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Re Judiciary 4/20

SENATE FILE 460

By COMMITTEE ON JUDICIARY

Passed Senate, Date 4-20-71 Passed House, Date 5-14-71

Vote: Ayes 41 Nays 0 Vote: Ayes 77 Nays 2

Approved 5-27-71

A BILL FOR

- 1 An Act providing for enactment of the uniform partnership act.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 Section 1. SHORT TITLE. This Act may be cited as the
2 "Uniform Partnership Act".

3 Sec. 2. DEFINITIONS. As used in this Act the terms:

4 1. "Court" includes every court and judge having juris-
5 diction in the case.

6 2. "Business" includes every trade, occupation, or pro-
7 fession.

8 3. "Person" includes individuals, partnerships, corpo-
9 rations, and other associations, trusts, trustees and other
10 fiduciaries.

11 4. "Bankrupt" includes bankrupt under the Federal Bank-
12 ruptcy Act or insolvent under any state insolvent act.

13 5. "Conveyance" includes every assignment, lease, mort-
14 gage, or encumbrance.

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

17 Sec. 3. INTERPRETATION OF KNOWLEDGE AND NOTICE.

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

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

25 a. States the fact to the person, or

26 b. Delivers through the mail, or by other means of com-
27 munication, a written statement of the fact to such person
28 or to a proper person at his place of business or residence.

29 Sec. 4. RULES OF CONSTRUCTION.

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

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

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

35 4. This Act shall be so interpreted and construed as to

1 effect its general purpose to make uniform the law of those
2 states which enact it.

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

7 Sec. 5. RULES FOR CASES NOT PROVIDED FOR IN THIS ACT.
8 In any case not provided for in this Act the rules of law
9 and equity, including the law merchant, shall govern.

10 Sec. 6. PARTNERSHIP DEFINED.

11 1. A partnership is an association of two or more per-
12 sons to carry on as co-owners a business for profit.

13 2. But any association formed under any other statute
14 of this state, or any statute adopted by authority, other
15 than the authority of this state, is not a partnership under
16 this Act, unless the association would have been a partner-
17 ship in this state prior to the adoption of this Act; but
18 this Act shall apply to limited partnerships except in so
19 far as the statutes relating to such partnerships are incon-
20 sistent herewith.

21 Sec. 7. RULES FOR DETERMINING THE EXISTENCE OF A PARTNER-
22 SHIP. In determining whether a partnership exists, these
23 rules shall apply:

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

27 2. Joint tenancy, tenancy in common, tenancy by the en-
28 tireties, joint property, common property, or part ownership
29 does not of itself establish a partnership, whether such co-
30 owners do or do not share any profits made by the use of the
31 property.

32 3. The sharing of gross returns does not of itself estab-
33 lish a partnership, whether or not the persons sharing them
34 have a joint or common right or interest in any property from
35 which the returns are derived.

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

5 a. As a debt by installments or otherwise,

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

7 c. As an annuity to a widow or representative of a de-
8 ceased partner,

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

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

13 Sec. 8. PARTNERSHIP PROPERTY.

14 1. All property originally brought into the partnership
15 stock or subsequently acquired by purchase or otherwise, on
16 account of the partnership, is partnership property.

17 2. Unless the contrary intention appears, property ac-
18 quired with partnership funds is partnership property.

19 3. Any estate in real property may be acquired in the
20 partnership name. Title so acquired can be conveyed only
21 in the partnership name.

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

25 Sec. 9. PARTNER AGENT OF PARTNERSHIP AS TO PARTNERSHIP
26 BUSINESS.

27 1. Every partner is an agent of the partnership for the
28 purpose of its business, and the act of every partner, in-
29 cluding the execution in the partnership name of any instru-
30 ment, for apparently carrying on in the usual way the business
31 of the partnership of which he is a member binds the partner-
32 ship, unless the partner so acting has in fact no authority
33 to act for the partnership in the particular matter, and the
34 person with whom he is dealing has knowledge of the fact that
35 he has no such authority.

1 2. An act of a partner which is not apparently for the
2 carrying on of the business of the partnership in the usual
3 way does not bind the partnership unless authorized by the
4 other partners.

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

8 a. Assign the partnership property in trust for credi-
9 tors or on the assignee's promise to pay the debts of the
10 partnership,

11 b. Dispose of the good-will of the business.

