificate of limited partnership in the office of the secretary of state. The certificate of amendment shall set forth all of the following:

a. The name of the limited partnership.

b. The date of filing the certificate of limited partnership.

c. The amendment to the certificate ~~of limited partnership~~.

2. ~~Except as provided in subsection 5, within~~ Within thirty days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event shall be filed:

~~a. A change in the amount or character of the contribution of a partner, or in a partner's obligation to make a contribution.~~

~~b. a.~~ The admission of a new general partner.

b. The withdrawal of a general partner.

c. The continuation of the business under section 487.801 after an event of withdrawal of a general partner.

3. A general partner who becomes aware that a 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. ~~An amendment to show the admission of or a change of address of a limited partner shall be filed within twelve months of the admission or change of address.~~

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

~~5. An amendment is not required to reflect distributions made pursuant to rights described in section 487.201, subsection 1, paragraph "j".~~

~~6. 5.~~ A ~~limited partner person~~ is not liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of an any event referred to in subsection 2 if the amendment is filed within the thirty-day period specified in subsection 2.

6. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment. The restated certificate must contain the information required in section 487.201 and may set forth any other provision consistent with law.

Sec. 21. Section 487.204, subsection 1, Code 1997, is amended to read as follows:

1. Each certificate required by this chapter to be filed in the office of the secretary of state shall be executed in the following manner:

~~a. An original~~ A certificate of limited partnership shall be signed by all general partners named in the certificate.

b. A certificate of amendment shall be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner ~~or whose contribution is described as having been increased.~~

c. A certificate of cancellation shall be signed by all general partners.

Sec. 22. Section 487.205, Code 1997, is amended to read as follows:

487.205 AMENDMENT OR CANCELLATION BY JUDICIAL ACT.

If a person required by section 487.204 to execute a any certificate ~~of amendment or cancellation~~ fails or refuses to do so, any other ~~partner, or any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal may petition the Iowa district court for the county in which the office described in section 487.104 is located to direct the ~~amendment or cancellation~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper and that a~~ it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, the court shall order the secretary of state to ~~record~~ accept for filing an appropriate certificate ~~of amendment or cancellation.~~

Sec. 23. Section 487.208, Code 1997, is amended to read as follows:

487.208 SCOPE OF 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 ~~claims to be~~ is a limited partnership and the persons designated in such certificate as general partners are general partners, but it is not notice of any other fact.

Sec. 24. Section 487.301, Code 1997, is amended to read as follows:

487.301 ADMISSION OF ~~NEW~~ LIMITED PARTNERS.

1. A person becomes a limited partner at either of the following times:

a. At the time the limited partnership is formed.

b. At any later time specified in the records of the limited partnership for becoming a limited partner.

2. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as a new limited partner under the following conditions:

a. In the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners.

b. In the case of an assignee of a partnership interest of a partner who has the power, as provided in section 487.704 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.

2. Under both paragraphs "a" and "b" of subsection 1, the person acquiring the partnership interest becomes a limited partner at the time specified in the certificate of limited partnership or, if a time is not specified, upon amendment of the certificate of limited partnership to show the partnership interest.

Sec. 25. Section 487.303, Code 1997, is amended to read as follows:

487.303 LIABILITY TO THIRD PARTIES.

1. Except as provided in subsection 4, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner ~~takes part~~ participates in the control of the business. However, if the limited partner's ~~participation~~ partner participates in the control of the business ~~is not substantially the same as the exercise of the powers of a general partner~~, the limited partner is liable only to persons who transact business with the limited partnership ~~with actual knowledge of the limited~~

~~partner's participation in control reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.~~

2. A limited partner does not participate in the control of the business within the meaning of subsection 1 solely by doing one or more of the following:

a. Being a contractor for or an agent or employee of the limited partnership.
 b. Being a contractor for or an agent, employee, manager, member, director, officer, or shareholder of or a limited partner of a general partner, or a partner in a limited liability partnership that is a general partner.

c. Consulting with and advising a general partner with respect to the business of the limited partnership.

d. Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership.

~~e. Approving or disapproving an amendment to the partnership agreement. Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership.~~

~~f. Voting on Requesting or attending a meeting of partners.~~

g. Proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(1) The dissolution and winding up of the limited partnership.

(2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all the assets of the limited partnership ~~other than in the ordinary course of its business.~~

(3) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business.

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

(5) The admission or removal of a general partner.

(6) The admission or removal of a limited partner.

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

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

(9) Matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners.

h. Winding up the limited partnership pursuant to section 487.803.

i. Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

3. The enumeration in subsection 2 does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

4. A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by section 487.102, subsection 2, ~~paragraph "a"~~, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Sec. 26. Section 487.304, Code 1997, is amended to read as follows:

487.304 PERSON ERRONEOUSLY BELIEVING SELF TO BE A LIMITED PARTNER.

1. Except as provided in subsection 2, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, the person does either of the following:

a. Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; ~~or,~~

b. Withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.

2. A person who makes a contribution of the kind described in subsection 1 is liable as a general partner to a third party who, ~~believing the person to be a general partner,~~ transacts business with the enterprise ~~before an appropriate certificate is filed and~~ before either of the following:

a. The person withdraws and an appropriate certificate is filed to show the withdrawal.

b. An appropriate certificate is filed to show ~~the person's status as a limited partner and, in the case of an amendment, after expiration of the period for filing the amendment relating to the person as a limited partner under section 487.202~~ that the person is not a general partner.

However, in either case referred to in paragraph "a" or "b", the person is liable as a general partner only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

Sec. 27. Section 487.401, Code 1997, is amended to read as follows:

487.401 ADMISSION OF ADDITIONAL GENERAL PARTNERS.

After the filing of a limited partnership's original certificate of limited partnership, additional general partners ~~shall be admitted only with the specific written consent of each partner. However, if the certificate of limited partnership or may be admitted as provided in writing in the partnership agreement names a person to be admitted as a general partner upon the occurrence of a specified circumstance or at a specified time, the consent required is deemed to have been given or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.~~

Sec. 28. Section 487.402, Code 1997, is amended to read as follows:

487.402 EVENTS OF WITHDRAWAL.

Except as ~~otherwise agreed in writing by~~ approved by the specific written consent of all partners at the time of the event, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

1. The general partner withdraws from the limited partnership as provided in section 487.602.

2. The general partner ceases to be a member of the limited partnership as provided in section 487.702.

~~3.~~ 3. The general partner is removed as a general partner in accordance with the partnership agreement.

~~4.~~ 4. Unless otherwise provided in ~~the certificate of limited~~ writing in the partnership agreement, the general partner does any of the following:

a. Makes an assignment for the benefit of creditors.

b. Files a voluntary petition in bankruptcy.

c. Is adjudicated a bankrupt or insolvent.

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

e. Files an answer or other pleading admitting or failing to contest material allegations of a petition filed against the general partner in a proceeding of a nature specified in paragraph "d".

f. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties.

~~5.~~ 5. Unless otherwise provided in ~~the certificate of limited~~ writing in the partnership agreement, upon the expiration of the following time periods:

a. One hundred twenty days after the commencement of a proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, under any statute, law, or regulation, if the proceeding has not been dismissed within that time.

b. Ninety days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties, if the appointment is not vacated or stayed within that time.

c. If an appointment of the nature specified in paragraph "b" is stayed and if the appointment is not then vacated, ninety days after the expiration of the stay.

~~5.~~ 6. If the general partner is a natural person when either of the following occur:

a. The general partner dies.

b. The district court finds the general partner incapable of managing the general partner's person or property.

~~6.~~ 7. If the general partner is acting as a general partner by virtue of being a trustee of a trust, when the trust terminates. Substitution of a new trustee is not termination of the trust.

~~7.~~ 8. If the general partner is a separate partnership, the dissolution and commencement of winding up of the separate partnership.

~~8.~~ 9. If the general partner is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or revocation of the corporation's charter.

10. If the general partner is a limited liability company, the filing of a certificate of dissolution, or its equivalent, for the limited liability company or revocation of the limited liability company's charter.

~~9.~~ 11. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

Sec. 29. Section 487.403, Code 1997, is amended to read as follows:

487.403 GENERAL POWERS AND LIABILITIES.

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

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

Sec. 30. Section 487.405, Code 1997, is amended to read as follows:

487.405 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.

Sec. 31. Section 487.502, Code 1997, is amended to read as follows:

487.502 LIABILITY FOR CONTRIBUTION.

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

2. Except as provided in the certificate of limited partnership agreement, a partner is obligated to the limited partnership to perform a any enforceable promise to contribute cash or property or to perform services even if the partner is unable to perform because of death, disability, or any other reason. If the a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership may require the partner to contribute cash equal to that portion of the value, as stated in the certificate of limited partnership, partnership records required to be kept pursuant to section 487.105, of the stated contribution that which has not been made.

3. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. Notwithstanding the compro-

mise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or cancellation of such obligation to reflect the compromise may enforce the original obligation.

Sec. 32. Section 487.503, Code 1997, is amended to read as follows:

487.503 SHARING OF PROFITS AND LOSSES.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the ~~certificate of limited partnership records~~ required to be kept pursuant to section 487.105, of the contributions made by each partner to the extent the contributions have been received by the partnership and have not been returned.

Sec. 33. Section 487.504, Code 1997, is amended to read as follows:

487.504 SHARING OF DISTRIBUTIONS.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the ~~certificate of limited partnership records~~ required to be kept pursuant to section 487.105, of the contributions made by each partner to the extent the contributions have been received by the partnership and have not been returned.

Sec. 34. Section 487.601, Code 1997, is amended to read as follows:

487.601 INTERIM DISTRIBUTIONS.

Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up of the partnership ~~subject to the following conditions:~~

1. ~~To~~ to the extent and at the times or upon the happening of the events specified in the partnership agreement.