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

14 d. Confess a judgment,

15 e. Submit a partnership claim or liability to arbitra-
16 tion or reference.

17 4. No act of a partner in contravention of a restriction
18 on authority shall bind the partnership to persons having
19 knowledge of the restriction.

20 Sec. 10. CONVEYANCE OF REAL PROPERTY OF THE PARTNERSHIP.

21 1. Where title to real property is in the partnership
22 name, any partner may convey title to the property by a con-
23 veyance executed in the partnership name; but the partner-
24 ship may recover such property unless the partner's act binds
25 the partnership under the provisions of section nine (9),
26 subsection one (1) of this Act, or unless the property has
27 been conveyed by the grantee or a person claiming through
28 the grantee to a holder for value without knowledge that the
29 partner, in making the conveyance, has exceeded his authority.

30 2. Where title to real property is in the name of the
31 partnership, a conveyance executed by a partner, in his own
32 name, passes the equitable interest of the partnership, pro-
33 vided the act is within the authority of the partner under
34 the provisions of section nine (9), subsection one (1) of
35 this Act.

1 3. Where title to real property is in the name of one
2 or more but not all the partners, and the record does not
3 disclose the right of the partnership, the partners in whose
4 name the title stands may convey title to the property, but
5 the partnership may recover the property if the partners'
6 act does not bind the partnership under the provisions of
7 section nine (9), subsection one (1) of this Act, unless the
8 purchaser or his assignee, is a holder for value, without
9 knowledge.

10 4. Where the title to real property is in the name of
11 one or more or all the partners, or in a third person in trust
12 for the partnership, a conveyance executed by a partner in
13 the partnership name, or in his own name, passes the equitable
14 interest of the partnership, provided the act is one within
15 the authority of the partner under the provisions of section
16 nine (9), subsection one (1) of this Act.

17 5. Where the title to real property is in the names of
18 all the partners a conveyance executed by all the partners
19 passes all their rights in the property.

20 Sec. 11. PARTNERSHIP BOUND BY ADMISSION OF PARTNER. An
21 admission or representation made by any partner concerning
22 partnership affairs within the scope of his authority as con-
23 ferred by this Act is evidence against the partnership.

24 Sec. 12. PARTNERSHIP CHARGED WITH KNOWLEDGE OF OR NOTICE
25 TO PARTNER. Notice to any partner of any matter relating
26 to partnership affairs, and the knowledge of the partner act-
27 ing in the particular matter, acquired while a partner or
28 then present to his mind, and the knowledge of any other
29 partner who reasonably could and should have communicated
30 it to the acting partner, operates as notice to or knowledge
31 of the partnership, except in the case of a fraud on the
32 partnership committed by or with the consent of that partner.

33 Sec. 13. PARTNERSHIP BOUND BY PARTNER'S WRONGFUL ACT.
34 Where, by any wrongful act or omission of any partner acting
35 in the ordinary course of the business of the partnership

1 or with the authority of his co-partners, loss or injury is
2 caused to any person, not being a partner in the partnership,
3 or any penalty is incurred, the partnership is liable there-
4 for to the same extent as the partner so acting or omitting
5 to act.

6 Sec. 14. PARTNERSHIP BOUND BY PARTNER'S BREACH OF TRUST.
7 The partnership is bound to make good the loss:

8 1. Where one partner acting within the scope of his ap-
9 parent authority receives money or property of a third per-
10 son and misapplies it.

11 2. Where the partnership in the course of its business
12 receives money or property of a third person and the money
13 or property so received is misapplied by any partner while
14 it is in the custody of the partnership.

15 Sec. 15. NATURE OF PARTNER'S LIABILITY. All partners
16 are liable:

17 1. Jointly and severally for everything chargeable to
18 the partnership under sections thirteen (13) and fourteen
19 (14) of this Act.

20 2. Jointly for all other debts and obligations of the
21 partnership; but any partner may enter into a separate ob-
22 ligation to perform a partnership contract.

23 Sec. 16. PARTNER BY ESTOPPEL.

24 1. When a person, by words spoken or written or by con-
25 duct, represents himself, or consents to another represent-
26 ing him to any one, as a partner in an existing partnership
27 or with one or more persons not actual partners, he is lia-
28 ble to any person to whom the representation has been made,
29 who has, on the faith of the representation, given credit
30 to the actual or apparent partnership, and if he has made
31 a representation or consented to its being made in a public
32 manner he is liable to the person, whether the representa-
33 tion has or has not been made or communicated to the person
34 so giving credit by or with the knowledge of the apparent
35 partner making the representation or consenting to its being

1 made.