2. ~~If a distribution is a return of part of the partner's contribution under section 487.608, subsection 2, to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.~~

Sec. 35. Section 487.603, Code 1997, is amended to read as follows:

487.603 WITHDRAWAL OF LIMITED PARTNER.

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in the ~~certificate of limited partnership and in accordance with writing in~~ the partnership agreement. ~~If the certificate does not specify the time or the events upon the happening of which a limited partner may withdraw or a 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 directed or delivered to the partnership or to each general partner at the partner's address on the books of the limited partnership at its office in this state.~~

Sec. 36. Section 487.605, Code 1997, is amended to read as follows:

487.605 DISTRIBUTION IN KIND.

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

the percentage in which the partner shares in distributions from the limited partnership.

Sec. 37. Section 487.607, Code 1997, is amended to read as follows:

487.607 LIMITATIONS ON DISTRIBUTION.

A partner shall not receive a distribution ~~if, after~~ 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, ~~will~~ exceed the fair value of the partnership assets.

Sec. 38. Section 487.608, subsection 3, Code 1997, is amended to read as follows:

3. A partner receives a return of the partner's contribution only to the extent that a distribution to the partner reduces the partner's share of the fair value, ~~as specified in the certificate of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept pursuant to section 487.105,~~ of the partner's contribution which has not been distributed to the partner.

Sec. 39. Section 487.702, Code 1997, is amended to read as follows:

487.702 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 distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all the partner's partnership interest.

Sec. 40. Section 487.704, Code 1997, is amended to read as follows:

487.704 RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER.

1. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner ~~under any of the following conditions~~ if and to the extent that either of the following applies:

a. ~~When the certificate of limited partnership so provides, if the~~ The assignor gives the assignee ~~the right to become a limited partner in the manner specified in the agreement. that right in accordance with authority described in~~

b. ~~When the partnership agreement so provides, if persons required to consent to the assignee becoming a limited partner consent in the manner specified in the agreement.~~

c. ~~d.~~ All other partners ~~other than the assignor of the interest consent to the assignee becoming a limited partner.~~

2. An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of the assignor to make and return contributions as provided in ~~article~~ articles 5 and 6 of this chapter. However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner ~~and which could not be ascertained from the certificate of limited partnership.~~

3. The fact that an assignee of a partnership interest has become a limited partner does not release the assignor from the assignor's liability to the limited partnership under sections 487.207 and 487.502.

Sec. 41. Section 487.801, subsection 1, Code 1997, is amended to read as follows:

1. A limited partnership is dissolved and its affairs shall be wound up when any of the following occur:

a. When events specified in the certificate of limited partnership occur.

b. When events specified in the partnership agreement occur.

c. When all partners consent in writing to the dissolution.

e. d. When a general partner withdraws unless at the time there is at least one other

general partner and the certificate provisions of limited the partnership permits agreement permit the business of the limited partnership to be carried on by the remaining general partner and the remaining partner does so.

~~d. e.~~ When a decree of judicial dissolution is entered under section 487.802.

Sec. 42. NEW SECTION. 487.810 GROUNDS FOR ADMINISTRATIVE DISSOLUTION.

The secretary of state may commence a proceeding under section 487.811 to administratively dissolve a limited partnership if any of the following apply:

1. The limited partnership is without a registered agent or registered office in this state for sixty days or more.
2. The limited partnership does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

Sec. 43. NEW SECTION. 487.811 PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION.

1. If the secretary of state determines that one or more grounds exist under section 487.810 for dissolving a limited partnership, the secretary of state shall serve the limited partnership with written notice of the secretary of state's determination under section 487.104.

2. If the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state to exist does not exist within sixty days after service of the notice is perfected under section 487.104, the secretary of state shall administratively dissolve the limited partnership by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the limited partnership under section 487.104.

3. A limited partnership administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 487.803.

4. The administrative dissolution of a limited partnership does not terminate the authority of its registered agent.

5. The secretary of state's administrative dissolution of a limited partnership pursuant to this section appoints the secretary of state the limited partnership's agent for service of process in any proceeding based on a cause of action which arose during the time the limited partnership was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the limited partnership. Upon receipt of process, the secretary of state shall serve a copy of the process on the limited partnership as provided in section 487.104. This subsection does not preclude service on the limited partnership's registered agent, if any.

Sec. 44. NEW SECTION. 487.812 REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

1. A limited partnership administratively dissolved under section 487.811 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the limited partnership at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

c. State a name that satisfies the requirements of section 487.102.

2. If the secretary of state determines that the application contains the information required by subsection 1, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited partnership under section 487.104. If the limited

partnership's name in subsection 1, paragraph "c", is different than the limited partnership's name in subsection 1, paragraph "a", the certificate of reinstatement shall constitute an amendment to the articles of limited partnership insofar as it pertains to the limited partnership's name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

Sec. 45. NEW SECTION. 487.813 APPEAL FROM DENIAL OF REINSTATEMENT.