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

4 b. When no partnership liability results, he is liable
5 jointly with the other persons, if anv, so consenting to the
6 contract or representation as to incur liability, otherwise
7 separately.

8 2. When a person has been thus represented to be a part-
9 ner in an existing partnership, or with one or more persons
10 not actual partners, he is an agent of the persons consent-
11 ing to the representation to bind them to the same extent
12 and in the same manner as though he were a partner in fact,
13 with respect to persons who rely upon the representation.
14 Where all the members of the existing partnership consent
15 to the representation, a partnership act or obligation re-
16 sults; but in all other cases it is the joint act or obli-
17 gation of the person acting and the persons consenting to
18 the representation.

19 Sec. 17. LIABILITY OF INCOMING PARTNER. A person admit-
20 ted as a partner into an existing partnership is liable for
21 all the obligations of the partnership arising before his
22 admission as though he had been a partner when such obliga-
23 tions were incurred, except that this liability shall be
24 satisfied only out of partnership property.

25 Sec. 18. RULES DETERMINING RIGHTS AND DUTIES OF PARTNERS.
26 The rights and duties of the partners in relation to the
27 partnership shall be determined, subject to any agreement
28 between them, by the following rules:

29 1. Each partner shall be repaid his contributions, whether
30 by way of capital or advances to the partnership property
31 and share equally in the profits and surplus remaining after
32 all liabilities, including those to partners, are satisfied;
33 and must contribute towards the losses, whether of capital
34 or otherwise, sustained by the partnership according to his
35 share in the profits.

1 2. The partnership must indemnify every partner in re-
2 spect of payments made and personal liabilities reasonably
3 incurred by him in the ordinary and proper conduct of its
4 business, or for the preservation of its business or prop-
5 erty.

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

10 4. A partner shall receive interest on the capital con-
11 tributed by him only from the date when repayment should be
12 made.

13 5. All partners have equal rights in the management and
14 conduct of the partnership business.

15 6. No partner is entitled to remuneration for acting in
16 the partnership business, except that a surviving partner
17 is entitled to reasonable compensation for his services in
18 winding up the partnership affairs.

19 7. No person can become a member of a partnership with-
20 out the consent of all the partners.

21 8. Any difference arising as to ordinary matters con-
22 nected with the partnership business may be decided by a
23 majority of the partners; but no act in contravention of any
24 agreement between the partners may be done rightfully with-
25 out the consent of all the partners.

26 Sec. 19. PARTNERSHIP BOOKS. The partnership books shall
27 be kept, subject to any agreement between the partners, at
28 the principal place of business of the partnership, and every
29 partner shall at all times have access to and may inspect
30 and copy any of them.

31 Sec. 20. DUTY OF PARTNERS TO RENDER INFORMATION. Part-
32 ners shall render on demand true and full information of all
33 things affecting the partnership to any partner or the legal
34 representative of any deceased partner or partner under legal
35 disability.

1 Sec. 21. PARTNER ACCOUNTABLE AS A FIDUCIARY.

2 1. Every partner must account to the partnership for any
3 benefit, and hold as trustee for it any profits derived by
4 him without the consent of the other partners from any trans-
5 action connected with the formation, conduct, liquidation
6 of the partnership or use of its property.

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

11 Sec. 22. RIGHT TO AN ACCOUNT. Any partner shall have
12 the right to a formal account as to partnership affairs:

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

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

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

17 4. Whenever other circumstances render it just and rea-
18 sonable.

19 Sec. 23. CONTINUATION OF PARTNERSHIP BEYOND FIXED TERM.

20 1. When a partnership for a fixed term or particular un-
21 dertaking is continued after the termination of such term
22 or particular undertaking, without any express agreement,
23 the rights and duties of the partners remain the same as they
24 were at such termination, so far as is consistent with a
25 partnership at will.

26 2. A continuation of the business by the partners or such
27 of them as habitually acted therein during the term, without
28 any settlement or liquidation of the partnership affairs,
29 is prima facie evidence of a continuation of the partnership.

30 Sec. 24. EXTENT OF PROPERTY RIGHTS OF A PARTNER. The
31 property rights of a partner are:

32 1. His rights in specific partnership property.