1. If the secretary of state denies a limited partnership's application for reinstatement following administrative dissolution, the secretary of state shall serve the limited partnership under section 487.104 with a written notice that explains the reason or reasons for denial.

2. The limited partnership may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The limited partnership appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the limited partnership's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved limited partnership or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

Sec. 46. Section 487.902, subsections 3 and 7, Code 1997, are amended by striking the subsections.

Sec. 47. Section 487.902, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 6A. The name and business address of each general partner.

NEW SUBSECTION. 6B. The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

Sec. 48. Section 487.905, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

487.905 AMENDED REGISTRATION.

1. A foreign limited partnership registered to transact business in this state shall obtain an amended certificate of registration from the secretary of state if either of the following conditions exist:

a. A statement in the application for registration was false when made.

b. An arrangement or other fact described in the application for registration has changed making the application inaccurate in any respect.

2. The requirements of section 487.902 for obtaining an original certificate of registration apply to obtaining an amended certificate under this section.

Sec. 49. Section 487.1002, Code 1997, is amended to read as follows:

487.1002 PROPER PLAINTIFF.

In a derivative action, the plaintiff ~~shall~~ must be a partner at the time of bringing the action and either ~~shall~~ must have been a partner at the time ~~the cause of action arose or shall of the transaction of which the partner complains or must~~ have acquired the status of partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time ~~the cause of action arose~~ of the transaction of which the partner complains.

Sec. 50. Section 487.1104, Code 1997, is amended to read as follows:
487.1104 EFFECT ON EXISTING LIMITED PARTNERSHIPS.

~~This chapter~~ Except as specifically provided in this section, this chapter applies to all limited partnerships in existence on July 1, 1997, and does not invalidate provisions in limited partnership agreements or certificates executed prior to July 1, 1982 1997. Unless otherwise agreed to by the partners, the applicable provisions of existing law, in effect prior to July 1, 1997, governing events of withdrawal of a general partner, withdrawal of a limited partner, and assignment of a partnership interest, govern limited partnerships formed before July 1, 1997.

Sec. 51. NEW SECTION. 487.1106 SAVINGS CLAUSE.

The repeal of any statutory provision effective July 1, 1997, does not impair or otherwise affect the organization or the continued existence of a limited partnership existing on July 1, 1997, nor does the repeal of any existing statutory provision effective July 1, 1997, impair any contract or any right accrued before July 1, 1997.

Sec. 52. Section 490.1109, subsection 3, paragraph e, as enacted in 1997 Iowa Acts, House File 628, if enacted,* is amended to read as follows:

e. "Interested shareholder" means any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that is the owner of ~~fifteen~~ ten percent or more of the outstanding voting stock of the corporation, or is an affiliate or associate of the corporation and was the owner of ~~fifteen~~ ten percent or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested shareholder, and the affiliates and associates of such person. "Interested shareholder" does not include ~~either of the following:~~

~~(1) A person who owns shares in excess of the fifteen percent limitation and who acquired such shares as follows:~~

~~(a) Pursuant to a tender offer commenced prior to January 1, 1998, or pursuant to an exchange offer announced prior to January 1, 1998, and commenced within ninety days after such date, if such person satisfies either of the following:~~

~~(i) Continues to own shares in excess of the fifteen percent limitation or would continue to own such shares but for action taken by the corporation.~~

~~(ii) Is an affiliate or associate of the corporation and continues, or would continue but for action taken by the corporation, to be the owner of fifteen percent or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested shareholder.~~

~~(b) From a person subject to subparagraph subdivision (a) by gift, devise, or in a transaction in which no consideration for the shares was exchanged.~~

~~(2) A person whose ownership of shares in excess of the fifteen~~ ten percent limitation is the result of action taken solely by the corporation, provided that such person is an interested shareholder if, after such action by the corporation, the person acquires additional shares of voting stock of the corporation, other than as a result of further corporate action not caused, directly or indirectly, by such person.

For purposes of determining whether a person is an interested shareholder, the outstanding voting stock of the corporation does not include any other unissued stock of the corporation which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

Sec. 53. Section 490A.102, subsections 13, 16, and 18, Code 1997, are amended to read as follows:

13. "Limited liability company" or "domestic limited liability company" means ~~an entity~~

* Chapter 117 herein

~~that is~~ an unincorporated association having ~~two~~ one or more members, and ~~that is~~ organized under or subject to this chapter.

16. "Member" means a person with a membership interest in a limited liability company under this chapter or, with respect to a foreign limited liability company, under the laws of the state, foreign country, or other foreign jurisdiction under which such company is organized.

18. "Operating agreement" means any agreement, written or oral, of the members as to the affairs of a limited liability company and the conduct of its business.

Sec. 54. Section 490A.202, subsection 17, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

17. Indemnify and hold harmless a member, manager, or other person against a claim, liability, or other demand, as provided in an operating agreement.

Sec. 55. Section 490A.303, subsection 1, paragraph d, Code 1997, is amended to read as follows:

d. The period of its duration, which ~~shall not~~ may be perpetual.