33 2. His interest in the partnership.

34 3. His right to participate in the management.

35 Sec. 25. NATURE OF A PARTNER'S RIGHT IN SPECIFIC PARTNER-

1 SHIP PROPERTY.

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

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

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

11 b. A partner's right in specific partnership property
12 is not assignable except in connection with the assignment
13 of rights of all the partners in the same property.

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

20 d. On the death of a partner his right in specific part-
21 nership property vests in the surviving partner or partners,
22 except where the deceased was the last surviving partner,
23 when his rights in the property vest in his legal represen-
24 tative. Such surviving partner or partners, or the legal
25 representative of the last surviving partner, has no right
26 to possess the partnership property for any but a partner-
27 ship purpose.

28 e. A partner's right in specific partnership property
29 is not subject to dower, courtesy, or allowances to widows,
30 heirs, or next of kin.

31 Sec. 26. NATURE OF PARTNER'S INTEREST IN THE PARTNERSHIP.

32 A partner's interest in the partnership is his share of the
33 profits and surplus, and the same is personal property.

34 Sec. 27. ASSIGNMENT OF A PARTNER'S INTEREST.

35 1. A conveyance by a partner of his interest in the part-

1 nership does not of itself dissolve the partnership, nor as
2 against the other partners in the absence of agreement, en-
3 title the assignee, during the continuance of the partnership,
4 to interfere in the management or administration of the part-
5 nership business or affairs, or to require any information
6 or account of partnership transactions, or to inspect the
7 partnership books; but it merely entitles the assignee to
8 receive in accordance with his contract the profits to which
9 the assigning partner would otherwise be entitled.

10 2. In case of a dissolution of the partnership, the as-
11 signee is entitled to receive his assignor's interest and
12 may require an account from the date only of the last ac-
13 count agreed to by all the partners.

14 Sec. 28. PARTNER'S INTEREST SUBJECT TO CHARGING ORDER.

15 1. On due application to a competent court by any judg-
16 ment creditor of a partner, the court which entered the judg-
17 ment, order, or decree, or any other court, may charge the
18 interest of the debtor partner with payment of the unsatis-
19 fied amount of the judgment debt with interest thereon; and
20 may then or later appoint a receiver of his share of the
21 profits, and of any other money due or to fall due to him
22 in respect of the partnership, and make all other orders,
23 directions, accounts and inquiries which the debtor partner
24 might have made, or which the circumstances of the case may
25 require.

26 2. The interest charged may be redeemed at any time be-
27 fore foreclosure, or in case of a sale being directed by the
28 court may be purchased without thereby causing a dissolution:

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

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

34 3. Nothing in this Act shall be held to deprive a part-
35 ner of his right, if any, under the exemption laws, as re-

1 gards his interest in the partnership.

2 Sec. 29. DISSOLUTION DEFINED. The dissolution of a part-
3 nership is the change in the relation of the partners caused
4 by any partner ceasing to be associated in the carrying on
5 as distinguished from the winding up of the business.

6 Sec. 30. PARTNERSHIP NOT TERMINATED BY DISSOLUTION. On
7 dissolution the partnership is not terminated, but continues
8 until the winding up of partnership affairs is completed.

9 Sec. 31. CAUSES OF DISSOLUTION. Dissolution is caused:

10 1. Without violation of the agreement between the part-
11 ners:

12 a. By the termination of the definite term or particular
13 undertaking specified in the agreement,

14 b. By the express will of any partner when no definite
15 term or particular undertaking is specified,

16 c. By the express will of all the partners who have not
17 assigned their interests or suffered them to be charged for
18 their separate debts, either before or after the termination
19 of any specified term or particular undertaking,

20 d. By the expulsion of any partner from the business bona
21 fide in accordance with such a power conferred by the agreement
22 between the partners;

23 2. In contravention of the agreement between the part-
24 ners, where the circumstances do not permit a dissolution
25 under any other provision of this section, by the express
26 will of any partner at any time;

27 3. By any event which makes it unlawful for the business
28 of the partnership to be carried on or for the members to
29 carry it on in partnership;

30 4. By the death of any partner, unless the partnership
31 agreement provides otherwise;

32 5. By the bankruptcy of any partner or the partnership;

33 6. By decree of court under section thirty-two (32) of
34 this Act.

35 Sec. 32. DISSOLUTION BY DECREE OF COURT. The court shall

1 decree a dissolution:

- 2 1. On application by or for a partner whenever:
 - 3 a. A partner has been declared a mentally ill person in
 - 4 any judicial proceeding, or is shown to be of unsound mind,
 - 5 b. A partner becomes in any other way incapable of per-
 - 6 forming his part of the partnership contract,
 - 7 c. A partner has been guilty of conduct as tends to af-
 - 8 fect prejudicially the carrying on of the business,
 - 9 d. A partner willfully or persistently commits a breach
 - 10 of the partnership or agreement, or otherwise so conducts
 - 11 himself in matters relating to the partnership business that
 - 12 it is not reasonably practicable to carry on the business
 - 13 in partnership with him,
 - 14 e. The business of the partnership can only be carried
 - 15 on at a loss,
 - 16 f. Other circumstances render a dissolution equitable.

17 2. On application of the purchaser of a partner's inter-
18 est under section twenty-seven (27) or twenty-eight (28) of
19 this Act:

- 20 a. After the termination of the specified term or par-
21 ticular undertaking,
- 22 b. At any time if the partnership was a partnership at
23 will when the interest was assigned or when the charging or-
24 der was issued.

25 Sec. 33. GENERAL EFFECT OF DISSOLUTION ON AUTHORITY OF
26 PARTNER. Except so far as may be necessary to wind up part-
27 nership affairs or to complete transactions begun but not
28 then finished, dissolution terminates all authority of any
29 partner to act for the partnership:

- 30 1. With respect to the partners,
 - 31 a. When the dissolution is not by the act, bankruptcy
 - 32 or death of a partner, or
 - 33 b. When the dissolution is by such act, bankruptcy or
 - 34 death of a partner, in cases where section thirty-four (34)
 - 35 of this Act, so requires.

1 2. With respect to persons not partners, as declared in
2 section thirty-five (35) of this Act.

3 Sec. 34. RIGHT OF PARTNER TO CONTRIBUTION FROM CO-PARTNERS
4 AFTER DISSOLUTION. Where the dissolution is caused by the
5 act, death or bankruptcy of a partner, each partner is lia-
6 ble to his co-partners for his share of any liability created
7 by any partner acting for the partnership as if the partner-
8 ship had not been dissolved unless:

9 1. The dissolution being by act of any partner, the part-
10 ner acting for the partnership had knowledge of the dissolu-
11 tion, or

12 2. The dissolution being by the death or bankruptcy of
13 a partner, the partner acting for the partnership had knowl-
14 edge or notice of the death or bankruptcy.

15 Sec. 35. POWER OF PARTNER TO BIND PARTNERSHIP TO THIRD
16 PERSONS AFTER DISSOLUTION.

17 1. After dissolution a partner can bind the partnership
18 except as provided in subsection three (3) of this section:

19 a. By any act appropriate for winding up partnership af-
20 fairs or completing transactions unfinished at dissolution.

21 b. By any transaction which would bind the partnership
22 if dissolution had not taken place, provided the other party
23 to the transaction:

24 (1) Had extended credit to the partnership prior to dis-
25 solution and had no knowledge or notice of the dissolution;
26 or

27 (2) Though he had not so extended credit, had neverthe-
28 less known of the partnership prior to dissolution, and,
29 having no knowledge or notice of dissolution, the fact of
30 dissolution had not been advertised in a newspaper of gen-
31 eral circulation in the place (or in each place if more than
32 one) at which the partnership business was regularly carried
33 on.

34 2. The liability of a partner under paragraph b of sub-
35 section one (1) of this section shall be satisfied out of

1 partnership assets alone when such partner had been prior
2 to dissolution:

3 a. Unknown as a partner to the person with whom the con-
4 tract is made; and

5 b. So far unknown and inactive in partnership affairs
6 that the business reputation of the partnership could not
7 be said to have been in any degree due to his connection with
8 it.

9 3. The partnership is in no case bound by any act of a
10 partner after dissolution:

11 a. Where the partnership is dissolved because it is un-
12 lawful to carry on the business, unless the act is appro-
13 priate for winding up partnership affairs; or

14 b. Where the partner has become bankrupt; or

15 c. Where the partner has no authority to wind up partner-
16 ship affairs; except by a transaction with one who:

17 (1) Had extended credit to the partnership prior to dis-
18 solution and had no knowledge or notice of his want of author-
19 ity; or

20 (2) Had not extended credit to the partnership prior to
21 dissolution, and, having no knowledge or notice of his want
22 of authority, the fact of his want of authority has not been
23 advertised in the manner provided for advertising the fact
24 of dissolution in paragraph b of subsection one (1) of this
25 section.