Sec. 56. NEW SECTION. 490A.304 CONVERSION OF CERTAIN ENTITIES TO A LIMITED LIABILITY COMPANY.

1. As used in this section, the term "other entity" means a corporation, business trust or association, real estate investment trust, common-law trust, or any other unincorporated business, including any partnership, whether general or limited, or a foreign limited liability company.

2. Any other entity may convert to a domestic limited liability company by complying with subsection 8 and filing in the office of the secretary of state both of the following:

a. Articles of conversion to a limited liability company executed by one or more authorized persons.

b. Articles of organization executed by one or more authorized persons.

3. The articles of conversion to a limited liability company shall state all of the following:

a. The date on which, and jurisdiction where, the converting entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited liability company.

b. The name of the converting entity immediately prior to the filing of the articles of conversion to a limited liability company.

c. The name of the limited liability company.

d. The future effective date or time certain of the conversion to a limited liability company if it is not to be effective upon the filing of the articles of conversion and the articles of organization.

4. Upon the filing in the office of the secretary of state of the articles of conversion and the articles of organization or upon the future effective date or time of the articles of conversion and the articles of organization, the converting entity shall be converted into a domestic limited liability company and the limited liability company, from that date or time, is subject to this chapter, except that the existence of the limited liability company is deemed to have commenced on the date the converting entity commenced its existence in the jurisdiction in which the converting entity was first created, formed, incorporated, or otherwise came into being.

5. The conversion of an entity into a domestic limited liability company does not affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company, or the personal liability of any person incurred prior to such conversion.

6. When a conversion is effective, for all purposes of the laws of this state, all of the rights, privileges, and powers of the converting entity, and all property, real, personal, and mixed, and all debts due to the converting entity, as well as all other things and causes of action

belonging to such entity, are vested in the domestic limited liability company and are the property of the domestic limited liability company as they were of the converting entity. The title to any real property vested by deed or otherwise in the converting entity shall not revert or be in any way impaired by reason of this chapter, and all rights of creditors and all liens upon any property of such other entity are preserved unimpaired, and all debts, liabilities, and duties of the converting entity shall attach to the domestic limited liability company, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the domestic limited liability company.

7. Unless otherwise agreed, or as required under the laws of a jurisdiction other than this state, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion does not constitute a dissolution of the converting entity.

8. Prior to filing the articles of conversion to a limited liability company with the office of the secretary of state, an operating agreement must be approved in the manner provided for by the documents, instrument, agreement, or other writing, as the case may be, governing the internal affairs of the converting entity and the conduct of its business or by applicable law, as appropriate.

9. This section shall not be construed to limit the ability to change the law governing, or the domicile of, a converting entity to this state by any other means provided for in an operating agreement or as otherwise permitted by law, including by the amendment of an operating agreement.

Sec. 57. NEW SECTION. 490A.305 SERIES OF MEMBERS, MANAGERS, OR MEMBERSHIP INTERESTS.

1. An operating agreement may establish or provide for the establishment of designated series of members, managers, or membership interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.

2. Notwithstanding contrary provisions of this chapter, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally, if all of the following apply:

- a. The operating agreement creates one or more series.
- b. Separate and distinct records are maintained for the series and the assets associated with the series are held and accounted for separately from the other assets of the limited liability company, or from any other series of the limited liability company.
- c. The operating agreement provides for such limitation on liabilities.
- d. Notice of the limitation on liabilities of a series is set forth in the articles of organization of the limited liability company. Filing of articles of organization containing a notice of the limitation on liabilities of a series in the office of the secretary of state constitutes notice of the limitation on liabilities of such series.

3. Notwithstanding section 490A.601, or a contrary provision in an operating agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations or liabilities of one or more series.

4. An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as the operating agreement may provide. The operating agreement may provide for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members or managers associated with the series. An operating agreement may provide for the taking of an action,

including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including all action to create under the provisions of the operating agreement a class or group of the series of membership interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members associated with a series have no voting rights.

5. An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote on any matter separately or with all or any class or group of the members or managers associated with the series. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group, or other basis.

6. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series in proportion to the then-current percentage or other interest of members in the profits of the series owned by all of the members associated with such series. The decision of members owning more than fifty percent of the series or other interest in the profits shall control. However, if an operating agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, is vested in the manager who shall be chosen as provided in the operating agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to managers as set forth in the operating agreement. A series may have more than one manager. A manager shall cease to be a manager with respect to a series as provided in the operating agreement. Except as otherwise provided in the operating agreement, an event under this chapter or identified in an operating agreement that causes a manager to cease to be a manager with respect to a series, by itself, shall not cause the manager to cease to be a manager of the limited liability company or with respect to any other series of the limited liability company.