26 4. Nothing in this section shall affect the liability
27 under section sixteen (16) of this Act of any person who after
28 dissolution represents himself or consents to another
29 representing him as a partner in a partnership engaged in
30 carrying on business.

31 Sec. 36. EFFECT OF DISSOLUTION ON PARTNER'S EXISTING
32 LIABILITY.

33 1. The dissolution of the partnership does not of itself
34 discharge the existing liability of any partner.

35 2. A partner is discharged from any existing liability

1 upon dissolution of the partnership by an agreement to that
2 effect between himself, the partnership creditor and the per-
3 son or partnership continuing the business; and such agree-
4 ment may be inferred from the course of dealing between the
5 creditor having knowledge of the dissolution and the person
6 or partnership continuing the business.

7 3. Where a person agrees to assume the existing obliga-
8 tions of a dissolved partnership, the partners whose obli-
9 gations have been assumed shall be discharged from any lia-
10 bility to any creditor of the partnership who, knowing of
11 the agreement, consents to a material alteration in the na-
12 ture or time of payment of the obligations.

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

17 Sec. 37. RIGHT TO WIND UP. Unless otherwise agreed the
18 partners who have not wrongfully dissolved the partnership
19 or the legal representative of the last surviving partner,
20 not bankrupt, has the right to wind up the partnership af-
21 fairs; provided, however, that any partner, his legal repre-
22 sentative or his assignee, upon cause shown, may obtain wind-
23 ing up by the court.

24 Sec. 38. RIGHTS OF PARTNERS TO APPLICATION OF PARTNERSHIP
25 PROPERTY.

26 1. When dissolution is caused in any way, except in con-
27 travention of the partnership agreement, each partner, as
28 against his co-partners and all persons claiming through them
29 in respect of their interests in the partnership, unless
30 otherwise agreed, may have the partnership property applied
31 to discharge its liabilities, and the surplus applied to pay
32 in cash the net amount owing to the respective partners.
33 But if dissolution is caused by expulsion of a partner, bona
34 fide under the partnership agreement and if the expelled
35 partner is discharged from all partnership liabilities, either

1 by payment or agreement under subsection two (2) of section
2 thirty-six (36) of this Act, he shall receive in cash only
3 the net amount due him from the partnership.

4 2. When dissolution is caused in contravention of the
5 partnership agreement the rights of the partners shall be
6 as follows:

7 a. Each partner who has not caused dissolution wrong-
8 fully shall have:

9 (1) All the rights specified in subsection one (1) of
10 this section, and

11 (2) The right, as against each partner who has caused
12 the dissolution wrongfully, to damages for breach of the
13 agreement.

14 b. The partners who have not caused the dissolution wrong-
15 fully, if they all desire to continue the business in the
16 same name, either by themselves or jointly with others, may
17 do so, during the agreed term for the partnership and for
18 that purpose may possess the partnership property, provided
19 they secure the payment by bond approved by the court, or
20 pay to any partner who has caused the dissolution wrongfully,
21 the value of his interest in the partnership at the disso-
22 lution, less any damages recoverable under subparagraph two
23 (2) of paragraph a of section two (2) of this section, and
24 in like manner indemnify him against all present or future
25 partnership liabilities.

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

28 (1) If the business is not continued under the provi-
29 sions of paragraph b of subsection two (2) of this section,
30 all the rights of a partner under subsection one (1) of this
31 section, subject to subparagraph two (2) of paragraph a of
32 subsection two (2) of this section,

33 (2) If the business is continued under paragraph b of
34 subsection two (2) of this section the right as against his
35 co-partners and all claiming through them in respect of their

1 interests in the partnership, to have the value of his inter-
2 est in the partnership, less any damages caused to his co-
3 partners by the dissolution, ascertained and paid to him in
4 cash, or the payment secured by bond approved by the court,
5 and to be released from all existing liabilities of the
6 partnership; but in ascertaining the value of the partner's
7 interest the value of the good-will of the business shall
8 not be considered.

9 Sec. 39. RIGHTS WHERE PARTNERSHIP IS DISSOLVED FOR FRAUD
10 OR MISREPRESENTATION. Where a partnership contract is re-
11 scinded on the ground of the fraud or misrepresentation of
12 one of the parties thereto, the party entitled to rescind
13 is, without prejudice to any other right, entitled:

14 1. To a lien on, or a right of retention of, the surplus
15 of the partnership property after satisfying the partnership
16 liabilities to third persons for any sum of money paid by
17 him for the purchase of an interest in the partnership and
18 for any capital or advances contributed by him; and

19 2. To stand, after all liabilities to third persons have
20 been satisfied, in the place of the creditors of the partner-
21 ship for any payments made by him in respect of the partner-
22 ship liabilities; and

23 3. To be indemnified by the person guilty of the fraud
24 or making the representation against all debts and liabili-
25 ties of the partnership.

26 Sec. 40. RULES FOR DISTRIBUTION. In settling accounts
27 between the partners after dissolution, the following rules
28 shall be observed, subject to any agreement to the contrary:

29 1. The assets of the partnership are:

- 30 a. The partnership property,
- 31 b. The contributions of the partners necessary for the
32 payment of all the liabilities specified in subsection two
33 (2) of this section.

34 2. The liabilities of the partnership shall rank in or-
35 der of payment, as follows:

1 a. Those owing to creditors other than partners,

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

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

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

6 3. The assets shall be applied in order of their declara-
7 tion in subsection one (1) of this section to the satisfaction
8 of the liabilities.

9 4. The partners shall contribute, as provided by subsec-
10 tion one (1) of section eighteen (18) of this Act, the amount
11 necessary to satisfy the liabilities; but if any, but not
12 all of the partners are insolvent, or, not being subject to
13 process, refuse to contribute, the other partners shall con-
14 tribute their share of the liabilities, and, in the relative
15 proportions in which they share the profits, the additional
16 amount necessary to pay the liabilities.

17 5. An assignee for the benefit of creditors or any per-
18 son appointed by the court shall have the right to enforce
19 the contributions specified in subsection four (4) of this
20 section.

21 6. Any partner or his legal representative shall have
22 the right to enforce the contributions specified in subsec-
23 tion four (4) of this section, to the extent of the amount
24 which he has paid in excess of his share of the liability.

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

28 8. When partnership property and the individual proper-
29 ties of the partners are in possession of a court for dis-
30 tribution, partnership creditors shall have priority on
31 partnership property and separate creditors on individual
32 property, saving the rights of lien or secured creditors as
33 heretofore.

34 9. Where a partner has become bankrupt or his estate is
35 insolvent the claims against his separate property shall rank

1 in the following order:

- 2 a. Those owing to separate creditors,
- 3 b. Those owing to partnership creditors,
- 4 c. Those owing to partners by way of contribution.

5 Sec. 41. LIABILITY OF PERSONS CONTINUING THE BUSINESS
6 IN CERTAIN CASES.

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

16 2. When all but one partner retire and assign, or the
17 representative of a deceased partner assigns their rights
18 in partnership property to the remaining partner, who con-
19 tinues the business without liquidation of partnership af-
20 fairs, either alone or with others, creditors of the dis-
21 solved partnership are also creditors of the person or
22 partnership so continuing the business.

23 3. When any partner retires or dies and the business of
24 the dissolved partnership is continued as set forth in sub-
25 sections one (1) and two (2) of this section, with the con-
26 sent of the retired partners or the representative of the
27 deceased partner, but without any assignment of his right
28 in partnership property, rights of creditors of the dissolved
29 partnership and of the creditors of the person or partnership
30 continuing the business shall be as if such assignment had
31 been made.

32 4. When all the partners or their representatives assign
33 their rights in partnership property to one or more third
34 persons who promise to pay the debts and who continue the
35 business of the dissolved partnership, creditors of the dis-

1 dissolved partnership are also creditors of the person or part-
2 nership continuing the business.

3 5. When any partner wrongfully causes a dissolution and
4 the remaining partners continue the business under the pro-
5 visions of paragraph b of subsection two (2) of section thirty-
6 eight (38) of this Act, either alone or with others, and
7 without liquidation of the partnership affairs, creditors
8 of the dissolved partnership are also creditors of the person
9 or partnership continuing the business.