7. Notwithstanding any other provision of this chapter, except subsections 8 and 11 and unless otherwise provided in an operating agreement, at the time a member associated with a series that has been established pursuant to subsection 1 becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to, all remedies available to a creditor of the series with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

8. Notwithstanding any other provision of this chapter, a limited liability company may make a distribution with respect to a series that has been established pursuant to subsection 1. However, a limited liability company shall not make a distribution with respect to a series that has been established pursuant to subsection 1 to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their membership interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series. However, the fair value of an asset of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that asset exceeds that liability. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, is liable for the amount of the distribution. Subject to section 490A.807, which applies to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

9. Unless otherwise provided in the operating agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's membership interest with respect to such series. Except as otherwise provided in an operating agreement, an event under this chapter or identified in an operating agreement that causes a member to

cease to be associated with a series, by itself, shall not cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company.

10. Subject to section 490A.1301, except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established pursuant to subsection 1 shall not affect the limitation on liabilities of such series provided by subsection 2. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under section 490A.1301 or otherwise upon the first to occur of the following:

- a. At the time specified in the operating agreement.
- b. Upon the happening of events specified in the operating agreement.
- c. Unless otherwise provided in the operating agreement, upon the written consent of all members associated with such series.
- d. The termination of such series under subsection 10.

11. Notwithstanding section 490A.1303, unless otherwise provided in the operating agreement, any of the following persons may wind up the affairs of the series:

- a. A manager associated with a series who has not wrongfully terminated the series.
- b. If there is no manager of a series, the members associated with the series or a person approved by the members associated with the series.
- c. If there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than fifty percent of the then-current percentage or other interest in the profits of the series owned by all of the members associated with the series or by the members of each class or group associated with the series.

However, if the series has been established pursuant to subsection 1, the district court of the county in which the limited liability company has its principal place of business, upon cause shown, may wind up the affairs of the series upon application of any member associated with the series or the member's legal representative or assignee, and in connection with such winding up, may appoint a liquidating trustee. The persons winding up the affairs of a series, in the name of the limited liability company and for and on behalf of the limited liability company and such series, may take all actions with respect to the series as are permitted under section 490A.1303. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in section 490A.1304 and distribute the assets of the series as provided in section 490A.1304. Actions taken pursuant to this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

12. On application by or for a member or manager associated with a series established pursuant to subsection 1, the district court in the county in which the limited liability company has its principal place of business may enter an order for dissolution of such series if it is not reasonably practicable to carry on the business of the series in conformity with the operating agreement.

13. A foreign limited liability company that is registering to do business in this state under this chapter which is governed by an operating agreement that establishes or provides for the establishment of designated series of members, managers, or membership interests having separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company, or profits and losses associated with the specified property or obligations, shall indicate that fact on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on the application whether the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series, if any, are enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally.

Sec. 58. NEW SECTION. 490A.306 ADMISSION OF MEMBERS.

1. In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of the following:

a. The formation of the limited liability company.

b. The time provided in, and upon compliance with, the operating agreement or, if the operating agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

2. After the formation of a limited liability company, a person is admitted as a member of the limited liability company as follows:

a. In the case of a person who is not an assignee of a membership interest, including a person acquiring a membership interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a membership interest in the limited liability company, at the time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, upon the consent of all members and the person's admission being reflected in the records of the limited liability company.

b. In the case of an assignee of a membership interest, as provided in section 490A.903 and at the time provided in and upon compliance with the operating agreement, or if the operating agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company.

c. Unless otherwise provided in an agreement of merger, in the case of a person acquiring a membership interest in a surviving or resulting limited liability company pursuant to a merger approved pursuant to section 490A.1203, at the time provided in and upon compliance with the operating agreement of the surviving or resulting limited liability company.

3. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in an operating agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the limited liability company.

Sec. 59. NEW SECTION. 490A.307 CLASSES AND VOTING.

1. An operating agreement may provide for classes or groups of members and the relative rights, powers, and duties of such members, and may provide for the future creation of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. An operating agreement may provide for taking action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members, including an action to create a class or group of membership interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members has no voting rights.

2. An operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of members or managers on any matter. Voting by members may be on a per capita, number, financial interest, class, group, or any other basis.

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

Sec. 60. NEW SECTION. 490A.603 LIABILITY OF MEMBERS.

1. Except as otherwise provided in this chapter or by written agreement of a member, a member or manager of a limited liability company is not personally liable solely by reason

of being a member or manager of the limited liability company under any judgment, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise.

2. A member of a limited liability company is personally liable under a judgment or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any debt, obligation, or liability of the limited liability company.

3. Nothing in this section shall be construed to affect the liability of a member of a limited liability company to third parties for the member's participation in tortious conduct.

Sec. 61. Section 490A.702, subsection 4, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

4. Except as provided in subsection 4A, the validity of an act of a limited liability company is not challengeable on the ground that the limited liability company lacks or lacked the power or authority to act.

Sec. 62. Section 490A.702, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 4A. A limited liability company's power to act may be challenged in the following proceedings:

a. In an action by a member against the limited liability company to enjoin an unauthorized act.

b. In an action by the limited liability company against an incumbent or former manager, employee, or agent of the limited liability company, either directly, derivatively, or through a receiver, trustee, or other legal representative.

c. By the attorney general under section 490A.1409.