10 6. When a partner is expelled and the remaining partners
11 continue the business either alone or with others, without
12 liquidation of the partnership affairs, creditors of the dis-
13 solved partnership are also creditors of the person or part-
14 nership continuing the business.

15 7. The liability of a third person becoming a partner
16 in the partnership continuing the business, under this sec-
17 tion, to the creditors of the dissolved partnership shall
18 be satisfied out of partnership property only.

19 8. When the business of a partnership after dissolution
20 is continued under any conditions set forth in this section
21 the creditors of the dissolved partnership, as against the
22 separate creditors of the retiring or deceased partner or
23 the representative of the deceased partner, have a prior right
24 to any claim of the retired partner or the representative
25 of the deceased partner against the person or partnership
26 continuing the business, on account of the retired or deceased
27 partner's interest in the dissolved partnership or on account
28 of any consideration promised for such interest or for his
29 right in partnership property.

30 9. Nothing in this section shall be held to modify any
31 right of creditors to set aside any assignment on the ground
32 of fraud.

33 10. The use by the person or partnership continuing the
34 business of the partnership name, or the name of a deceased
35 partner as part thereof, shall not of itself make the indi-

1 vidual property of the deceased partner liable for any debts
2 contracted by the person or partnership.

3 Sec. 42. RIGHTS OF RETIRING OR ESTATE OF DECEASED PARTNER
4 WHEN THE BUSINESS IS CONTINUED. When any partner retires
5 or dies, and the business is continued under any of the con-
6 ditions set forth in subsections one (1), two (2), three (3),
7 five (5), and six (6) of section forty-one (41) or paragraph
8 b of subsection two (2) of section thirty-eight (38) of this
9 Act, without any settlement of accounts as between him or
10 his estate and the person or partnership continuing the
11 business, unless otherwise agreed, he or his legal repre-
12 sentative as against such persons or partnership may have
13 the value of his interest at the date of dissolution ascer-
14 tained, and shall receive as an ordinary creditor an amount
15 equal to the value of his interest in the dissolved partner-
16 ship with interest, or, at his option or at the option of
17 his legal representative, in lieu of interest, the profits
18 attributable to the use of his right in the property of the
19 dissolved partnership; provided that the creditors of the
20 dissolved partnership as against the separate creditors, or
21 the representative of the retired or deceased partner, shall
22 have priority on any claim arising under this section, as
23 provided by subsection eight (8) of section forty-one (41)
24 of this Act.

25 Sec. 43. ACCRUAL OF ACTIONS. The right to an account
26 of his interest shall accrue to any partner, or his legal
27 representative, as against the winding up partners or the
28 surviving partners or the person or partnership continuing
29 the business, at the date of dissolution, in the absence of
30 any agreement to the contrary.

31 Sec. 44. Section six hundred twenty-six point thirty-two
32 (626.32), Code 1971, is amended as follows:

33 626.32 JOINT OR PARTNERSHIP PROPERTY. When an officer
34 has an execution against a person who owns property jointly,
35 or in common ~~or-in-partnership~~ with another, such officer

1 may levy on and take possession of the property owned jointly,
2 or in common ~~or-in-partnership~~, sufficiently to enable him
3 to appraise and inventory the same, and for that purpose
4 shall call to his assistance three disinterested persons,
5 which inventory and appraisement shall be returned by the
6 officer with the execution, and shall state in his return
7 who claims to own the property.

8 Sec. 45. Section six hundred thirty-nine point thirty-
9 seven (639.37), Code 1971, is amended as follows:

10 639.37 COMMON, OR JOINT ~~OR-PARTNERSHIP~~ PROPERTY. In
11 executing an attachment against a person who owns property
12 jointly or in common with another, ~~or-who-is-a-member-of-a~~
13 ~~partnership~~, the officer may take possession of such prop-
14 erty so owned jointly, or in common, ~~or-in-partnership~~
15 sufficiently to enable him to inventory and appraise the same,
16 and for that purpose shall call to his assistance three
17 disinterested persons; which inventory and appraisement shall
18 be returned by the officer with the attachment, and such
19 return shall state who claims to own such property.

20 EXPLANATION

21 This bill provides for adoption of the Uniform Partner-
22 ship Act. This Act was approved by the National Conference
23 of Commissioners on Uniform State Laws in 1914. It has been
24 adopted by 40 states, the District of Columbia, Guam, and
25 the Virgin Islands.

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