NEW SUBSECTION. 4B. In a member's proceeding under subsection 4A, paragraph "a", to enjoin an unauthorized act, the court may enjoin or set aside the act if equitable and if all affected persons are parties to the proceeding. The court may award damages, other than anticipated profits, for loss suffered by the limited liability company or another party as a result of the unauthorized act being enjoined.

Sec. 63. Section 490A.703, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. a. A written operating agreement or other writing may provide for a person to be admitted as a member of a limited liability company, or to become an assignee of a limited liability company membership interest or other rights or powers of a member, to the extent that either of the following occurs:

(1) If the person, or a representative authorized by the person orally, in writing, or by other action such as payment for a limited liability company interest, executes the operating agreement or any other writing evidencing the intent of such person to become a member or assignee.

(2) Without execution of the operating agreement or similar writing, if the person or such authorized representative of the person complies with the conditions for becoming a member or assignee as set forth in the operating agreement or any other writing and requests orally, in writing, or by other action such as payment for a limited liability company interest, that the records of the limited liability company reflect such admission or assignment.

b. A written operating agreement or another written agreement or writing is not unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee, or the member's or assignee's representative, as provided in paragraph "a".

Sec. 64. NEW SECTION. 490A.704A RESIGNATION OR WITHDRAWAL OF MEMBER.

1. a. This section applies to a limited liability company whose original articles of organization are filed with the secretary of state on or after July 1, 1997.

b. This section applies to a limited liability company whose original articles of organization are filed with the secretary of state and effective on or prior to June 30, 1997, if such company's operating agreement provides that it is subject to this section.

c. If no provision is made in the operating agreement, a limited liability company whose original articles of organization were filed with the secretary of state and effective on or prior to June 30, 1997, is subject to section 490A.704.

2. A member may resign or withdraw from a limited liability company only at the time or upon the happening of an event specified in an operating agreement and pursuant to the operating agreement.

3. Unless an operating agreement provides otherwise, a member may not resign or withdraw from a limited liability company prior to the dissolution and winding up of the limited liability company. However, if the articles of organization or an operating agreement do not specify the time or the events upon the happening of which a member may resign or withdraw, a member may resign or withdraw from the limited liability company in the event any amendment to the articles of organization or operating agreement that is adopted over the member's written dissent adversely affects the rights or preferences of the dissenting member's membership interest in any of the ways described in paragraphs "a" through "e". A resignation or withdrawal in the event of such dissent and adverse effect is deemed to have occurred as of the effective date of the amendment, if the member gives notice to the limited liability company not more than sixty days after the date of the amendment. In valuing the member's distribution pursuant to this subsection, any depreciation in anticipation of the amendment shall be excluded. An amendment that does any of the following is subject to this subsection:

a. Alters or abolishes a member's right to receive a distribution.

b. Alters or abolishes a member's right to voluntarily withdraw or resign.

c. Alters or abolishes a member's right to vote on any matter, except as the rights may be altered or abolished through the acceptance of contributions or the making of contribution agreements.

d. Alters or abolishes a member's preemptive right to make contributions.

e. Establishes or changes the conditions for or consequences of expulsion.

4. A member withdrawing under this section is not liable for damages for the breach of any agreement not to withdraw.

5. An operating agreement may provide that a membership interest may be assigned prior to the dissolution and winding up of the limited liability company.

Sec. 65. NEW SECTION. 490A.705A CLASSES OF MANAGERS AND VOTING.

1. An operating agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the operating agreement may provide, and may make provision for the future creation of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers. An operating agreement may provide for taking action, including the amendment of the operating agreement, without the vote or approval of any manager or class or group of managers, including an action to create a class or group of membership interests that was not previously outstanding.

2. An operating agreement may grant to all or certain identified managers or a specified class or group of managers the right to vote on any matter, separately or with all or any class or group of managers or members. Voting by managers may be on a per capita, number, financial interest, class, group, or any other basis.

3. An operating agreement which grants a right to vote may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

Sec. 66. Section 490A.709, subsection 2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Each member has the right for any purpose reasonably related to the member's interest as a member of the limited liability company, upon reasonable request and subject to reasonable standards as may be set forth in an operating agreement, to do any of the following:

Sec. 67. NEW SECTION. 490A.710 DELEGATION OF RIGHTS AND POWERS TO MANAGE.

Unless otherwise provided in the operating agreement, a member or manager of a limited liability company may delegate to one or more other persons the member's or manager's rights and powers to manage and control the business and affairs of the limited liability company, including to agents and employees of a member or manager of the limited liability company, and to delegate by a management agreement or another agreement with other persons. Unless otherwise provided in the operating agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager of the limited liability company.

Sec. 68. NEW SECTION. 490A.711 CONTRACTUAL APPRAISAL RIGHTS.

An operating agreement or an agreement of merger may provide that contractual appraisal rights with respect to a membership interest or another interest in a limited liability company are available for any class or group of members or membership interests in connection with an amendment of an operating agreement, a merger in which the limited liability company is a constituent party to the merger, or the sale of all or substantially all of the limited liability company's assets. The district court of the county in which the limited liability company has its principal place of business has jurisdiction to hear and determine any matter relating to such appraisal rights.

Sec. 69. NEW SECTION. 490A.712 CESSATION OF MEMBERSHIP.

A person ceases to be a member of a limited liability company upon the occurrence of any of the following events:

1. The person withdraws or resigns from the limited liability company.
2. The person is removed as a member pursuant to the operating agreement.
3. Unless otherwise provided in the operating agreement or with the consent of all other members, the person does any of the following:
 - a. Makes an assignment for the benefit of creditors.
 - b. Files a voluntary petition in bankruptcy.
 - c. Is adjudged bankrupt or insolvent or has entered against the person an order for relief in any bankruptcy or insolvency proceeding.
 - d. Files a petition or answer seeking for that person any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute or rule.
 - e. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator for the member or for all or any substantial part of the member's properties.
 - f. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the person in any proceeding described in this subsection.
4. Unless otherwise provided in the operating agreement, or with the consent of all other members, the continuation of any proceeding against the person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under

any statute or rule for one hundred twenty days after the commencement of such proceeding, or the appointment of a trustee, receiver, or liquidator for the member or for all or any substantial part of the member's properties without the member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty days or, if the appointment is stayed, for one hundred twenty days after the expiration of the stay during which period the appointment is not vacated.

5. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member who is an individual, the individual's death or adjudication by a court of competent jurisdiction as incompetent to manage the individual's person or property.

6. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member who is acting as a member by virtue of being a trustee of a trust, the termination of the trust.

7. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member that is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company.

8. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member that is a corporation, the dissolution of the corporation or the revocation of its articles of incorporation.

9. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

Sec. 70. Section 490A.801, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. An operating agreement may provide that the interest of any member who fails to make a contribution that the member is obligated to make is subject to specified penalties for, or specified consequences of, such failure. The penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's membership interest to that of a nondefaulting member, a forced sale of the member's membership interest, forfeiture of the member's membership interest, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's membership interest by appraisal or by formula and redemption, or sale of the member's membership interest at such value or other penalty or consequence.

Sec. 71. **NEW SECTION.** 490A.809 RIGHT TO DISTRIBUTION.

Subject to sections 490A.807 and 490A.1304, and unless otherwise provided in an operating agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

Sec. 72. Section 490A.902, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assignable in whole or in part. An assignment of an interest in a limited liability company does not ~~of itself~~* dissolve the limited liability company. Except as provided in the articles of organization or an operating agreement, an assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Such Except as provided in the articles of organization or an operating agree-

* Strike through also probably intended for the letter "F"

ment, an assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the articles of organization or an operating agreement, a member ceases to be a member upon assignment of the member's entire membership interest.

Sec. 73. Section 490A.1301, subsection 3, Code 1997, is amended by striking the subsection.

Sec. 74. Sections 487.206, 487.903, and 487.1105, Code 1997, are repealed.

Approved May 26, 1997

CHAPTER 189

SENTENCING OF CERTAIN CRIMINAL OFFENDERS

H.F. 661

AN ACT relating to the adjudication and sentencing of certain criminal offenders, by providing for notice and hearings on reconsiderations of sentence, permitting the presentation of oral victim impact statements at reconsideration of sentence hearings, and eliminating certain sexual offenders from eligibility for suspended or deferred sentences or deferred judgments.

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

Section 1. Section 902.4, Code 1997, is amended to read as follows:
902.4 RECONSIDERATION OF FELON'S SENTENCE.

For a period of ninety days from the date when a person convicted of a felony, other than a class "A" felony or a felony for which a minimum sentence of confinement is imposed, begins to serve a sentence of confinement, the court, on its own motion or on the recommendation of the director of the Iowa department of corrections, may order the person to be returned to the court, at which time the court may review its previous action and reaffirm it or substitute for it any sentence permitted by law. Copies of the order to return the person to the court shall be provided to the attorney for the state, the defendant's attorney, and the defendant. Upon a request of the attorney for the state, the defendant's attorney, or the defendant if the defendant has no attorney, the court may, but is not required to, conduct a hearing on the issue of reconsideration of sentence. The court shall not disclose its decision to reconsider or not to reconsider the sentence of confinement until the date reconsideration is ordered or the date the ninety-day period expires, whichever occurs first. The district court retains jurisdiction for the limited purposes of conducting such review and entering an appropriate order notwithstanding the timely filing of a notice of appeal. The court's final order in the proceeding shall be delivered to the defendant personally or by certified mail. The court's decision to take the action or not to take the action is not subject to appeal. However, for the purposes of appeal, a judgment of conviction of a felony is a final judgment when pronounced.

Sec. 2. Section 907.3, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony