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HOUSE FILE 642  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 198)

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Passed House, Date 3-24-97 Passed Senate, Date 4/28/97  
Vote: Ayes 100 Nays 0 Vote: Ayes 50 Nays 0  
Approved May 26, 1997

## A BILL FOR

1 An Act relating to limited partnerships and the rights and duties  
2 of limited partners, partnership agreements, duties of the  
3 secretary of state with respect to limited partnerships, and  
4 other related matters affecting foreign and domestic limited  
5 partnerships, and establishing fees and penalties.  
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 642

1 Section 1. Section 487.101, subsections 1 and 6, Code  
2 1997, are amended to read as follows:

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

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

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

12 NEW SUBSECTION. 11. "Person" means as defined in section  
13 4.1.

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

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

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

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

32 Sec. 5. Section 487.104, subsection 3, Code 1997, is  
33 amended to read as follows:

34 3. An agent for service of process may resign as agent  
35 upon filing and recording in accordance with section 487-206

1 487.108 a written notice of resignation, executed in  
2 duplicate, with the secretary of state. The secretary of  
3 state shall forthwith mail a copy of the resignation to the  
4 limited partnership at its principal place of business. The  
5 appointment of the agent terminates upon the expiration of  
6 thirty days after receipt of the notice by the secretary of  
7 state.

8 Sec. 6. Section 487.105, Code 1997, is amended to read as  
9 follows:

10 487.105 RECORDS TO BE KEPT.

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

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

17 2. A copy of the certificate of limited partnership and  
18 ~~all amendments-to-the-certificate~~ certificates of amendment to  
19 the certificate of limited partnership, together with any  
20 executed copies of any powers of attorney pursuant to which a  
21 any certificate or-amendment has been executed.

22 3. Copies of the limited partnership's federal, state, and  
23 local income tax returns and reports, if any, for the three  
24 most recent years.

25 4. Copies of any currently effective written partnership  
26 agreements ~~in-effect~~ and of any financial statements of the  
27 limited partnership for the three most recent years.

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

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

34 a. The amount of cash and a description and statement of  
35 the agreed value of the other property or services contributed

1 by each partner and which each partner has agreed to  
2 contribute.

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

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

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

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

14 Sec. 7. NEW SECTION. 487.108 FILING REQUIREMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Sec. 8. NEW SECTION. 487.109 FEES.

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

- 22 a. Certificate of limited partnership ..... \$100
- 23 b. Application for registration of foreign limited partner-  
24 ship and also issuance of a certificate of registration to  
25 transact business in this state ..... \$100
- 26 c. Amendment to certificate of limited partnership .... \$ 20
- 27 d. Amendment to application for registration of foreign  
28 limited partnership ..... \$ 20
- 29 e. Cancellation of certificate of limited  
30 partnership ..... \$ 20
- 31 f. Cancellation of registration of foreign limited partner-  
32 ship ..... \$ 20
- 33 g. A consent required to be filed under this chapter .. \$ 20
- 34 h. Application to reserve a limited partnership name .. \$ 10
- 35 i. A notice of transfer of reservation of name ..... \$ 10

1 j. A notice of resignation of agent for service of  
2 process ..... \$ 5  
3 k. Articles of correction ..... \$ 5  
4 l. Application for certificate of existence or regis-  
5 tration ..... \$ 5  
6 m. Any other document required or permitted to be  
7 filed ..... \$ 5

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

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

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

18 Sec. 9. NEW SECTION. 487.110 EFFECTIVE TIME AND DATE OF  
19 DOCUMENTS.

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

- 23 a. At the time of filing on the date it is filed, as  
24 evidenced by the secretary of state's date and time  
25 endorsement on the original document.
- 26 b. At the time specified in the document as its effective  
27 time on the date it is filed.

28 2. A document may specify a delayed effective time and  
29 date, and if it does so the document becomes effective at the  
30 time and date specified. If a delayed effective date but no  
31 time is specified, the document is effective at the close of  
32 business on that date. A delayed effective date for a  
33 document shall not be later than the ninetieth day after the  
34 date it is filed.

35 Sec. 10. NEW SECTION. 487.111 CORRECTING FILED

## 1 DOCUMENTS.

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

5 a. Contains an incorrect statement.

6 b. Was defectively executed, attested, sealed, verified,  
7 or acknowledged.

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

10 a. Describe the document, including its filing date, or  
11 attach a copy of it to the articles.

12 b. Specify the incorrect statement and the reason it is  
13 incorrect or the manner in which the execution was defective.

14 c. Correct the incorrect statement or defective execution.

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

20 Sec. 11. NEW SECTION. 487.112 FILING DUTY OF SECRETARY  
21 OF STATE.

22 1. If a document delivered to the office of the secretary  
23 of state for filing satisfies the requirements of section  
24 487.108, the secretary of state shall file it and issue any  
25 necessary certificate.

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

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

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

10 a. Affect the validity or invalidity of the document in  
11 whole or part.

12 b. Relate to the correctness or incorrectness of  
13 information contained in the document.

14 c. Create a presumption that the document is valid or  
15 invalid or that information contained in the document is  
16 correct or incorrect.

17 Sec. 12. NEW SECTION. 487.113 APPEAL FROM SECRETARY OF  
18 STATE'S REFUSAL TO FILE DOCUMENT.

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

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

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

34 Sec. 13. NEW SECTION. 487.114 EVIDENTIARY EFFECT OF COPY  
35 OF FILED DOCUMENT.

1 A certificate attached to a copy of a document filed by the  
2 secretary of state, bearing the secretary of state's  
3 signature, which may be in facsimile, and the seal of the  
4 secretary of state, is conclusive evidence that the original  
5 document is on file with the secretary of state.

6 Sec. 14. NEW SECTION. 487.115 CERTIFICATE OF EXISTENCE.

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

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

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

15 b. That one of the following apply:

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

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

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

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

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

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

31 Sec. 15. NEW SECTION. 487.116 PENALTY FOR SIGNING FALSE  
32 DOCUMENT.

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

1 state for filing.

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

4 Sec. 16. NEW SECTION. 487.117 SECRETARY OF STATE --  
5 POWERS.

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

9 Sec. 17. Section 487.201, subsection 1, Code 1997, is  
10 amended to read as follows:

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

17 a. The name of the limited partnership.

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

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

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

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

30 ~~f.--The-times-at-which-or-events-on-the-happening-of-which~~  
31 ~~any-additional-contributions-agreed-to-be-made-by-each-partner~~  
32 ~~are-to-be-made.~~

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

1 of-the-power-

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

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

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

13 k.---A-time-at-which, or-an-event-upon-the-happening-of  
14 which-

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

17 i.---A-right-of-the-remaining-general-partners-to-continue  
18 the-business-on-the-happening-of-an-event-of-withdrawal-of-a  
19 general-partner-

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

22 Sec. 18. Section 487.202, Code 1997, is amended to read as  
23 follows:

24 487.202 AMENDMENT TO CERTIFICATE.

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

30 a. The name of the limited partnership.

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

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

35 2. ~~Except-as-provided-in-subsection-5, within~~ Within

1 thirty days after the happening of any of the following  
2 events, an amendment to a certificate of limited partnership  
3 reflecting the occurrence of the event shall be filed:

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

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

8 ~~b. The withdrawal of a general partner.~~

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

11 3. A general partner who becomes aware that a any  
12 statement in a certificate of limited partnership was false  
13 when made or that any arrangements or other facts described  
14 have changed, making the certificate inaccurate in any  
15 respect, shall promptly amend the certificate. ~~An amendment~~  
16 ~~to show the admission of or a change of address of a limited~~  
17 ~~partner shall be filed within twelve months of the admission~~  
18 ~~or change of address.~~

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

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

25 ~~6. 5. A limited partner person is not liable because an~~  
26 ~~amendment to a certificate of limited partnership has not been~~  
27 ~~filed to reflect the occurrence of an any event referred to in~~  
28 ~~subsection 2 if the amendment is filed within the thirty-day~~  
29 ~~period specified in subsection 2.~~

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

35 Sec. 19. Section 487.204, subsection 1, Code 1997, is

1 amended to read as follows:

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

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

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

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

13 Sec. 20. Section 487.205, Code 1997, is amended to read as  
14 follows:

15 487.205 AMENDMENT OR CANCELLATION BY JUDICIAL ACT.

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

29 Sec. 21. Section 487.208, Code 1997, is amended to read as  
30 follows:

31 487.208 SCOPE OF NOTICE.

32 The fact that a certificate of limited partnership is on  
33 file in the office of the secretary of state is notice that  
34 the partnership ~~claims-to-be~~ is a limited partnership and the  
35 persons designated in such certificate as general partners are

1 general partners, but it is not notice of any other fact.

2 Sec. 22. Section 487.301, Code 1997, is amended to read as  
3 follows:

4 487.301 ADMISSION OF NEW LIMITED PARTNERS.

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

7 a. At the time the limited partnership is formed.

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

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

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

18 b. In the case of an assignee of a partnership interest of  
19 a partner who has the power, as provided in section 487.704 to  
20 grant the assignee the right to become a limited partner, upon  
21 the exercise of that power and compliance with any conditions  
22 limiting the grant or exercise of the power.

23 ~~2.--Under-both-paragraphs-"a"-and-"b"-of-subsection-17-the~~  
24 ~~person-acquiring-the-partnership-interest-becomes-a-limited~~  
25 ~~partner-at-the-time-specified-in-the-certificate-of-limited~~  
26 ~~partnership-or,-if-a-time-is-not-specified,-upon-amendment-of~~  
27 ~~the-certificate-of-limited-partnership-to-show-the-partnership~~  
28 ~~interest.~~

29 Sec. 23. Section 487.303, Code 1997, is amended to read as  
30 follows:

31 487.303 LIABILITY TO THIRD PARTIES.

32 1. Except as provided in subsection 4, a limited partner  
33 is not liable for the obligations of a limited partnership  
34 unless the limited partner is also a general partner or, in  
35 addition to the exercise of the limited partner's rights and

1 powers as a limited partner, the limited partner ~~takes-part~~  
2 participates in the control of the business. However, if the  
3 ~~limited partner's-participation~~ partner participates in the  
4 control of the business ~~is-not-substantially-the-same-as-the~~  
5 ~~exercise-of-the-powers-of-a-general-partner~~, the limited  
6 partner is liable only to persons who transact business with  
7 the limited partnership ~~with-actual-knowledge-of-the-limited~~  
8 ~~partner's-participation-in-control~~ reasonably believing, based  
9 upon the limited partner's conduct, that the limited partner  
10 is a general partner.

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

14 a. Being a contractor for or an agent or employee of the  
15 limited partnership.

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

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

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

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

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

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

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

35 (2) The sale, exchange, lease, mortgage, pledge, or other

1 transfer of all or substantially all the assets of the limited  
2 partnership ~~other than in the ordinary course of its business.~~

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

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

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

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

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

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

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

17 h. Winding up the limited partnership pursuant to section  
18 487.803.

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

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

26 4. A limited partner who knowingly permits the limited  
27 partner's name to be used in the name of the limited  
28 partnership, except under circumstances permitted by section  
29 487.102, subsection 2, ~~paragraph "a"~~7, is liable to creditors  
30 who extend credit to the limited partnership without actual  
31 knowledge that the limited partner is not a general partner.

32 Sec. 24. Section 487.304, Code 1997, is amended to read as  
33 follows:

34 487.304 PERSON ERRONEOUSLY BELIEVING SELF TO BE A LIMITED  
35 PARTNER.

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

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

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

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

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

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

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

33 Sec. 25. Section 487.401, Code 1997, is amended to read as  
34 follows:

35 487.401 ADMISSION OF ADDITIONAL GENERAL PARTNERS.

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

12 Sec. 26. Section 487.402, Code 1997, is amended to read as  
13 follows:

14 487.402 EVENTS OF WITHDRAWAL.

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

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

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

23 ~~2.~~ 3. The general partner is removed as a general partner  
24 in accordance with the partnership agreement.

25 ~~3.~~ 4. Unless otherwise provided in ~~the certificate of~~  
26 ~~limited writing in the~~ partnership agreement, the general  
27 partner does any of the following:

28 a. Makes an assignment for the benefit of creditors.

29 b. Files a voluntary petition in bankruptcy.

30 c. Is adjudicated a bankrupt or insolvent.

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

35 e. Files an answer or other pleading admitting or failing

1 to contest material allegations of a petition filed against  
2 the general partner in a proceeding of a nature specified in  
3 paragraph "d".

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

8 ~~4~~ 5. Unless otherwise provided in ~~the certificate of~~  
9 ~~limited writing in the partnership agreement~~, upon the  
10 expiration of the following time periods:

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

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

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

25 ~~5~~ 6. If the general partner is a natural person when  
26 either of the following occur:

27 a. The general partner dies.

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

30 ~~6~~ 7. If the general partner is acting as a general  
31 partner by virtue of being a trustee of a trust, when the  
32 trust terminates. Substitution of a new trustee is not  
33 termination of the trust.

34 ~~7~~ 8. If the general partner is a separate partnership,  
35 the dissolution and commencement of winding up of the separate

1 partnership.

2 ~~8~~ 9. If the general partner is a corporation, the filing  
3 of a certificate of dissolution, or its equivalent, for the  
4 corporation or revocation of the corporation's charter.

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

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

11 Sec. 27. Section 487.403, Code 1997, is amended to read as  
12 follows:

13 487.403 GENERAL POWERS AND LIABILITIES.

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

19 2. Except as provided in this chapter, a general partner  
20 of a limited partnership has the liabilities of a partner in a  
21 partnership without limited partners to persons other than the  
22 partnership and the other partners. Except as provided in  
23 this chapter or in the partnership agreement, a general  
24 partner of a limited partnership has the liabilities of a  
25 partner in a partnership without limited partners to the  
26 partnership and to the other partners.

27 Sec. 28. Section 487.405, Code 1997, is amended to read as  
28 follows:

29 487.405 VOTING.

30 The partnership agreement may grant to all or certain  
31 identified general partners the right to vote on a per capita  
32 or any other basis, separately or with all or any class of the  
33 limited partners, on any matter.

34 Sec. 29. Section 487.502, Code 1997, is amended to read as  
35 follows:

1 487.502 LIABILITY FOR CONTRIBUTION.

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

5 2. Except as provided in the certificate-of-limited  
6 partnership agreement, a partner is obligated to the limited  
7 partnership to perform a any enforceable promise to contribute  
8 cash or property or to perform services even if the partner is  
9 unable to perform because of death, disability, or any other  
10 reason. If the a partner does not make the required  
11 contribution of property or services, the partner is obligated  
12 at the option of the limited partnership ~~may-require-the~~  
13 partner to contribute cash equal to that portion of the value,  
14 as stated in the certificate-of-limited-partnership,  
15 partnership records required to be kept pursuant to section  
16 487.105, of the stated contribution that which has not been  
17 made.

18 3. Unless otherwise provided in the partnership agreement,  
19 the obligation of a partner to make a contribution or return  
20 money or other property paid or distributed in violation of  
21 this chapter may be compromised only by consent of all  
22 partners. Notwithstanding the compromise, a creditor of a  
23 limited partnership who extends credit or otherwise acts in  
24 reliance on that obligation after the partner signs a writing  
25 which reflects the obligation and before the amendment or  
26 cancellation of such obligation to reflect the compromise may  
27 enforce the original obligation.

28 Sec. 30. Section 487.503, Code 1997, is amended to read as  
29 follows:

30 487.503 SHARING OF PROFITS AND LOSSES.

31 The profits and losses of a limited partnership shall be  
32 allocated among the partners, and among classes of partners,  
33 in the manner provided in writing in the partnership  
34 agreement. If the partnership agreement does not so provide  
35 in writing, profits and losses shall be allocated on the basis

1 of the value, as stated in the ~~certificate-of-limited~~  
2 partnership records required to be kept pursuant to section  
3 487.105, of the contributions made by each partner to the  
4 extent the contributions have been received by the partnership  
5 and have not been returned.

6 Sec. 31. Section 487.504, Code 1997, is amended to read as  
7 follows:

8 487.504 SHARING OF DISTRIBUTIONS.

9 Distributions of cash or other assets of a limited  
10 partnership shall be allocated among the partners, and among  
11 classes of partners, in the manner provided in writing in the  
12 partnership agreement. If the partnership agreement does not  
13 so provide in writing, distributions shall be made on the  
14 basis of the value, as stated in the ~~certificate-of-limited~~  
15 partnership records required to be kept pursuant to section  
16 487.105, of the contributions made by each partner to the  
17 extent the contributions have been received by the partnership  
18 and have not been returned.

19 Sec. 32. Section 487.601, Code 1997, is amended to read as  
20 follows:

21 487.601 INTERIM DISTRIBUTIONS.

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

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

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

33 Sec. 33. Section 487.603, Code 1997, is amended to read as  
34 follows:

35 487.603 WITHDRAWAL OF LIMITED PARTNER.

1 A limited partner may withdraw from a limited partnership  
2 only at the time or upon the happening of events specified in  
3 ~~the certificate of limited partnership and in accordance with~~  
4 writing in the partnership agreement. ~~If the certificate does~~  
5 ~~not specify the time or the events upon the happening of which~~  
6 ~~a limited partner may withdraw or a time for the dissolution~~  
7 ~~and winding up of the limited partnership, a limited partner~~  
8 ~~may withdraw upon not less than six months prior written~~  
9 ~~notice directed or delivered to the partnership or to each~~  
10 ~~general partner at the partner's address on the books of the~~  
11 ~~limited partnership at its office in this state.~~

12 Sec. 34. Section 487.605, Code 1997, is amended to read as  
13 follows:

14 487.605 DISTRIBUTION IN KIND.

15 Except as provided in ~~the certificate of limited~~ writing in  
16 the partnership agreement, a partner, regardless of the nature  
17 of the partner's contribution, has no right to demand and  
18 receive any distribution from a limited partnership in any  
19 form other than cash. Except as provided in writing in the  
20 partnership agreement, a partner shall not be compelled to  
21 accept a distribution of any asset in kind from a limited  
22 partnership to the extent that the percentage of the asset  
23 distributed to the partner exceeds a percentage of that asset  
24 which is equal to the percentage in which the partner shares  
25 in distributions from the limited partnership.

26 Sec. 35. Section 487.607, Code 1997, is amended to read as  
27 follows:

28 487.607 LIMITATIONS ON DISTRIBUTION.

29 A partner shall not receive a distribution ~~if~~ after from a  
30 limited partnership to the extent that, after giving effect to  
31 the distribution, all liabilities of the limited partnership,  
32 other than liabilities to partners on account of their  
33 partnership interests, will exceed the fair value of the  
34 partnership assets.

35 Sec. 36. Section 487.608, subsection 3, Code 1997, is

1 amended to read as follows:

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

10 Sec. 37. Section 487.702, Code 1997, is amended to read as  
11 follows:

12 487.702 ASSIGNMENT OF PARTNERSHIP INTEREST.

13 Except as provided in the partnership agreement, a  
14 partnership interest is assignable in whole or in part. An  
15 assignment of a partnership interest does not dissolve a  
16 limited partnership or entitle the assignee to become or to  
17 exercise any rights of a partner. An assignment entitles the  
18 assignee to receive, to the extent assigned, only the  
19 distribution to which the assignor would be entitled. Except  
20 as provided in the partnership agreement, a partner ceases to  
21 be a partner upon assignment of all the partner's partnership  
22 interest.

23 Sec. 38. Section 487.704, Code 1997, is amended to read as  
24 follows:

25 487.704 RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER.

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

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

35 b. ~~When the partnership agreement so provides, if persons~~

1 ~~required to consent to the assignee becoming a limited partner~~  
2 ~~consent in the manner specified in the agreement.~~

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

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

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

20 Sec. 39. Section 487.801, subsection 1, Code 1997, is  
21 amended to read as follows:

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

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

26 b. When events specified in the partnership agreement  
27 occur.

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

30 ~~c. d.~~ When a general partner withdraws unless at the time  
31 there is at least one other general partner and the  
32 certificate provisions of limited the partnership permits  
33 agreement permit the business of the limited partnership to be  
34 carried on by the remaining general partner and the remaining  
35 partner does so.

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

3 Sec. 40. Section 487.902, subsections 3 and 7, Code 1997,  
4 are amended by striking the subsections.

5 Sec. 41. Section 487.902, Code 1997, is amended by adding  
6 the following new subsections:

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

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

15 Sec. 42. Section 487.1002, Code 1997, is amended to read  
16 as follows:

17 487.1002 PROPER PLAINTIFF.

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

26 Sec. 43. Section 487.1104, Code 1997, is amended to read  
27 as follows:

28 487.1104 EFFECT ON EXISTING LIMITED PARTNERSHIPS.

29 ~~This chapter~~ Except as specifically provided in this  
30 section, this chapter applies to all limited partnerships in  
31 existence on July 1, 1997, and does not invalidate provisions  
32 in limited partnership agreements or certificates executed  
33 prior to July 1, 1982 1997. Unless otherwise agreed to by the  
34 partners, the applicable provisions of existing law, in effect  
35 prior to July 1, 1997, governing events of withdrawal,

1 withdrawal of a limited partner, and assignment of a  
2 partnership interest, govern limited partnerships formed  
3 before July 1, 1997.

4 Sec. 44. NEW SECTION. 487.1106 SAVINGS CLAUSE.

5 The repeal of any statutory provision effective July 1,  
6 1997, does not impair or otherwise affect the organization or  
7 the continued existence of a limited partnership existing on  
8 July 1, 1997, nor does the repeal of any existing statutory  
9 provision effective July 1, 1997, impair any contract or any  
10 right accrued before July 1, 1997.

11 Sec. 45. Sections 487.206 and 487.1105, Code 1997, are  
12 repealed.

13

EXPLANATION

14 This bill rewrites provisions of the uniform limited  
15 partnership law contained in Code chapter 487. Generally, the  
16 bill amends provisions allowing a limited partner to  
17 contribute services to the limited partnership in lieu of  
18 property or other valuable obligations, allowing limited  
19 partners to be granted voting rights in the partnership  
20 agreement, granting limited partners access to partnership  
21 records, authorizing a derivative action by limited partners  
22 against the partnership, and providing for the registration of  
23 foreign limited partnerships.

24 The bill refocuses the chapter on the limited partnership  
25 agreement as the primary governing document, as opposed to the  
26 certificate of limited partnership, and provides that unless  
27 contained in a written limited partnership agreement, the  
28 partnership must keep at its office a writing containing  
29 amounts contributed by each partner, times or events  
30 triggering additional contributions, the right of a partner to  
31 receive a distribution of assets, and events triggering  
32 dissolution of the limited partnership.

33 The bill creates new Code sections rewriting provisions  
34 relating to filing requirements, fees to be charged by the  
35 secretary of state related to such filings, the effective time

1 and date of documents filed, procedures and duties of the  
2 secretary of state with respect to such filings, the  
3 evidentiary effect of a copy of a filed document, the creation  
4 of a certificate of existence, penalties for signing false  
5 documents, and powers of the secretary of state.

6 The bill strikes items currently required to be contained  
7 in the certificate of limited partnership and provides for the  
8 inclusion of those items in the partnership agreement or other  
9 writing.

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3/25/97 X  
S. 4/3/97 Do Pass  
5-4/10/97 Unfinished Business Calendar

HOUSE FILE 642  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 198)

(As Amended and Passed by the House, March 24, 1997)

Passed House, <sup>(P. 1699)</sup> Date 4-29-97 Passed Senate, <sup>(P. 1507)</sup> Date 4-28-97  
Vote: Ayes 96 Nays 0 Vote: Ayes 50 Nays 0  
Approved May 26, 1997

A BILL FOR

1 An Act relating to limited partnerships and the rights and duties  
2 of limited partners, partnership agreements, duties of the  
3 secretary of state with respect to limited partnerships, and  
4 other related matters affecting foreign and domestic limited  
5 partnerships, and establishing fees and penalties.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_

Deleted Language \*

1 Section 1. Section 487.101, subsections 1 and 6, Code  
2 1997, are amended to read as follows:

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

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

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

12 NEW SUBSECTION. 11. "Person" means as defined in section  
13 4.1.

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

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

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

21 4. Shall be distinguishable upon the records of the  
22 secretary of state from the name of a registered limited  
23 liability partnership, corporation, limited liability company,  
24 or limited partnership organized under the law of this state  
25 or licensed or registered as a foreign registered limited  
26 liability partnership, foreign corporation, foreign limited  
27 liability company, or foreign limited partnership in this  
28 state or a name the exclusive right to which is, at the time,  
29 reserved in the manner provided in this chapter, without the  
30 written consent of the registered limited liability  
31 partnership, corporation, limited liability company, or  
32 limited partnership, which consent shall be filed with the  
33 secretary of state, and provided the name is not identical.

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

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

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

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

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

22 3. An agent for service of process may resign as agent  
23 upon filing and recording in accordance with section 487-206  
24 487.108 a written notice of resignation, executed in  
25 duplicate, with the secretary of state. The secretary of  
26 state shall forthwith mail a copy of the resignation to the  
27 limited partnership at its principal place of business. The  
28 appointment of the agent terminates upon the expiration of  
29 thirty days after receipt of the notice by the secretary of  
30 state.

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

33 487.105 RECORDS TO BE KEPT.

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

- 1 1. A current list of the full name and last known business  
2 address of each partner separately identifying the general  
3 partners and the limited partners, each list being in  
4 alphabetical order.
- 5 2. A copy of the certificate of limited partnership and  
6 all ~~amendments-to-the-certificate~~ certificates of amendment to  
7 the certificate of limited partnership, together with any  
8 executed copies of any powers of attorney pursuant to which a  
9 any certificate or amendment has been executed.
- 10 3. Copies of the limited partnership's federal, state, and  
11 local income tax returns and reports, if any, for the three  
12 most recent years.
- 13 4. Copies of any currently effective written partnership  
14 agreements in-effect and of any financial statements of the  
15 limited partnership for the three most recent years.
- 16 ~~Any partner may inspect and copy the records required to be~~  
17 ~~kept under subsections 1 to 4 provided that the partner's~~  
18 ~~request to inspect and copy is reasonable and done at the~~  
19 ~~partner's expense.~~
- 20 5. Unless contained in a written partnership agreement, a  
21 writing setting out all of the following:
- 22 a. The amount of cash and a description and statement of  
23 the agreed value of the other property or services contributed  
24 by each partner and which each partner has agreed to  
25 contribute.
- 26 b. The times at which or events on the happening of which  
27 any additional contributions agreed to be made by each partner  
28 are to be made.
- 29 c. Any right of a partner to receive, or of a general  
30 partner to make, distributions to a partner which include a  
31 return of all or any part of the partner's contribution.
- 32 d. Any events upon the happening of which the limited  
33 partnership is to be dissolved and its affairs wound up.
- 34 Records kept under this section are subject to inspection  
35 and copying at the reasonable request and at the expense of

1 any partner during ordinary business hours.

2 Sec. 9. NEW SECTION. 487.108 FILING REQUIREMENTS.

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

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

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

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

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

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

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

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

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

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

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

35 9. The document shall be delivered to the office of the

1 secretary of state for filing and shall be accompanied by the  
2 correct filing fee.

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

6 Sec. 10. NEW SECTION. 487.109 FEES.

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

- 10 a. Certificate of limited partnership ..... \$100
- 11 b. Application for registration of foreign limited partner-  
12 ship and also issuance of a certificate of registration to  
13 transact business in this state ..... \$100
- 14 c. Amendment to certificate of limited partnership .... \$100
- 15 d. Amendment to application for registration of foreign  
16 limited partnership ..... \$100
- 17 e. Cancellation of certificate of limited  
18 partnership ..... \$ 20
- 19 f. Cancellation of registration of foreign limited partner-  
20 ship ..... \$ 20
- 21 g. A consent required to be filed under this chapter .. \$ 20
- 22 h. Application to reserve a limited partnership name .. \$ 10
- \* 23 i. A notice of transfer of reservation of name ..... \$ 10
- 24 j. Articles of correction ..... \$ 5
- 25 k. Application for certificate of existence or regis-  
26 tration ..... \$ 5
- 27 1. Any other document required or permitted to be  
28 filed ..... \$ 5

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

34 3. The secretary of state shall collect the following fees  
35 for copying and certifying the copy of any filed document

1 relating to a domestic or foreign limited partnership:

2 a. One dollar per page for copying.

3 b. Five dollars for the certificate.

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

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

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

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

14 2. A document may specify a delayed effective time and  
15 date, and if it does so the document becomes effective at the  
16 time and date specified. If a delayed effective date but no  
17 time is specified, the document is effective at the close of  
18 business on that date. A delayed effective date for a  
19 document shall not be later than the ninetieth day after the  
20 date it is filed.

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

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

26 a. Contains an incorrect statement.

27 b. Was defectively executed, attested, sealed, verified,  
28 or acknowledged.

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

31 a. Describe the document, including its filing date, or  
32 attach a copy of it to the articles.

33 b. Specify the incorrect statement and the reason it is  
34 incorrect or the manner in which the execution was defective.

35 c. Correct the incorrect statement or defective execution.

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

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

8 1. If a document delivered to the office of the secretary  
9 of state for filing satisfies the requirements of section  
10 487.108, the secretary of state shall file it.

\* 11 2. The secretary of state files a document by stamping or  
12 otherwise endorsing "filed", together with the secretary's  
13 name and official title and the date and time of receipt, on  
14 both the document and the receipt for the filing fee. After  
15 filing a document, and except as provided in section 487.104A,  
16 subsection 3, and section 487.909, the secretary of state  
17 shall deliver the document, with the filing fee receipt, or  
18 acknowledgment of receipt if no fee is required, attached to  
19 the domestic or foreign limited partnership or its  
20 representative.

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

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

30 a. Affect the validity or invalidity of the document in  
31 whole or part.

32 b. Relate to the correctness or incorrectness of  
33 information contained in the document.

34 c. Create a presumption that the document is valid or  
35 invalid or that information contained in the document is

1 correct or incorrect.

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

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

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

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

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

21 A certificate attached to a copy of a document filed by the  
22 secretary of state, bearing the secretary of state's  
23 signature, which may be in facsimile, and the seal of the  
24 secretary of state, is conclusive evidence that the original  
25 document is on file with the secretary of state.

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

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

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

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

35 b. That one of the following apply:

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

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

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

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

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

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

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

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

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

24 Sec. 18. NEW SECTION. 487.117 SECRETARY OF STATE --  
25 POWERS.

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

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

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

1 following:

2 a. The name of the limited partnership.

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

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

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

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

15 ~~f. The times at which or events on the happening of which~~  
16 ~~any additional contributions agreed to be made by each partner~~  
17 ~~are to be made.~~

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

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

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

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

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

35 d. The latest date upon which the limited partnership is

1 to be dissolved and its affairs wound up dissolve.

2 ~~1. A right of the remaining general partners to continue~~  
3 ~~the business on the happening of an event of withdrawal of a~~  
4 ~~general partner.~~

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

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

9 487.202 AMENDMENT TO CERTIFICATE.

10 1. A certificate of limited partnership is amended by  
11 filing a certificate of amendment to the certificate of  
12 limited partnership in the office of the secretary of state.

13 The certificate of amendment shall set forth all of the  
14 following:

15 a. The name of the limited partnership.

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

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

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

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

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

28 b. The withdrawal of a general partner.

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

31 3. A general partner who becomes aware that a any  
32 statement in a certificate of limited partnership was false  
33 when made or that any arrangements or other facts described  
34 have changed, making the certificate inaccurate in any

35 respect, shall promptly amend the certificate. An amendment

1 to show the admission of or a change of address of a limited  
2 partner shall be filed within twelve months of the admission  
3 or change of address.

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

7 ~~5. An amendment is not required to reflect distributions~~  
8 ~~made pursuant to rights described in section 487.201,~~  
9 ~~subsection 17, paragraph "j".~~

10 6. 5. A limited partner person is not liable because an  
11 amendment to a certificate of limited partnership has not been  
12 filed to reflect the occurrence of an any event referred to in  
13 subsection 2 if the amendment is filed within the thirty-day  
14 period specified in subsection 2.

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

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

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

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

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

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

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

35 487.205 AMENDMENT OR CANCELLATION BY JUDICIAL ACT.

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

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

16 487.208 SCOPE OF NOTICE.

17 The fact that a certificate of limited partnership is on  
18 file in the office of the secretary of state is notice that  
19 the partnership ~~claims-to-be~~ is a limited partnership and the  
20 persons designated in such certificate as general partners are  
21 general partners, but it is not notice of any other fact.

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

24 487.301 ADMISSION OF NEW LIMITED PARTNERS.

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

27 a. At the time the limited partnership is formed.

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

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

33 a. In the case of a person acquiring a partnership  
34 interest directly from the limited partnership, upon  
35 compliance with the partnership agreement or, if the

1 partnership agreement does not so provide, upon the written  
2 consent of all partners.

3 b. In the case of an assignee of a partnership interest of  
4 a partner who has the power, as provided in section 487.704 to  
5 grant the assignee the right to become a limited partner, upon  
6 the exercise of that power and compliance with any conditions  
7 limiting the grant or exercise of the power.

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

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

16 487.303 LIABILITY TO THIRD PARTIES.

17 1. Except as provided in subsection 4, a limited partner  
18 is not liable for the obligations of a limited partnership  
19 unless the limited partner is also a general partner or, in  
20 addition to the exercise of the limited partner's rights and  
21 powers as a limited partner, the limited partner ~~takes part~~  
22 participates in the control of the business. However, if the  
23 ~~limited partner's participation~~ partner participates in the  
24 ~~control of the business is not substantially the same as the~~  
25 ~~exercise of the powers of a general partner~~, the limited  
26 partner is liable only to persons who transact business with  
27 the limited partnership ~~with actual knowledge of the limited~~  
28 ~~partner's participation in control~~ reasonably believing, based  
29 upon the limited partner's conduct, that the limited partner  
30 is a general partner.

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

34 a. Being a contractor for or an agent or employee of the  
35 limited partnership.

- 1 b. Being a contractor for or an agent, employee, manager,  
2 member, director, officer, or shareholder of or a limited  
3 partner of a general partner, or a partner in a limited  
4 liability partnership that is a general partner.
- 5 c. Consulting with and advising a general partner with  
6 respect to the business of the limited partnership.
- 7 d. Acting as surety for the limited partnership or  
8 guaranteeing or assuming one or more specific obligations of  
9 the limited partnership.
- 10 e. ~~Approving or disapproving an amendment to the~~  
11 ~~partnership agreement.~~ Taking any action required or  
12 permitted by law to bring or pursue a derivative action in the  
13 right of the limited partnership.
- 14 f. ~~Voting on~~ Requesting or attending a meeting of  
15 partners.
- 16 g. Proposing, approving, or disapproving, by voting or  
17 otherwise, one or more of the following matters:
- 18 (1) The dissolution and winding up of the limited  
19 partnership.
- 20 (2) The sale, exchange, lease, mortgage, pledge, or other  
21 transfer of all or substantially all the assets of the limited  
22 partnership ~~other than in the ordinary course of its business.~~
- 23 (3) The incurrence of indebtedness by the limited  
24 partnership other than in the ordinary course of its business.
- 25 (4) A change in the nature of the business.
- 26 (5) The admission or removal of a general partner.
- 27 (6) The admission or removal of a limited partner.
- 28 (7) A transaction involving an actual or potential  
29 conflict of interest between a general partner and the limited  
30 partnership or the limited partners.
- 31 (8) An amendment to the partnership agreement or  
32 certificate of limited partnership.
- 33 (9) Matters related to the business of the limited  
34 partnership not otherwise enumerated in this subsection, which  
35 the partnership agreement states in writing may be subject to

1 the approval or disapproval of limited partners.

2 h. Winding up the limited partnership pursuant to section  
3 487.803.

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

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

11 4. A limited partner who knowingly permits the limited  
12 partner's name to be used in the name of the limited  
13 partnership, except under circumstances permitted by section  
14 487.102, subsection 2, paragraph-"a", is liable to creditors  
15 who extend credit to the limited partnership without actual  
16 knowledge that the limited partner is not a general partner.

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

19 487.304 PERSON ERRONEOUSLY BELIEVING SELF TO BE A LIMITED  
20 PARTNER.

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

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

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

1 this section.

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

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

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

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

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

20 487.401 ADMISSION OF ADDITIONAL GENERAL PARTNERS.

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

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

34 487.402 EVENTS OF WITHDRAWAL.

35 Except as otherwise agreed in writing by approved by the

1 specific written consent of all partners at the time of the  
2 event, a person ceases to be a general partner of a limited  
3 partnership upon the happening of any of the following events:

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

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

8 ~~2.~~ 3. The general partner is removed as a general partner  
9 in accordance with the partnership agreement.

10 ~~3.~~ 4. Unless otherwise provided in ~~the certificate of~~  
11 ~~limited writing in the partnership agreement~~, the general  
12 partner does any of the following:

13 a. Makes an assignment for the benefit of creditors.

14 b. Files a voluntary petition in bankruptcy.

15 c. Is adjudicated a bankrupt or insolvent.

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

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

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

28 ~~4.~~ 5. Unless otherwise provided in ~~the certificate of~~  
29 ~~limited writing in the partnership agreement~~, upon the  
30 expiration of the following time periods:

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

1 that time.

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

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

10 ~~5~~ 6. If the general partner is a natural person when  
11 either of the following occur:

12 a. The general partner dies.

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

15 ~~6~~ 7. If the general partner is acting as a general  
16 partner by virtue of being a trustee of a trust, when the  
17 trust terminates. Substitution of a new trustee is not  
18 termination of the trust.

19 ~~7~~ 8. If the general partner is a separate partnership,  
20 the dissolution and commencement of winding up of the separate  
21 partnership.

22 ~~8~~ 9. If the general partner is a corporation, the filing  
23 of a certificate of dissolution, or its equivalent, for the  
24 corporation or revocation of the corporation's charter.

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

29 ~~9~~ 11. In the case of an estate, the distribution by the  
30 fiduciary of the estate's entire interest in the partnership.

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

33 487.403 GENERAL POWERS AND LIABILITIES.

34 1. Except as provided in this chapter or in the  
35 partnership agreement, a general partner of a limited

1 partnership has the rights and powers and is subject to the  
2 restrictions ~~and-liabilities~~ of a general partner in a  
3 partnership without limited partners.

4 2. Except as provided in this chapter, a general partner  
5 of a limited partnership has the liabilities of a partner in a  
6 partnership without limited partners to persons other than the  
7 partnership and the other partners. Except as provided in  
8 this chapter or in the partnership agreement, a general  
9 partner of a limited partnership has the liabilities of a  
10 partner in a partnership without limited partners to the  
11 partnership and to the other partners.

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

14 487.405 VOTING.

15 The partnership agreement may grant to all or certain  
16 identified general partners the right to vote on a per capita  
17 or any other basis, separately or with all or any class of the  
18 limited partners, on any matter.

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

21 487.502 LIABILITY FOR CONTRIBUTION.

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

25 2. Except as provided in the ~~certificate-of-limited~~  
26 partnership agreement, a partner is obligated to the limited  
27 partnership to perform a any enforceable promise to contribute  
28 cash or property or to perform services even if the partner is  
29 unable to perform because of death, disability, or any other  
30 reason. If the a partner does not make the required  
31 contribution of property or services, the partner is obligated  
32 at the option of the limited partnership ~~may-require-the~~  
33 partner to contribute cash equal to that portion of the value,  
34 as stated in the ~~certificate-of-limited-partnership,~~  
35 partnership records required to be kept pursuant to section

1 487.105, of the stated contribution ~~that~~ which has not been  
2 made.

3 3. Unless otherwise provided in the partnership agreement,  
4 the obligation of a partner to make a contribution or return  
5 money or other property paid or distributed in violation of  
6 this chapter may be compromised only by consent of all  
7 partners. Notwithstanding the compromise, a creditor of a  
8 limited partnership who extends credit or otherwise acts in  
9 reliance on that obligation after the partner signs a writing  
10 which reflects the obligation and before the amendment or  
11 cancellation of such obligation to reflect the compromise may  
12 enforce the original obligation.

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

15 487.503 SHARING OF PROFITS AND LOSSES.

16 The profits and losses of a limited partnership shall be  
17 allocated among the partners, and among classes of partners,  
18 in the manner provided in writing in the partnership  
19 agreement. If the partnership agreement does not so provide  
20 in writing, profits and losses shall be allocated on the basis  
21 of the value, as stated in the ~~certificate-of-limited~~  
22 partnership records required to be kept pursuant to section  
23 487.105, of the contributions made by each partner to the  
24 extent the contributions have been received by the partnership  
25 and have not been returned.

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

28 487.504 SHARING OF DISTRIBUTIONS.

29 Distributions of cash or other assets of a limited  
30 partnership shall be allocated among the partners, and among  
31 classes of partners, in the manner provided in writing in the  
32 partnership agreement. If the partnership agreement does not  
33 so provide in writing, distributions shall be made on the  
34 basis of the value, as stated in the ~~certificate-of-limited~~  
35 partnership records required to be kept pursuant to section

1 487.105, of the contributions made by each partner to the  
2 extent the contributions have been received by the partnership  
3 and have not been returned.

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

6 487.601 INTERIM DISTRIBUTIONS.

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

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

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

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

20 487.603 WITHDRAWAL OF LIMITED PARTNER.

21 A limited partner may withdraw from a limited partnership  
22 only at the time or upon the happening of events specified in  
23 ~~the certificate of limited partnership and in accordance with~~  
24 writing in the partnership agreement. ~~If the certificate does~~  
25 ~~not specify the time or the events upon the happening of which~~  
26 ~~a limited partner may withdraw or a time for the dissolution~~  
27 ~~and winding up of the limited partnership, a limited partner~~  
28 ~~may withdraw upon not less than six months prior written~~  
29 ~~notice directed or delivered to the partnership or to each~~  
30 ~~general partner at the partner's address on the books of the~~  
31 ~~limited partnership at its office in this state.~~

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

34 487.605 DISTRIBUTION IN KIND.

35 Except as provided in ~~the certificate of limited~~ writing in

1 the partnership agreement, a partner, regardless of the nature  
2 of the partner's contribution, has no right to demand and  
3 receive any distribution from a limited partnership in any  
4 form other than cash. Except as provided in writing in the  
5 partnership agreement, a partner shall not be compelled to  
6 accept a distribution of any asset in kind from a limited  
7 partnership to the extent that the percentage of the asset  
8 distributed to the partner exceeds a percentage of that asset  
9 which is equal to the percentage in which the partner shares  
10 in distributions from the limited partnership.

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

13 487.607 LIMITATIONS ON DISTRIBUTION.

14 A partner shall not receive a distribution ~~if~~after from a  
15 limited partnership to the extent that, after giving effect to  
16 the distribution, all liabilities of the limited partnership,  
17 other than liabilities to partners on account of their  
18 partnership interests, will exceed the fair value of the  
19 partnership assets.

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

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

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

32 487.702 ASSIGNMENT OF PARTNERSHIP INTEREST.

33 Except as provided in the partnership agreement, a  
34 partnership interest is assignable in whole or in part. An  
35 assignment of a partnership interest does not dissolve a

1 limited partnership or entitle the assignee to become or to  
2 exercise any rights of a partner. An assignment entitles the  
3 assignee to receive, to the extent assigned, only the  
4 distribution to which the assignor would be entitled. Except  
5 as provided in the partnership agreement, a partner ceases to  
6 be a partner upon assignment of all the partner's partnership  
7 interest.

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

10 487.704 RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER.

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

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

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

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

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

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

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

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

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

11 b. When events specified in the partnership agreement  
12 occur.

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

15 ~~c-~~ d. When a general partner withdraws unless at the time  
16 there is at least one other general partner and the  
17 certificate provisions of limited the partnership permits  
18 agreement permit the business of the limited partnership to be  
19 carried on by the remaining general partner and the remaining  
20 partner does so.

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

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

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

28 1. The limited partnership is without a registered agent  
29 or registered office in this state for sixty days or more.

30 2. The limited partnership does not notify the secretary  
31 of state within sixty days that its registered agent or  
32 registered office has been changed, that its registered agent  
33 has resigned, or that its registered office has been  
34 discontinued.

35 Sec. 43. NEW SECTION. 487.811 PROCEDURE FOR AND EFFECT

1 OF ADMINISTRATIVE DISSOLUTION.

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

7 2. If the limited partnership does not correct each ground  
8 for dissolution or demonstrate to the reasonable satisfaction  
9 of the secretary of state that each ground determined by the  
10 secretary of state to exist does not exist within sixty days  
11 after service of the notice is perfected under section  
12 487.104, the secretary of state shall administratively  
13 dissolve the limited partnership by signing a certificate of  
14 dissolution that recites the ground or grounds for dissolution  
15 and its effective date. The secretary of state shall file the  
16 original of the certificate and serve a copy on the limited  
17 partnership under section 487.104.

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

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

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

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

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

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

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

13 c. State a name that satisfies the requirements of section  
14 487.102.

15 2. If the secretary of state determines that the  
16 application contains the information required by subsection 1,  
17 and that the information is correct, the secretary of state  
18 shall cancel the certificate of dissolution and prepare a  
19 certificate of reinstatement that recites the secretary of  
20 state's determination and the effective date of reinstatement,  
21 file the original of the certificate, and serve a copy on the  
22 limited partnership under section 487.104. If the limited  
23 partnership's name in subsection 1, paragraph "c", is  
24 different than the limited partnership's name in subsection 1,  
25 paragraph "a", the certificate of reinstatement shall  
26 constitute an amendment to the articles of limited partnership  
27 insofar as it pertains to the limited partnership's name.

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

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

34 1. If the secretary of state denies a limited  
35 partnership's application for reinstatement following

1 administrative dissolution, the secretary of state shall serve  
2 the limited partnership under section 487.104 with a written  
3 notice that explains the reason or reasons for denial.

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

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

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

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

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

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

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

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

32 487.905 AMENDED REGISTRATION.

33 1. A foreign limited partnership registered to transact  
34 business in this state shall obtain an amended certificate of  
35 registration from the secretary of state if either of the

1 following conditions exist:

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

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

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

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

12 487.1002 PROPER PLAINTIFF.

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

21 Sec. 50. Section 487.1104, Code 1997, is amended to read  
22 as follows:

23 487.1104 EFFECT ON EXISTING LIMITED PARTNERSHIPS.

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

34 Sec. 51. NEW SECTION. 487.1106 SAVINGS CLAUSE.

35 The repeal of any statutory provision effective July 1,

1 1997, does not impair or otherwise affect the organization or  
2 the continued existence of a limited partnership existing on  
3 July 1, 1997, nor does the repeal of any existing statutory  
4 provision effective July 1, 1997, impair any contract or any  
5 right accrued before July 1, 1997.  
6 Sec. 52. Sections 487.206, 487.903, and 487.1105, Code  
7 1997, are repealed.

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## HOUSE FILE 642

-1273

- 1 Amend House File 642 as follows:  
2 1. Page 1, line 22, by inserting after the word  
3 "a" the following: "registered limited partnership".  
4 2. Page 1, line 24, by inserting after the word  
5 "a" the following: "foreign registered limited  
6 partnership".  
7 3. Page 1, line 28, by inserting after the words  
8 "of the" the following: "registered limited  
9 partnership".  
10 4. Page 1, by inserting after line 31 the  
11 following:  
12 "Sec. \_\_\_\_ . Section 487.102, Code 1997, is amended  
13 by adding the following new subsection:  
14 NEW SUBSECTION. 6. This chapter does not control  
15 the use of fictitious names. However, a limited  
16 partnership which uses a fictitious name in this state  
17 shall deliver to the secretary of state for filing a  
18 copy of the resolution of the limited partnership  
19 certified by its general partners, adopting the  
20 fictitious name."  
21 5. Page 1, by inserting after 31, the following:  
22 "Sec. \_\_\_\_ . Section 487.103, subsection 2, Code  
23 1997, is amended to read as follows:  
24 2. The reservation shall be made by filing with  
25 the secretary of state an application to reserve a  
26 specified name. If the secretary of state finds that  
27 the name is available for use by a domestic or foreign  
28 limited partnership, the secretary shall reserve the  
29 name for the exclusive use of the applicant for a  
30 period of ninety one hundred twenty days. The right  
31 to the exclusive use of a reserved name may be  
32 transferred to any other person by filing in the  
33 office of the secretary of state a notice of the  
34 transfer, executed by the applicant for whom the name  
35 was reserved and specifying the name and address of  
36 the transferee."  
37 6. Page 4, line 26, by striking the figure "20"  
38 and inserting the following: "100".  
39 7. Page 4, line 28, by striking the figure "20"  
40 and inserting the following: "100".  
41 8. Page 5, by striking lines 1 and 2.  
42 9. Page 5, line 15, by striking the word  
43 "corporation" and inserting the following: "limited  
44 partnership".  
45 10. Page 6, lines 24 and 25, by striking the  
46 words "and issue any necessary certificate".  
47 11. Page 25, by inserting after line 14 the  
48 following:  
49 "Sec. \_\_\_\_ . Section 487.904, Code 1997, is amended  
by striking the section and inserting in lieu thereof

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Page 2

1 the following:

2 487.904 AMENDED REGISTRATION.

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

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

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

12 2. The requirements of section 487.902 for  
13 obtaining an original certificate of registration  
14 apply to obtaining an amended certificate under this  
15 section."

16 12. Page 26, line 11, by inserting after the  
17 figure "487.206" the following: ", 487.905,".

18 13. By renumbering as necessary.

By DINKLA of Guthrie

H-1273 FILED MARCH 20, 1997

*Adapted*  
*3-24-97*  
*(p. 743)*

## HOUSE FILE 642

H-1275

1 Amend the amendment, H-1273, to House File 642, as  
2 follows:

3 1. Page 1, line 3, by inserting after the word  
4 "limited" the following: "liability".

5 2. Page 1, line 5, by inserting after the word  
6 "limited" the following: "liability".

7 3. Page 1, line 8, by inserting after the word  
8 "limited" the following: "liability".

9 4. Page 1, by inserting after line 46 the  
10 following:

11 "\_\_\_\_. Page 13, line 4, by striking the word "NEW"  
12 and inserting the following: "NEW".

13 \_\_\_\_\_. Page 25, by inserting after line 2 the  
14 following:

15 "Sec. \_\_\_\_\_. NEW SECTION. 487.810 GROUNDS FOR  
16 ADMINISTRATIVE DISSOLUTION.

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

20 1. The limited partnership is without a registered  
21 agent or registered office in this state for sixty  
22 days or more.

23 2. The limited partnership does not notify the  
24 secretary of state within sixty days that its  
25 registered agent or registered office has been  
26 changed, that its registered agent has resigned, or  
27 that its registered office has been discontinued.

28 Sec. \_\_\_\_\_. NEW SECTION. 487.811 PROCEDURE FOR AND  
29 EFFECT OF ADMINISTRATIVE DISSOLUTION.

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

36 2. If the limited partnership does not correct  
37 each ground for dissolution or demonstrate to the  
38 reasonable satisfaction of the secretary of state that  
39 each ground determined by the secretary of state to  
40 exist does not exist within sixty days after service  
41 of the notice is perfected under section 487.104, the  
42 secretary of state shall administratively dissolve the  
43 limited partnership by signing a certificate of  
44 dissolution that recites the ground or grounds for  
45 dissolution and its effective date. The secretary of  
46 state shall file the original of the certificate and  
47 serve a copy on the limited partnership under section  
48 487.104.

49 3. A limited partnership administratively  
50 dissolved continues its existence but shall not carry

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1 on any business except that necessary to wind up and  
2 liquidate its business and affairs under section  
3 487.803.

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

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

21 Sec. \_\_\_\_ . NEW SECTION. 487.812 REINSTATEMENT  
22 FOLLOWING ADMINISTRATIVE DISSOLUTION.

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

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

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

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

36 2. If the secretary of state determines that the  
37 application contains the information required by  
38 subsection 1, and that the information is correct, the  
39 secretary of state shall cancel the certificate of  
40 dissolution and prepare a certificate of reinstatement  
41 that recites the secretary of state's determination  
42 and the effective date of reinstatement, file the  
43 original of the certificate, and serve a copy on the  
44 limited partnership under section 487.104. If the  
45 limited partnership's name in subsection 1, paragraph  
46 "c", is different than the limited partnership's name  
47 in subsection 1, paragraph "a", the certificate of  
48 reinstatement shall constitute an amendment to the  
49 articles of limited partnership insofar as it pertains  
50 to the limited partnership's name.

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

5 Sec. \_\_\_\_ . NEW SECTION. 487.813 APPEAL FROM  
6 DENIAL OF REINSTATEMENT.

7 1. If the secretary of state denies a limited  
8 partnership's application for reinstatement following  
9 administrative dissolution, the secretary of state  
10 shall serve the limited partnership under section  
11 487.104 with a written notice that explains the reason  
12 or reasons for denial.

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

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

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

28 5. Page 1, line 49, by striking the figure  
29 "487.904" and inserting the following: "487.905".

30 6. Page 2, line 2, by striking the figure  
31 "487.904" and inserting the following: "487.905".

32 7. Page 2, by inserting after line 15 the  
33 following:

34 " \_\_\_\_ . Page 25, line 35, by inserting after the  
35 word "withdrawal" the following: "of a general  
36 partner"."

37 8. Page 2, line 17, by striking the figure  
38 "487.905" and inserting the following: "487.903".

39 9. By renumbering as necessary.

By DINKLA of Guthrie

H-1275 FILED MARCH 24, 1997

*adopted*  
3-24-97 (P.743)

## SENATE AMENDMENT TO HOUSE FILE 642

H-1962

1 Amend House File 642, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 30, by inserting after line 5 the  
4 following:

5 "Sec. \_\_\_\_\_. Section 490.1109, subsection 3,  
6 paragraph e, as enacted in 1997 Iowa Acts, House File  
7 628, if enacted, is amended to read as follows:

8 e. "Interested shareholder" means any person,  
9 other than the corporation and any direct or indirect  
10 majority-owned subsidiary of the corporation, that is  
11 the owner of fifteen ten percent or more of the  
12 outstanding voting stock of the corporation, or is an  
13 affiliate or associate of the corporation and was the  
14 owner of fifteen ten percent or more of the  
15 outstanding voting stock of the corporation at any  
16 time within the three-year period immediately prior to  
17 the date on which it is sought to be determined  
18 whether such person is an interested shareholder, and  
19 the affiliates and associates of such person.

20 "Interested shareholder" does not include either of  
21 the following:

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

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

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

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

41 ~~(b)---From a person subject to subparagraph  
42 subdivision (a) by gift, devise, or in a transaction  
43 in which no consideration for the shares was  
44 exchanged;~~

45 ~~(2)---A a person whose ownership of shares in excess  
46 of the fifteen ten percent limitation is the result of  
47 action taken solely by the corporation, provided that  
48 such person is an interested shareholder if, after  
49 such action by the corporation, the person acquires  
50 additional shares of voting stock of the corporation,~~

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1 other than as a result of further corporate action not  
2 caused, directly or indirectly, by such person.

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

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

12 13. "Limited liability company" or "domestic  
13 limited liability company" means ~~an entity that is~~ an  
14 unincorporated association having ~~two~~ one or more  
15 members, and ~~that is~~ organized under or subject to  
16 this chapter.

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

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

27 Sec. \_\_\_\_\_. Section 490A.202, subsection 17, Code  
28 1997, is amended by striking the subsection and  
29 inserting in lieu thereof the following:

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

33 Sec. \_\_\_\_\_. Section 490A.303, subsection 1,  
34 paragraph d, Code 1997, is amended to read as follows:  
35 d. The period of its duration, which ~~shall not~~ may  
36 be perpetual.

37 Sec. \_\_\_\_\_. NEW SECTION. 490A.304 CONVERSION OF  
38 CERTAIN ENTITIES TO A LIMITED LIABILITY COMPANY.

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

45 2. Any other entity may convert to a domestic  
46 limited liability company by complying with subsection  
47 8 and filing in the office of the secretary of state  
48 both of the following:

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

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

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

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

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

13 c. The name of the limited liability company.

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

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

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

37 6. When a conversion is effective, for all  
38 purposes of the laws of this state, all of the rights,  
39 privileges, and powers of the converting entity, and  
40 all property, real, personal, and mixed, and all debts  
41 due to the converting entity, as well as all other  
42 things and causes of action belonging to such entity,  
43 are vested in the domestic limited liability company  
44 and are the property of the domestic limited liability  
45 company as they were of the converting entity. The  
46 title to any real property vested by deed or otherwise  
47 in the converting entity shall not revert or be in any  
48 way impaired by reason of this chapter, and all rights  
49 of creditors and all liens upon any property of such  
50 other entity are preserved unimpaired, and all debts,

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1 liabilities, and duties of the converting entity shall  
2 attach to the domestic limited liability company, and  
3 may be enforced against it to the same extent as if  
4 the debts, liabilities, and duties had been incurred  
5 or contracted by the domestic limited liability  
6 company.

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

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

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

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

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

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

46 a. The operating agreement creates one or more  
47 series.

48 b. Separate and distinct records are maintained  
49 for the series and the assets associated with the  
50 series are held and accounted for separately from the

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1 other assets of the limited liability company, or from  
2 any other series of the limited liability company.

3 c. The operating agreement provides for such  
4 limitation on liabilities.

5 d. Notice of the limitation on liabilities of a  
6 series is set forth in the articles of organization of  
7 the limited liability company. Filing of articles of  
8 organization containing a notice of the limitation on  
9 liabilities of a series in the office of the secretary  
10 of state constitutes notice of the limitation on  
11 liabilities of such series.

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

17 4. An operating agreement may provide for classes  
18 or groups of members or managers associated with a  
19 series having such relative rights, powers, and duties  
20 as the operating agreement may provide. The operating  
21 agreement may provide for the future creation of  
22 additional classes or groups of members or managers  
23 associated with the series having such relative  
24 rights, powers, and duties as may from time to time be  
25 established, including rights, powers, and duties  
26 senior to existing classes and groups of members or  
27 managers associated with the series. An operating  
28 agreement may provide for the taking of an action,  
29 including the amendment of the operating agreement,  
30 without the vote or approval of any member or manager  
31 or class or group of members or managers, including  
32 all action to create under the provisions of the  
33 operating agreement a class or group of the series of  
34 membership interests that was not previously  
35 outstanding. An operating agreement may provide that  
36 any member or class or group of members associated  
37 with a series have no voting rights.

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

47 6. Unless otherwise provided in an operating  
48 agreement, the management of a series shall be vested  
49 in the members associated with such series in  
50 proportion to the then-current percentage or other

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1 interest of members in the profits of the series owned  
2 by all of the members associated with such series.  
3 The decision of members owning more than fifty percent  
4 of the series or other interest in the profits shall  
5 control. However, if an operating agreement provides  
6 for the management of the series, in whole or in part,  
7 by a manager, the management of the series, to the  
8 extent so provided, is vested in the manager who shall  
9 be chosen as provided in the operating agreement. The  
10 manager of the series shall also hold the offices and  
11 have the responsibilities accorded to managers as set  
12 forth in the operating agreement. A series may have  
13 more than one manager. A manager shall cease to be a  
14 manager with respect to a series as provided in the  
15 operating agreement. Except as otherwise provided in  
16 the operating agreement, an event under this chapter  
17 or identified in an operating agreement that causes a  
18 manager to cease to be a manager with respect to a  
19 series, by itself, shall not cause the manager to  
20 cease to be a manager of the limited liability company  
21 or with respect to any other series of the limited  
22 liability company.

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

35 8. Notwithstanding any other provision of this  
36 chapter, a limited liability company may make a  
37 distribution with respect to a series that has been  
38 established pursuant to subsection 1. However, a  
39 limited liability company shall not make a  
40 distribution with respect to a series that has been  
41 established pursuant to subsection 1 to the extent  
42 that at the time of the distribution, after giving  
43 effect to the distribution, all liabilities of such  
44 series, other than liabilities to members on account  
45 of their membership interests with respect to such  
46 series and liabilities for which the recourse of  
47 creditors is limited to specified property of such  
48 series, exceed the fair value of the assets associated  
49 with such series. However, the fair value of an asset  
50 of the series that is subject to a liability for which

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1 the recourse of creditors is limited shall be included  
2 in the assets associated with such series only to the  
3 extent that the fair value of that asset exceeds that  
4 liability. A member who receives a distribution in  
5 violation of this subsection, and who knew at the time  
6 of the distribution that the distribution violated  
7 this subsection, is liable for the amount of the  
8 distribution. Subject to section 490A.807, which  
9 applies to any distribution made with respect to a  
10 series under this subsection, this subsection shall  
11 not affect any obligation or liability of a member  
12 under an agreement or other applicable law for the  
13 amount of a distribution.

14 9. Unless otherwise provided in the operating  
15 agreement, a member shall cease to be associated with  
16 a series and to have the power to exercise any rights  
17 or powers of a member with respect to such series upon  
18 the assignment of all of the member's membership  
19 interest with respect to such series. Except as  
20 otherwise provided in an operating agreement, an event  
21 under this chapter or identified in an operating  
22 agreement that causes a member to cease to be  
23 associated with a series, by itself, shall not cause  
24 such member to cease to be associated with any other  
25 series or terminate the continued membership of a  
26 member in the limited liability company.

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

38 a. At the time specified in the operating  
39 agreement.

40 b. Upon the happening of events specified in the  
41 operating agreement.

42 c. Unless otherwise provided in the operating  
43 agreement, upon the written consent of all members  
44 associated with such series.

45 d. The termination of such series under subsection  
46 10.

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

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1 a. A manager associated with a series who has not  
2 wrongfully terminated the series.

3 b. If there is no manager of a series, the members  
4 associated with the series or a person approved by the  
5 members associated with the series.

6 c. If there is more than one class or group of  
7 members associated with the series, then by each class  
8 or group of members associated with the series, in  
9 either case, by members who own more than fifty  
10 percent of the then-current percentage or other  
11 interest in the profits of the series owned by all of  
12 the members associated with the series or by the  
13 members of each class or group associated with the  
14 series.

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

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

43 13. A foreign limited liability company that is  
44 registering to do business in this state under this  
45 chapter which is governed by an operating agreement  
46 that establishes or provides for the establishment of  
47 designated series of members, managers, or membership  
48 interests having separate rights, powers, or duties  
49 with respect to specified property or obligations of  
50 the foreign limited liability company, or profits and

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1 losses associated with the specified property or  
2 obligations, shall indicate that fact on the  
3 application for registration as a foreign limited  
4 liability company. In addition, the foreign limited  
5 liability company shall state on the application  
6 whether the debts, liabilities, and obligations  
7 incurred, contracted for, or otherwise existing with  
8 respect to a particular series, if any, are  
9 enforceable against the assets of such series only,  
10 and not against the assets of the foreign limited  
11 liability company generally.

12 Sec. \_\_\_\_ . NEW SECTION. 490A.306 ADMISSION OF  
13 MEMBERS.

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

18 a. The formation of the limited liability company.

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

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

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

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

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

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1 compliance with the operating agreement of the  
2 surviving or resulting limited liability company.  
3 3. A person may be admitted to a limited liability  
4 company as a member of the limited liability company  
5 and may receive a membership interest in the limited  
6 liability company without making a contribution or  
7 being obligated to make a contribution to the limited  
8 liability company. Unless otherwise provided in an  
9 operating agreement, a person may be admitted to a  
10 limited liability company as a member of the limited  
11 liability company without acquiring a membership  
12 interest in the limited liability company.

13 Sec. \_\_\_\_ . NEW SECTION. 490A.307 CLASSES AND  
14 VOTING.

15 1. An operating agreement may provide for classes  
16 or groups of members and the relative rights, powers,  
17 and duties of such members, and may provide for the  
18 future creation of additional classes or groups of  
19 members having such relative rights, powers, and  
20 duties as may from time to time be established,  
21 including rights, powers, and duties senior to  
22 existing classes and groups of members. An operating  
23 agreement may provide for taking action, including the  
24 amendment of the operating agreement, without the vote  
25 or approval of any member or class or group of  
26 members, including an action to create a class or  
27 group of membership interests that was not previously  
28 outstanding. An operating agreement may provide that  
29 any member or class or group of members has no voting  
30 rights.

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

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

46 Sec. \_\_\_\_ . NEW SECTION. 490A.603 LIABILITY OF  
47 MEMBERS.

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

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1 liable solely by reason of being a member or manager  
2 of the limited liability company under any judgment,  
3 or in any other manner, for any debt, obligation, or  
4 liability of the limited liability company, whether  
5 that liability or obligation arises in contract, tort,  
6 or otherwise.

7 2. A member of a limited liability company is  
8 personally liable under a judgment or for any debt,  
9 obligation, or liability of the limited liability  
10 company, whether that liability or obligation arises  
11 in contract, tort, or otherwise, under the same or  
12 similar circumstances and to the same extent as a  
13 shareholder of a corporation may be personally liable  
14 for any debt, obligation, or liability of the  
15 corporation, except that the failure to hold meetings  
16 of members or managers or the failure to observe  
17 formalities pertaining to the calling or conduct of  
18 meetings shall not be considered a factor tending to  
19 establish that the members have personal liability for  
20 any debt, obligation, or liability of the limited  
21 liability company.

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

26 Sec. \_\_\_\_\_. Section 490A.702, subsection 4, Code  
27 1997, is amended by striking the subsection and  
28 inserting in lieu thereof the following:

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

34 Sec. \_\_\_\_\_. Section 490A.702, Code 1997, is amended  
35 by adding the following new subsections:

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

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

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

46 c. By the attorney general under section  
47 490A.1409.

48 NEW SUBSECTION. 4B. In a member's proceeding  
49 under subsection 4A, paragraph "a", to enjoin an  
50 unauthorized act, the court may enjoin or set aside

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1 the act if equitable and if all affected persons are  
2 parties to the proceeding. The court may award  
3 damages, other than anticipated profits, for loss  
4 suffered by the limited liability company or another  
5 party as a result of the unauthorized act being  
6 enjoined.

7 Sec. \_\_\_\_\_. Section 490A.703, Code 1997, is amended  
8 by adding the following new subsection:

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

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

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

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

37 Sec. \_\_\_\_\_. NEW SECTION. 490A.704A RESIGNATION OR  
38 WITHDRAWAL OF MEMBER.

39 1. a. This section applies to a limited liability  
40 company whose original articles of organization are  
41 filed with the secretary of state on or after July 1,  
42 1997.

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

48 c. If no provision is made in the operating  
49 agreement, a limited liability company whose original  
50 articles of organization were filed with the secretary

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1 of state and effective on or prior to June 30, 1997,  
2 is subject to section 490A.704.

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

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

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

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

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

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

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

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

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

49 Sec. \_\_\_\_. NEW SECTION. 490A.705A CLASSES OF  
50 MANAGERS AND VOTING.

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

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

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

32 Sec. \_\_\_\_ . Section 490A.709, subsection 2,  
33 unnumbered paragraph 1, Code 1997, is amended to read  
34 as follows:

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

41 Sec. \_\_\_\_ . NEW SECTION. 490A.710 DELEGATION OF  
42 RIGHTS AND POWERS TO MANAGE.

43 Unless otherwise provided in the operating  
44 agreement, a member or manager of a limited liability  
45 company may delegate to one or more other persons the  
46 member's or manager's rights and powers to manage and  
47 control the business and affairs of the limited  
48 liability company, including to agents and employees  
49 of a member or manager of the limited liability  
50 company, and to delegate by a management agreement or

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1 another agreement with other persons. Unless  
2 otherwise provided in the operating agreement, such  
3 delegation by a member or manager of a limited  
4 liability company shall not cause the member or  
5 manager to cease to be a member or manager of the  
6 limited liability company.

7 Sec. \_\_\_\_ . NEW SECTION. 490A.711 CONTRACTUAL  
8 APPRAISAL RIGHTS.

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

23 Sec. \_\_\_\_ . NEW SECTION. 490A.712 CESSATION OF  
24 MEMBERSHIP.

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

28 1. The person withdraws or resigns from the  
29 limited liability company.

30 2. The person is removed as a member pursuant to  
31 the operating agreement.

32 3. Unless otherwise provided in the operating  
33 agreement or with the consent of all other members,  
34 the person does any of the following:

35 a. Makes an assignment for the benefit of  
36 creditors.

37 b. Files a voluntary petition in bankruptcy.

38 c. Is adjudged bankrupt or insolvent or has  
39 entered against the person an order for relief in any  
40 bankruptcy or insolvency proceeding.

41 d. Files a petition or answer seeking for that  
42 person any reorganization, arrangement, composition,  
43 readjustment, liquidation, dissolution, or similar  
44 relief under any statute or rule.

45 e. Seeks, consents to, or acquiesces in the  
46 appointment of a trustee, receiver, or liquidator for  
47 the member or for all or any substantial part of the  
48 member's properties.

49 f. Files an answer or other pleading admitting or  
50 failing to contest the material allegations of a

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1 petition filed against the person in any proceeding  
2 described in this subsection.

3 4. Unless otherwise provided in the operating  
4 agreement, or with the consent of all other members,  
5 the continuation of any proceeding against the person  
6 seeking reorganization, arrangement, composition,  
7 readjustment, liquidation, dissolution, or similar  
8 relief under any statute or rule for one hundred  
9 twenty days after the commencement of such proceeding,  
10 or the appointment of a trustee, receiver, or  
11 liquidator for the member or for all or any  
12 substantial part of the member's properties without  
13 the member's agreement or acquiescence, which  
14 appointment is not vacated or stayed for one hundred  
15 twenty days or, if the appointment is stayed, for one  
16 hundred twenty days after the expiration of the stay  
17 during which period the appointment is not vacated.

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

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

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

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

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

45 Sec. \_\_\_\_\_. Section 490A.801, Code 1997, is amended  
46 by adding the following new subsection:

47 NEW SUBSECTION. 4. An operating agreement may  
48 provide that the interest of any member who fails to  
49 make a contribution that the member is obligated to  
50 make is subject to specified penalties for, or

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1 specified consequences of, such failure. The penalty  
2 or consequence may take the form of reducing or  
3 eliminating the defaulting member's proportionate  
4 interest in a limited liability company, subordinating  
5 the member's membership interest to that of a  
6 nondefaulting member, a forced sale of the member's  
7 membership interest, forfeiture of the member's  
8 membership interest, the lending by other members of  
9 the amount necessary to meet the member's commitment,  
10 a fixing of the value of the member's membership  
11 interest by appraisal or by formula and redemption, or  
12 sale of the member's membership interest at such value  
13 or other penalty or consequence.

14 Sec. \_\_\_\_ . NEW SECTION. 490A.809 RIGHT TO  
15 DISTRIBUTION.

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

26 Sec. \_\_\_\_ . Section 490A.902, unnumbered paragraph  
27 1, Code 1997, is amended to read as follows:

28 Unless otherwise provided in the articles of  
29 organization or an operating agreement, a membership  
30 interest in a limited liability company is assignable  
31 in whole or in part. An assignment of an interest in  
32 a limited liability company does not ~~of-itself~~  
33 dissolve the limited liability company. An Except as  
34 provided in the articles of organization or an  
35 operating agreement, an assignment does not entitle  
36 the assignee to participate in the management and  
37 affairs of the limited liability company or to become  
38 or to exercise any rights of a member. Such Except as  
39 provided in the articles of organization or an  
40 operating agreement, an assignment entitles the  
41 assignee to receive, to the extent assigned, only the  
42 distribution to which the assignor would be entitled.  
43 Except as provided in the articles of organization or  
44 an operating agreement, a member ceases to be a member  
45 upon assignment of the member's entire membership  
46 interest.

47 Sec. \_\_\_\_ . Section 490A.1301, subsection 3, Code  
48 1997, is amended by striking the subsection."

49 2. Title page, line 1, by inserting after the  
50 word "to" the following: "the organization and

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- 1 operation of certain legal entities, including".  
2 3. Title page, line 5, by inserting after the  
3 word "partnerships," the following: "and including  
4 limited liability companies and the conversion of  
5 other entities to limited liability companies, and the  
6 rights, duties, obligations, and interests of members  
7 and managers with respect to such companies,".  
8 4. By renumbering as necessary.

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*House Concurred**4-29-97**(P. 1698)*

## HOUSE FILE 642

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1 Amend House File 642, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 30, by inserting after line 5 the  
4 following:  
5 "Sec. \_\_\_\_\_. Section 490A.102, subsections 13, 16,  
6 and 18, Code 1997, are amended to read as follows:  
7 13. "Limited liability company" or "domestic  
8 limited liability company" means ~~an entity that is~~ an  
9 unincorporated association having ~~two~~ one or more  
10 members, and ~~that is~~ organized under or subject to  
11 this chapter.  
12 16. "Member" means a person with a membership  
13 interest in a limited liability company under this  
14 chapter or, with respect to a foreign limited  
15 liability company, under the laws of the state,  
16 foreign country, or other foreign jurisdiction under  
17 which such company is organized.  
18 18. "Operating agreement" means any agreement,  
19 written or oral, of the members as to the affairs of a  
20 limited liability company and the conduct of its  
21 business.  
22 Sec. \_\_\_\_\_. Section 490A.202, subsection 17, Code  
23 1997, is amended by striking the subsection and  
24 inserting in lieu thereof the following:  
25 17. Indemnify and hold harmless a member, manager,  
26 or other person against a claim, liability, or other  
27 demand, as provided in an operating agreement.  
28 Sec. \_\_\_\_\_. NEW SECTION. 490A.304 CONVERSION OF  
29 CERTAIN ENTITIES TO A LIMITED LIABILITY COMPANY.  
30 1. As used in this section, the term "other  
31 entity" means a corporation, business trust or  
32 association, real estate investment trust, common-law  
33 trust, or any other unincorporated business, including  
34 any partnership, whether general or limited, or a  
35 foreign limited liability company.  
36 2. Any other entity may convert to a domestic  
37 limited liability company by complying with subsection  
38 8 and filing in the office of the secretary of state  
39 both of the following:  
40 a. Articles of conversion to a limited liability  
41 company executed by one or more authorized persons.  
42 b. Articles of organization executed by one or  
43 more authorized persons.  
44 3. The articles of conversion to a limited  
45 liability company shall state all of the following:  
46 a. The date on which, and jurisdiction where, the  
47 converting entity was first created, formed,  
48 incorporated, or otherwise came into being and, if it  
49 has changed, its jurisdiction immediately prior to its  
50 conversion to a domestic limited liability company.

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

4 c. The name of the limited liability company.

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

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

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

28 6. When a conversion is effective, for all  
29 purposes of the laws of this state, all of the rights,  
30 privileges, and powers of the converting entity, and  
31 all property, real, personal, and mixed, and all debts  
32 due to the converting entity, as well as all other  
33 things and causes of action belonging to such entity,  
34 are vested in the domestic limited liability company  
35 and are the property of the domestic limited liability  
36 company as they were of the converting entity. The  
37 title to any real property vested by deed or otherwise  
38 in the converting entity shall not revert or be in any  
39 way impaired by reason of this chapter, and all rights  
40 of creditors and all liens upon any property of such  
41 other entity are preserved unimpaired, and all debts,  
42 liabilities, and duties of the converting entity shall  
43 attach to the domestic limited liability company, and  
44 may be enforced against it to the same extent as if  
45 the debts, liabilities, and duties had been incurred  
46 or contracted by the domestic limited liability  
47 company.

48 7. Unless otherwise agreed, or as required under  
49 the laws of a jurisdiction other than this state, the  
50 converting entity is not required to wind up its

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1 affairs or pay its liabilities and distribute its  
2 assets, and the conversion does not constitute a  
3 dissolution of the converting entity.

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

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

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

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

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

37 a. The operating agreement creates one or more  
38 series.

39 b. Separate and distinct records are maintained  
40 for the series and the assets associated with the  
41 series are held and accounted for separately from the  
42 other assets of the limited liability company, or from  
43 any other series of the limited liability company.

44 c. The operating agreement provides for such  
45 limitation on liabilities.

46 d. Notice of the limitation on liabilities of a  
47 series is set forth in the articles of organization of  
48 the limited liability company. Filing of articles of  
49 organization containing a notice of the limitation on  
50 liabilities of a series in the office of the secretary

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1 of state constitutes notice of the limitation on  
2 liabilities of such series.

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

8 4. An operating agreement may provide for classes  
9 or groups of members or managers associated with a  
10 series having such relative rights, powers, and duties  
11 as the operating agreement may provide. The operating  
12 agreement may provide for the future creation of  
13 additional classes or groups of members or managers  
14 associated with the series having such relative  
15 rights, powers, and duties as may from time to time be  
16 established, including rights, powers, and duties  
17 senior to existing classes and groups of members or  
18 managers associated with the series. An operating  
19 agreement may provide for the taking of an action,  
20 including the amendment of the operating agreement,  
21 without the vote or approval of any member or manager  
22 or class or group of members or managers, including  
23 all action to create under the provisions of the  
24 operating agreement a class or group of the series of  
25 membership interests that was not previously  
26 outstanding. An operating agreement may provide that  
27 any member or class or group of members associated  
28 with a series have no voting rights.

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

38 6. Unless otherwise provided in an operating  
39 agreement, the management of a series shall be vested  
40 in the members associated with such series in  
41 proportion to the then-current percentage or other  
42 interest of members in the profits of the series owned  
43 by all of the members associated with such series.  
44 The decision of members owning more than fifty percent  
45 of the series or other interest in the profits shall  
46 control. However, if an operating agreement provides  
47 for the management of the series, in whole or in part,  
48 by a manager, the management of the series, to the  
49 extent so provided, is vested in the manager who shall  
50 be chosen as provided in the operating agreement. The

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1 manager of the series shall also hold the offices and  
2 have the responsibilities accorded to managers as set  
3 forth in the operating agreement. A series may have  
4 more than one manager. A manager shall cease to be a  
5 manager with respect to a series as provided in the  
6 operating agreement. Except as otherwise provided in  
7 the operating agreement, an event under this chapter  
8 or identified in an operating agreement that causes a  
9 manager to cease to be a manager with respect to a  
10 series, by itself, shall not cause the manager to  
11 cease to be a manager of the limited liability company  
12 or with respect to any other series of the limited  
13 liability company.

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

26 8. Notwithstanding any other provision of this  
27 chapter, a limited liability company may make a  
28 distribution with respect to a series that has been  
29 established pursuant to subsection 1. However, a  
30 limited liability company shall not make a  
31 distribution with respect to a series that has been  
32 established pursuant to subsection 1 to the extent  
33 that at the time of the distribution, after giving  
34 effect to the distribution, all liabilities of such  
35 series, other than liabilities to members on account  
36 of their membership interests with respect to such  
37 series and liabilities for which the recourse of  
38 creditors is limited to specified property of such  
39 series, exceed the fair value of the assets associated  
40 with such series. However, the fair value of an asset  
41 of the series that is subject to a liability for which  
42 the recourse of creditors is limited shall be included  
43 in the assets associated with such series only to the  
44 extent that the fair value of that asset exceeds that  
45 liability. A member who receives a distribution in  
46 violation of this subsection, and who knew at the time  
47 of the distribution that the distribution violated  
48 this subsection, is liable for the amount of the  
49 distribution. Subject to section 490A.807, which  
50 applies to any distribution made with respect to a

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1 series under this subsection, this subsection shall  
2 not affect any obligation or liability of a member  
3 under an agreement or other applicable law for the  
4 amount of a distribution.

5 9. Unless otherwise provided in the operating  
6 agreement, a member shall cease to be associated with  
7 a series and to have the power to exercise any rights  
8 or powers of a member with respect to such series upon  
9 the assignment of all of the member's membership  
10 interest with respect to such series. Except as  
11 otherwise provided in an operating agreement, an event  
12 under this chapter or identified in an operating  
13 agreement that causes a member to cease to be  
14 associated with a series, by itself, shall not cause  
15 such member to cease to be associated with any other  
16 series or terminate the continued membership of a  
17 member in the limited liability company.

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

29 a. At the time specified in the operating  
30 agreement.

31 b. Upon the happening of events specified in the  
32 operating agreement.

33 c. Unless otherwise provided in the operating  
34 agreement, upon the written consent of all members  
35 associated with such series.

36 d. The termination of such series under subsection  
37 10.

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

42 a. A manager associated with a series who has not  
43 wrongfully terminated the series.

44 b. If there is no manager of a series, the members  
45 associated with the series or a person approved by the  
46 members associated with the series.

47 c. If there is more than one class or group of  
48 members associated with the series, then by each class  
49 or group of members associated with the series, in  
50 either case, by members who own more than fifty

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1 percent of the then-current percentage or other  
2 interest in the profits of the series owned by all of  
3 the members associated with the series or by the  
4 members of each class or group associated with the  
5 series.

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

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

34 13. A foreign limited liability company that is  
35 registering to do business in this state under this  
36 chapter which is governed by an operating agreement  
37 that establishes or provides for the establishment of  
38 designated series of members, managers, or membership  
39 interests having separate rights, powers, or duties  
40 with respect to specified property or obligations of  
41 the foreign limited liability company, or profits and  
42 losses associated with the specified property or  
43 obligations, shall indicate that fact on the  
44 application for registration as a foreign limited  
45 liability company. In addition, the foreign limited  
46 liability company shall state on the application  
47 whether the debts, liabilities, and obligations  
48 incurred, contracted for, or otherwise existing with  
49 respect to a particular series, if any, are  
50 enforceable against the assets of such series only,

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1 and not against the assets of the foreign limited  
2 liability company generally.

3 Sec. \_\_\_\_ . NEW SECTION. 490A.306 ADMISSION OF  
4 MEMBERS.

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

9 a. The formation of the limited liability company.

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

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

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

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

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

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

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1 limited liability company as a member of the limited  
2 liability company without acquiring a membership  
3 interest in the limited liability company.

4 Sec. \_\_\_\_ . NEW SECTION. 490A.307 CLASSES AND  
5 VOTING.

6 1. An operating agreement may provide for classes  
7 or groups of members and the relative rights, powers,  
8 and duties of such members, and may provide for the  
9 future creation of additional classes or groups of  
10 members having such relative rights, powers, and  
11 duties as may from time to time be established,  
12 including rights, powers, and duties senior to  
13 existing classes and groups of members. An operating  
14 agreement may provide for taking action, including the  
15 amendment of the operating agreement, without the vote  
16 or approval of any member or class or group of  
17 members, including an action to create a class or  
18 group of membership interests that was not previously  
19 outstanding. An operating agreement may provide that  
20 any member or class or group of members has no voting  
21 rights.

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

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

37 Sec. \_\_\_\_ . NEW SECTION. 490A.603 LIABILITY OF  
38 MEMBERS.

39 1. Except as otherwise provided in this chapter or  
40 by written agreement of a member, a member or manager  
41 of a limited liability company is not personally  
42 liable solely by reason of being a member or manager  
43 of the limited liability company under any judgment,  
44 or in any other manner, for any debt, obligation, or  
45 liability of the limited liability company, whether  
46 that liability or obligation arises in contract, tort,  
47 or otherwise.

48 2. A member of a limited liability company is  
49 personally liable under a judgment or for any debt,  
50 obligation, or liability of the limited liability

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1 company, whether that liability or obligation arises  
2 in contract, tort, or otherwise, under the same or  
3 similar circumstances and to the same extent as a  
4 shareholder of a corporation may be personally liable  
5 for any debt, obligation, or liability of the  
6 corporation, except that the failure to hold meetings  
7 of members or managers or the failure to observe  
8 formalities pertaining to the calling or conduct of  
9 meetings shall not be considered a factor tending to  
10 establish that the members have personal liability for  
11 any debt, obligation, or liability of the limited  
12 liability company.

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

17 Sec. \_\_\_\_\_. Section 490A.702, subsection 4, Code  
18 1997, is amended by striking the subsection and  
19 inserting in lieu thereof the following:

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

25 Sec. \_\_\_\_\_. Section 490A.702, Code 1997, is amended  
26 by adding the following new subsections:

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

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

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

37 c. By the attorney general under section  
38 490A.1409.

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

48 Sec. \_\_\_\_\_. Section 490A.703, Code 1997, is amended  
49 by adding the following new subsection:

50 NEW SUBSECTION. 2A. a. A written operating

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1 agreement or other writing may provide for a person to  
2 be admitted as a member of a limited liability  
3 company, or to become an assignee of a limited  
4 liability company membership interest or other rights  
5 or powers of a member, to the extent that either of  
6 the following occurs:

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

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

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

28 Sec. \_\_\_\_ . NEW SECTION. 490A.704A RESIGNATION OR  
29 WITHDRAWAL OF MEMBER.

30 1. a. This section applies to a limited liability  
31 company whose original articles of organization are  
32 filed with the secretary of state on or after July 1,  
33 1997.

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

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

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

48 3. Unless an operating agreement provides  
49 otherwise, a member may not resign or withdraw from a  
50 limited liability company prior to the dissolution and

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1 winding up of the limited liability company. However,  
2 if the articles of organization or an operating  
3 agreement do not specify the time or the events upon  
4 the happening of which a member may resign or  
5 withdraw, a member may resign or withdraw from the  
6 limited liability company in the event any amendment  
7 to the articles of organization or operating agreement  
8 that is adopted over the member's written dissent  
9 adversely affects the rights or preferences of the  
10 dissenting member's membership interest in any of the  
11 ways described in paragraphs "a" through "e". A  
12 resignation or withdrawal in the event of such dissent  
13 and adverse effect is deemed to have occurred as of  
14 the effective date of the amendment, if the member  
15 gives notice to the limited liability company not more  
16 than sixty days after the date of the amendment. In  
17 valuing the member's distribution pursuant to this  
18 subsection, any depreciation in anticipation of the  
19 amendment shall be excluded. An amendment that does  
20 any of the following is subject to this subsection:

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

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

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

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

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

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

36 5. An operating agreement may provide that a  
37 membership interest may not be assigned prior to the  
38 dissolution and winding up of the limited liability  
39 company.

40 Sec. \_\_\_\_ . NEW SECTION. 490A.705A CLASSES OF  
41 MANAGERS AND VOTING.

42 1. An operating agreement may provide for classes  
43 or groups of managers having such relative rights,  
44 powers, and duties as the operating agreement may  
45 provide, and may make provision for the future  
46 creation of additional classes or groups of managers  
47 having such relative rights, powers, and duties as may  
48 from time to time be established, including rights,  
49 powers, and duties senior to existing classes and  
50 groups of managers. An operating agreement may

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1 provide for taking action, including the amendment of  
2 the operating agreement, without the vote or approval  
3 of any manager or class or group of managers,  
4 including an action to create a class or group of  
5 membership interests that was not previously  
6 outstanding.

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

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

23 Sec. \_\_\_\_\_. Section 490A.709, subsection 2,  
24 unnumbered paragraph 1, Code 1997, is amended to read  
25 as follows:

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

32 Sec. \_\_\_\_\_. NEW SECTION. 490A.710 DELEGATION OF  
33 RIGHTS AND POWERS TO MANAGE.

34 Unless otherwise provided in the operating  
35 agreement, a member or manager of a limited liability  
36 company may delegate to one or more other persons the  
37 member's or manager's rights and powers to manage and  
38 control the business and affairs of the limited  
39 liability company, including to agents and employees  
40 of a member or manager of the limited liability  
41 company, and to delegate by a management agreement or  
42 another agreement with other persons. Unless  
43 otherwise provided in the operating agreement, such  
44 delegation by a member or manager of a limited  
45 liability company shall not cause the member or  
46 manager to cease to be a member or manager of the  
47 limited liability company.

48 Sec. \_\_\_\_\_. NEW SECTION. 490A.711 CONTRACTUAL  
49 APPRAISAL RIGHTS.

50 An operating agreement or an agreement of merger

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

14 Sec. \_\_\_\_ . NEW SECTION. 490A.712 CESSATION OF  
15 MEMBERSHIP.

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

19 1. The person withdraws or resigns from the  
20 limited liability company.

21 2. The person is removed as a member pursuant to  
22 the operating agreement.

23 3. Unless otherwise provided in the operating  
24 agreement or with the consent of all other members,  
25 the person does any of the following:

26 a. Makes an assignment for the benefit of  
27 creditors.

28 b. Files a voluntary petition in bankruptcy.

29 c. Is adjudged bankrupt or insolvent or has  
30 entered against the person an order for relief in any  
31 bankruptcy or insolvency proceeding.

32 d. Files a petition or answer seeking for that  
33 person any reorganization, arrangement, composition,  
34 readjustment, liquidation, dissolution, or similar  
35 relief under any statute or rule.

36 e. Seeks, consents to, or acquiesces in the  
37 appointment of a trustee, receiver, or liquidator for  
38 the member or for all or any substantial part of the  
39 member's properties.

40 f. Files an answer or other pleading admitting or  
41 failing to contest the material allegations of a  
42 petition filed against the person in any proceeding  
43 described in this subsection.

44 4. Unless otherwise provided in the operating  
45 agreement, or with the consent of all other members,  
46 the continuation of any proceeding against the person  
47 seeking reorganization, arrangement, composition,  
48 readjustment, liquidation, dissolution, or similar  
49 relief under any statute or rule for one hundred  
50 twenty days after the commencement of such proceeding,

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1 or the appointment of a trustee, receiver, or  
2 liquidator for the member or for all or any  
3 substantial part of the member's properties without  
4 the member's agreement or acquiescence, which  
5 appointment is not vacated or stayed for one hundred  
6 twenty days or, if the appointment is stayed, for one  
7 hundred twenty days after the expiration of the stay  
8 during which period the appointment is not vacated.

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

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

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

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

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

36 Sec. \_\_\_\_ . Section 490A.801, Code 1997, is amended  
37 by adding the following new subsection:

38 NEW SUBSECTION. 4. An operating agreement may  
39 provide that the interest of any member who fails to  
40 make a contribution that the member is obligated to  
41 make is subject to specified penalties for, or  
42 specified consequences of, such failure. The penalty  
43 or consequence may take the form of reducing or  
44 eliminating the defaulting member's proportionate  
45 interest in a limited liability company, subordinating  
46 the member's membership interest to that of a  
47 nondefaulting member, a forced sale of the member's  
48 membership interest, forfeiture of the member's  
49 membership interest, the lending by other members of  
50 the amount necessary to meet the member's commitment,

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1 a fixing of the value of the member's membership  
2 interest by appraisal or by formula and redemption, or  
3 sale of the member's membership interest at such value  
4 or other penalty or consequence.

5 Sec. \_\_\_\_ . NEW SECTION. 490A.809 RIGHT TO  
6 DISTRIBUTION.

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

17 2. Title page, line 1, by inserting after the  
18 word "to" the following: "the organization and  
19 operation of certain legal entities, including".

20 3. Title page, line 5, by inserting after the  
21 word "partnerships," the following: "and including  
22 limited liability companies and the conversion of  
23 other entities to limited liability companies, and the  
24 rights, duties, obligations, and interests of members  
25 and managers with respect to such companies,".

26 4. By renumbering as necessary.

By O. GENE MADDOX

S-3804 FILED APRIL 28, 1997

WITHDRAWN

(P.1507)

## HOUSE FILE 642

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1 Amend House File 642, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 30, by inserting after line 5 the  
4 following:

5 "Sec. \_\_\_\_\_. Section 490.1109, subsection 3,  
6 paragraph e, as enacted in 1997 Iowa Acts, House File  
7 628, if enacted, is amended to read as follows:

8 e. "Interested shareholder" means any person,  
9 other than the corporation and any direct or indirect  
10 majority-owned subsidiary of the corporation, that is  
11 the owner of fifteen ten percent or more of the  
12 outstanding voting stock of the corporation, or is an  
13 affiliate or associate of the corporation and was the  
14 owner of fifteen ten percent or more of the  
15 outstanding voting stock of the corporation at any  
16 time within the three-year period immediately prior to  
17 the date on which it is sought to be determined  
18 whether such person is an interested shareholder, and  
19 the affiliates and associates of such person.

20 "Interested shareholder" does not include either of  
21 the following:

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

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

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

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

41 ~~(b)--From a person subject to subparagraph  
42 subdivision (a) by gift, devise, or in a transaction  
43 in which no consideration for the shares was  
44 exchanged;~~

45 ~~(2)--A a person whose ownership of shares in excess  
46 of the fifteen ten percent limitation is the result of  
47 action taken solely by the corporation, provided that  
48 such person is an interested shareholder if, after  
49 such action by the corporation, the person acquires  
50 additional shares of voting stock of the corporation,~~

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1 other than as a result of further corporate action not  
2 caused, directly or indirectly, by such person.

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

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

12 13. "Limited liability company" or "domestic  
13 limited liability company" means ~~an entity that is~~ an  
14 unincorporated association having ~~two~~ one or more  
15 members, and ~~that is~~ organized under or subject to  
16 this chapter.

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

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

27 Sec. \_\_\_\_\_. Section 490A.202, subsection 17, Code  
28 1997, is amended by striking the subsection and  
29 inserting in lieu thereof the following:

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

33 Sec. \_\_\_\_\_. Section 490A.303, subsection 1,  
34 paragraph d, Code 1997, is amended to read as follows:  
35 d. The period of its duration, which ~~shall not~~ may  
36 be perpetual.

37 Sec. \_\_\_\_\_. NEW SECTION. 490A.304 CONVERSION OF  
38 CERTAIN ENTITIES TO A LIMITED LIABILITY COMPANY.

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

45 2. Any other entity may convert to a domestic  
46 limited liability company by complying with subsection  
47 8 and filing in the office of the secretary of state  
48 both of the following:

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

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

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

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

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

13 c. The name of the limited liability company.

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

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

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

37 6. When a conversion is effective, for all  
38 purposes of the laws of this state, all of the rights,  
39 privileges, and powers of the converting entity, and  
40 all property, real, personal, and mixed, and all debts  
41 due to the converting entity, as well as all other  
42 things and causes of action belonging to such entity,  
43 are vested in the domestic limited liability company  
44 and are the property of the domestic limited liability  
45 company as they were of the converting entity. The  
46 title to any real property vested by deed or otherwise  
47 in the converting entity shall not revert or be in any  
48 way impaired by reason of this chapter, and all rights  
49 of creditors and all liens upon any property of such  
50 other entity are preserved unimpaired, and all debts,

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1 liabilities, and duties of the converting entity shall  
2 attach to the domestic limited liability company, and  
3 may be enforced against it to the same extent as if  
4 the debts, liabilities, and duties had been incurred  
5 or contracted by the domestic limited liability  
6 company.

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

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

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

27 Sec. \_\_\_\_ . NEW SECTION. 490A.305 SERIES OF  
28 MEMBERS, MANAGERS, OR MEMBERSHIP INTERESTS.

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

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

46 a. The operating agreement creates one or more  
47 series.

48 b. Separate and distinct records are maintained  
49 for the series and the assets associated with the  
50 series are held and accounted for separately from the

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1 other assets of the limited liability company, or from  
2 any other series of the limited liability company.

3 c. The operating agreement provides for such  
4 limitation on liabilities.

5 d. Notice of the limitation on liabilities of a  
6 series is set forth in the articles of organization of  
7 the limited liability company. Filing of articles of  
8 organization containing a notice of the limitation on  
9 liabilities of a series in the office of the secretary  
10 of state constitutes notice of the limitation on  
11 liabilities of such series.

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

17 4. An operating agreement may provide for classes  
18 or groups of members or managers associated with a  
19 series having such relative rights, powers, and duties  
20 as the operating agreement may provide. The operating  
21 agreement may provide for the future creation of  
22 additional classes or groups of members or managers  
23 associated with the series having such relative  
24 rights, powers, and duties as may from time to time be  
25 established, including rights, powers, and duties  
26 senior to existing classes and groups of members or  
27 managers associated with the series. An operating  
28 agreement may provide for the taking of an action,  
29 including the amendment of the operating agreement,  
30 without the vote or approval of any member or manager  
31 or class or group of members or managers, including  
32 all action to create under the provisions of the  
33 operating agreement a class or group of the series of  
34 membership interests that was not previously  
35 outstanding. An operating agreement may provide that  
36 any member or class or group of members associated  
37 with a series have no voting rights.

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

47 6. Unless otherwise provided in an operating  
48 agreement, the management of a series shall be vested  
49 in the members associated with such series in  
50 proportion to the then-current percentage or other

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1 interest of members in the profits of the series owned  
2 by all of the members associated with such series.  
3 The decision of members owning more than fifty percent  
4 of the series or other interest in the profits shall  
5 control. However, if an operating agreement provides  
6 for the management of the series, in whole or in part,  
7 by a manager, the management of the series, to the  
8 extent so provided, is vested in the manager who shall  
9 be chosen as provided in the operating agreement. The  
10 manager of the series shall also hold the offices and  
11 have the responsibilities accorded to managers as set  
12 forth in the operating agreement. A series may have  
13 more than one manager. A manager shall cease to be a  
14 manager with respect to a series as provided in the  
15 operating agreement. Except as otherwise provided in  
16 the operating agreement, an event under this chapter  
17 or identified in an operating agreement that causes a  
18 manager to cease to be a manager with respect to a  
19 series, by itself, shall not cause the manager to  
20 cease to be a manager of the limited liability company  
21 or with respect to any other series of the limited  
22 liability company.

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

35 8. Notwithstanding any other provision of this  
36 chapter, a limited liability company may make a  
37 distribution with respect to a series that has been  
38 established pursuant to subsection 1. However, a  
39 limited liability company shall not make a  
40 distribution with respect to a series that has been  
41 established pursuant to subsection 1 to the extent  
42 that at the time of the distribution, after giving  
43 effect to the distribution, all liabilities of such  
44 series, other than liabilities to members on account  
45 of their membership interests with respect to such  
46 series and liabilities for which the recourse of  
47 creditors is limited to specified property of such  
48 series, exceed the fair value of the assets associated  
49 with such series. However, the fair value of an asset  
50 of the series that is subject to a liability for which

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1 the recourse of creditors is limited shall be included  
2 in the assets associated with such series only to the  
3 extent that the fair value of that asset exceeds that  
4 liability. A member who receives a distribution in  
5 violation of this subsection, and who knew at the time  
6 of the distribution that the distribution violated  
7 this subsection, is liable for the amount of the  
8 distribution. Subject to section 490A.807, which  
9 applies to any distribution made with respect to a  
10 series under this subsection, this subsection shall  
11 not affect any obligation or liability of a member  
12 under an agreement or other applicable law for the  
13 amount of a distribution.

14 9. Unless otherwise provided in the operating  
15 agreement, a member shall cease to be associated with  
16 a series and to have the power to exercise any rights  
17 or powers of a member with respect to such series upon  
18 the assignment of all of the member's membership  
19 interest with respect to such series. Except as  
20 otherwise provided in an operating agreement, an event  
21 under this chapter or identified in an operating  
22 agreement that causes a member to cease to be  
23 associated with a series, by itself, shall not cause  
24 such member to cease to be associated with any other  
25 series or terminate the continued membership of a  
26 member in the limited liability company.

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

38 a. At the time specified in the operating  
39 agreement.

40 b. Upon the happening of events specified in the  
41 operating agreement.

42 c. Unless otherwise provided in the operating  
43 agreement, upon the written consent of all members  
44 associated with such series.

45 d. The termination of such series under subsection  
46 10.

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

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1 a. A manager associated with a series who has not  
2 wrongfully terminated the series.

3 b. If there is no manager of a series, the members  
4 associated with the series or a person approved by the  
5 members associated with the series.

6 c. If there is more than one class or group of  
7 members associated with the series, then by each class  
8 or group of members associated with the series, in  
9 either case, by members who own more than fifty  
10 percent of the then-current percentage or other  
11 interest in the profits of the series owned by all of  
12 the members associated with the series or by the  
13 members of each class or group associated with the  
14 series.

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

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

43 13. A foreign limited liability company that is  
44 registering to do business in this state under this  
45 chapter which is governed by an operating agreement  
46 that establishes or provides for the establishment of  
47 designated series of members, managers, or membership  
48 interests having separate rights, powers, or duties  
49 with respect to specified property or obligations of  
50 the foreign limited liability company, or profits and

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1 losses associated with the specified property or  
2 obligations, shall indicate that fact on the  
3 application for registration as a foreign limited  
4 liability company. In addition, the foreign limited  
5 liability company shall state on the application  
6 whether the debts, liabilities, and obligations  
7 incurred, contracted for, or otherwise existing with  
8 respect to a particular series, if any, are  
9 enforceable against the assets of such series only,  
10 and not against the assets of the foreign limited  
11 liability company generally.

12 Sec. \_\_\_\_ . NEW SECTION. 490A.306 ADMISSION OF  
13 MEMBERS.

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

18 a. The formation of the limited liability company.

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

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

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

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

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

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1 compliance with the operating agreement of the  
2 surviving or resulting limited liability company.  
3 3. A person may be admitted to a limited liability  
4 company as a member of the limited liability company  
5 and may receive a membership interest in the limited  
6 liability company without making a contribution or  
7 being obligated to make a contribution to the limited  
8 liability company. Unless otherwise provided in an  
9 operating agreement, a person may be admitted to a  
10 limited liability company as a member of the limited  
11 liability company without acquiring a membership  
12 interest in the limited liability company.

13 Sec. \_\_\_\_ . NEW SECTION. 490A.307 CLASSES AND  
14 VOTING.

15 1. An operating agreement may provide for classes  
16 or groups of members and the relative rights, powers,  
17 and duties of such members, and may provide for the  
18 future creation of additional classes or groups of  
19 members having such relative rights, powers, and  
20 duties as may from time to time be established,  
21 including rights, powers, and duties senior to  
22 existing classes and groups of members. An operating  
23 agreement may provide for taking action, including the  
24 amendment of the operating agreement, without the vote  
25 or approval of any member or class or group of  
26 members, including an action to create a class or  
27 group of membership interests that was not previously  
28 outstanding. An operating agreement may provide that  
29 any member or class or group of members has no voting  
30 rights.

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

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

46 Sec. \_\_\_\_ . NEW SECTION. 490A.603 LIABILITY OF  
47 MEMBERS.

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

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1 liable solely by reason of being a member or manager  
2 of the limited liability company under any judgment,  
3 or in any other manner, for any debt, obligation, or  
4 liability of the limited liability company, whether  
5 that liability or obligation arises in contract, tort,  
6 or otherwise.

7 2. A member of a limited liability company is  
8 personally liable under a judgment or for any debt,  
9 obligation, or liability of the limited liability  
10 company, whether that liability or obligation arises  
11 in contract, tort, or otherwise, under the same or  
12 similar circumstances and to the same extent as a  
13 shareholder of a corporation may be personally liable  
14 for any debt, obligation, or liability of the  
15 corporation, except that the failure to hold meetings  
16 of members or managers or the failure to observe  
17 formalities pertaining to the calling or conduct of  
18 meetings shall not be considered a factor tending to  
19 establish that the members have personal liability for  
20 any debt, obligation, or liability of the limited  
21 liability company.

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

26 Sec. \_\_\_\_\_. Section 490A.702, subsection 4, Code  
27 1997, is amended by striking the subsection and  
28 inserting in lieu thereof the following:

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

34 Sec. \_\_\_\_\_. Section 490A.702, Code 1997, is amended  
35 by adding the following new subsections:

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

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

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

46 c. By the attorney general under section  
47 490A.1409.

48 NEW SUBSECTION. 4B. In a member's proceeding  
49 under subsection 4A, paragraph "a", to enjoin an  
50 unauthorized act, the court may enjoin or set aside

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1 the act if equitable and if all affected persons are  
2 parties to the proceeding. The court may award  
3 damages, other than anticipated profits, for loss  
4 suffered by the limited liability company or another  
5 party as a result of the unauthorized act being  
6 enjoined.

7 Sec. \_\_\_\_ . Section 490A.703, Code 1997, is amended  
8 by adding the following new subsection:

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

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

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

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

37 Sec. \_\_\_\_ . NEW SECTION. 490A.704A RESIGNATION OR  
38 WITHDRAWAL OF MEMBER.

39 1. a. This section applies to a limited liability  
40 company whose original articles of organization are  
41 filed with the secretary of state on or after July 1,  
42 1997.

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

48 c. If no provision is made in the operating  
49 agreement, a limited liability company whose original  
50 articles of organization were filed with the secretary

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1 of state and effective on or prior to June 30, 1997,  
2 is subject to section 490A.704.

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

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

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

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

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

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

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

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

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

49 Sec. \_\_\_\_ . NEW SECTION. 490A.705A CLASSES OF  
50 MANAGERS AND VOTING.

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

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

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

32 Sec. \_\_\_\_\_. Section 490A.709, subsection 2,  
33 unnumbered paragraph 1, Code 1997, is amended to read  
34 as follows:

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

41 Sec. \_\_\_\_\_. NEW SECTION. 490A.710 DELEGATION OF  
42 RIGHTS AND POWERS TO MANAGE.

43 Unless otherwise provided in the operating  
44 agreement, a member or manager of a limited liability  
45 company may delegate to one or more other persons the  
46 member's or manager's rights and powers to manage and  
47 control the business and affairs of the limited  
48 liability company, including to agents and employees  
49 of a member or manager of the limited liability  
50 company, and to delegate by a management agreement or

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1 another agreement with other persons. Unless  
2 otherwise provided in the operating agreement, such  
3 delegation by a member or manager of a limited  
4 liability company shall not cause the member or  
5 manager to cease to be a member or manager of the  
6 limited liability company.

7 Sec. \_\_\_\_ . NEW SECTION. 490A.711 CONTRACTUAL  
8 APPRAISAL RIGHTS.

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

23 Sec. \_\_\_\_ . NEW SECTION. 490A.712 CESSATION OF  
24 MEMBERSHIP.

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

- 28 1. The person withdraws or resigns from the  
29 limited liability company.
- 30 2. The person is removed as a member pursuant to  
31 the operating agreement.
- 32 3. Unless otherwise provided in the operating  
33 agreement or with the consent of all other members,  
34 the person does any of the following:
  - 35 a. Makes an assignment for the benefit of  
36 creditors.
  - 37 b. Files a voluntary petition in bankruptcy.
  - 38 c. Is adjudged bankrupt or insolvent or has  
39 entered against the person an order for relief in any  
40 bankruptcy or insolvency proceeding.
  - 41 d. Files a petition or answer seeking for that  
42 person any reorganization, arrangement, composition,  
43 readjustment, liquidation, dissolution, or similar  
44 relief under any statute or rule.
  - 45 e. Seeks, consents to, or acquiesces in the  
46 appointment of a trustee, receiver, or liquidator for  
47 the member or for all or any substantial part of the  
48 member's properties.
  - 49 f. Files an answer or other pleading admitting or  
50 failing to contest the material allegations of a

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1 petition filed against the person in any proceeding  
2 described in this subsection.

3 4. Unless otherwise provided in the operating  
4 agreement, or with the consent of all other members,  
5 the continuation of any proceeding against the person  
6 seeking reorganization, arrangement, composition,  
7 readjustment, liquidation, dissolution, or similar  
8 relief under any statute or rule for one hundred  
9 twenty days after the commencement of such proceeding,  
10 or the appointment of a trustee, receiver, or  
11 liquidator for the member or for all or any  
12 substantial part of the member's properties without  
13 the member's agreement or acquiescence, which  
14 appointment is not vacated or stayed for one hundred  
15 twenty days or, if the appointment is stayed, for one  
16 hundred twenty days after the expiration of the stay  
17 during which period the appointment is not vacated.

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

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

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

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

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

45 Sec. \_\_\_\_ . Section 490A.801, Code 1997, is amended  
46 by adding the following new subsection:

47 NEW SUBSECTION. 4. An operating agreement may  
48 provide that the interest of any member who fails to  
49 make a contribution that the member is obligated to  
50 make is subject to specified penalties for, or

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1 specified consequences of, such failure. The penalty  
2 or consequence may take the form of reducing or  
3 eliminating the defaulting member's proportionate  
4 interest in a limited liability company, subordinating  
5 the member's membership interest to that of a  
6 nondefaulting member, a forced sale of the member's  
7 membership interest, forfeiture of the member's  
8 membership interest, the lending by other members of  
9 the amount necessary to meet the member's commitment,  
10 a fixing of the value of the member's membership  
11 interest by appraisal or by formula and redemption, or  
12 sale of the member's membership interest at such value  
13 or other penalty or consequence.

14 Sec. \_\_\_\_ . NEW SECTION. 490A.809 RIGHT TO  
15 DISTRIBUTION.

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

26 Sec. \_\_\_\_ . Section 490A.902, unnumbered paragraph  
27 1, Code 1997, is amended to read as follows:

28 Unless otherwise provided in the articles of  
29 organization or an operating agreement, a membership  
30 interest in a limited liability company is assignable  
31 in whole or in part. An assignment of an interest in  
32 a limited liability company does not ~~of-itself~~  
33 dissolve the limited liability company. An Except as  
34 provided in the articles of organization or an  
35 operating agreement, an assignment does not entitle  
36 the assignee to participate in the management and  
37 affairs of the limited liability company or to become  
38 or to exercise any rights of a member. Such Except as  
39 provided in the articles of organization or an  
40 operating agreement, an assignment entitles the  
41 assignee to receive, to the extent assigned, only the  
42 distribution to which the assignor would be entitled.  
43 Except as provided in the articles of organization or  
44 an operating agreement, a member ceases to be a member  
45 upon assignment of the member's entire membership  
46 interest.

47 Sec. \_\_\_\_ . Section 490A.1301, subsection 3, Code  
48 1997, is amended by striking the subsection."

49 2. Title page, line 1, by inserting after the  
50 word "to" the following: "the organization and

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-17-

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1 operation of certain legal entities, including".  
2 3. Title page, line 5, by inserting after the  
3 word "partnerships," the following: "and including  
4 limited liability companies and the conversion of  
5 other entities to limited liability companies, and the  
6 rights, duties, obligations, and interests of members  
7 and managers with respect to such companies,".  
8 4. By renumbering as necessary.

By O. GENE MADDOX

S-3814 FILED APRIL 28, 1997

ADOPTED

*(p. 1507)*

Dinkla, Ch.  
Ganson  
Holveck

HB 198

JUDICIARY

Succeeded by  
SF/HF 642

HOUSE FILE  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY CHAIR-  
PERSON LAMBERTI)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to limited partnerships and the rights and duties  
2 of limited partners, partnership agreements, duties of the  
3 secretary of state with respect to limited partnerships, and  
4 other related matters affecting foreign and domestic limited  
5 partnerships, and establishing fees and penalties.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 487.101, subsections 1 and 6, Code  
2 1997, are amended to read as follows:

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

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

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

12 NEW SUBSECTION. 11. "Person" means as defined in section  
13 4.1.

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

17 Sec. 3. Section 487.102, subsection 4, Code 1997, is  
18 amended to read as follows:

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

30 Sec. 4. Section 487.102, subsection 3, Code 1997, is  
31 amended by striking the subsection.

32 Sec. 5. Section 487.104, subsection 3, Code 1997, is  
33 amended to read as follows:

34 3. An agent for service of process may resign as agent  
35 upon filing and recording in accordance with section ~~487-206~~

1 487.108 a written notice of resignation, executed in  
2 duplicate, with the secretary of state. The secretary of  
3 state shall forthwith mail a copy of the resignation to the  
4 limited partnership at its principal place of business. The  
5 appointment of the agent terminates upon the expiration of  
6 thirty days after receipt of the notice by the secretary of  
7 state.

8 Sec. 6. Section 487.105, Code 1997, is amended to read as  
9 follows:

10 487.105 RECORDS TO BE KEPT.

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

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

17 2. A copy of the certificate of limited partnership and  
18 all amendments-to-the-certificate certificates of amendment to  
19 the certificate of limited partnership, together with any  
20 executed copies of any powers of attorney pursuant to which a  
21 any certificate or-amendment has been executed.

22 3. Copies of the limited partnership's federal, state, and  
23 local income tax returns and reports, if any, for the three  
24 most recent years.

25 4. Copies of any currently effective written partnership  
26 agreements in-effect and of any financial statements of the  
27 limited partnership for the three most recent years.

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

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

34 a. The amount of cash and a description and statement of  
35 the agreed value of the other property or services contributed

1 by each partner and which each partner has agreed to  
2 contribute.

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

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

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

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

14 Sec. 7. NEW SECTION. 487.108 FILING REQUIREMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Sec. 8. NEW SECTION. 487.109 FEES.

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

- 22 a. Certificate of limited partnership ..... \$100
- 23 b. Application for registration of foreign limited partner-  
24 ship and also issuance of a certificate of registration to  
25 transact business in this state ..... \$100
- 26 c. Amendment to certificate of limited partnership .... \$ 20
- 27 d. Amendment to application for registration of foreign  
28 limited partnership ..... \$ 20
- 29 e. Cancellation of certificate of limited  
30 partnership ..... \$ 20
- 31 f. Cancellation of registration of foreign limited partner-  
32 ship ..... \$ 20
- 33 g. A consent required to be filed under this chapter .. \$ 20
- 34 h. Application to reserve a limited partnership name .. \$ 10
- 35 i. A notice of transfer of reservation of name ..... \$ 10

1 j. A notice of resignation of agent for service of  
2 process ..... \$ 5  
3 k. Articles of correction ..... \$ 5  
4 l. Application for certificate of existence or regis-  
5 tration ..... \$ 5  
6 m. Any other document required or permitted to be  
7 filed ..... \$ 5

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

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

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

18 Sec. 9. NEW SECTION. 487.110 EFFECTIVE TIME AND DATE OF  
19 DOCUMENTS.

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

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

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

28 2. A document may specify a delayed effective time and  
29 date, and if it does so the document becomes effective at the  
30 time and date specified. If a delayed effective date but no  
31 time is specified, the document is effective at the close of  
32 business on that date. A delayed effective date for a  
33 document shall not be later than the ninetieth day after the  
34 date it is filed.

35 Sec. 10. NEW SECTION. 487.111 CORRECTING FILED

1 DOCUMENTS.

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

5 a. Contains an incorrect statement.

6 b. Was defectively executed, attested, sealed, verified,  
7 or acknowledged.

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

10 a. Describe the document, including its filing date, or  
11 attach a copy of it to the articles.

12 b. Specify the incorrect statement and the reason it is  
13 incorrect or the manner in which the execution was defective.

14 c. Correct the incorrect statement or defective execution.

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

20 Sec. 11. NEW SECTION. 487.112 FILING DUTY OF SECRETARY  
21 OF STATE.

22 1. If a document delivered to the office of the secretary  
23 of state for filing satisfies the requirements of section  
24 487.108, the secretary of state shall file it and issue any  
25 necessary certificate.

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

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

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

10 a. Affect the validity or invalidity of the document in  
11 whole or part.

12 b. Relate to the correctness or incorrectness of  
13 information contained in the document.

14 c. Create a presumption that the document is valid or  
15 invalid or that information contained in the document is  
16 correct or incorrect.

17 Sec. 12. NEW SECTION. 487.113 APPEAL FROM SECRETARY OF  
18 STATE'S REFUSAL TO FILE DOCUMENT.

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

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

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

34 Sec. 13. NEW SECTION. 487.114 EVIDENTIARY EFFECT OF COPY  
35 OF FILED DOCUMENT.

1 A certificate attached to a copy of a document filed by the  
2 secretary of state, bearing the secretary of state's  
3 signature, which may be in facsimile, and the seal of the  
4 secretary of state, is conclusive evidence that the original  
5 document is on file with the secretary of state.

6 Sec. 14. NEW SECTION. 487.115 CERTIFICATE OF EXISTENCE.

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

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

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

15 b. That one of the following apply:

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

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

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

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

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

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

31 Sec. 15. NEW SECTION. 487.116 PENALTY FOR SIGNING FALSE  
32 DOCUMENT.

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

1 state for filing.

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

4 Sec. 16. NEW SECTION. 487.117 SECRETARY OF STATE --  
5 POWERS.

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

9 Sec. 17. Section 487.201, subsection 1, Code 1997, is  
10 amended to read as follows:

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

17 a. The name of the limited partnership.

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

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

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

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

30 ~~f.--The-times-at-which-or-events-on-the-happening-of-which~~  
31 ~~any-additional-contributions-agreed-to-be-made-by-each-partner~~  
32 ~~are-to-be-made.~~

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

1 of-the-power-

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

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

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

13 k.--A-time-at-which, or-an-event-upon-the-happening-of  
14 which,

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

17 l.--A-right-of-the-remaining-general-partners-to-continue  
18 the-business-on-the-happening-of-an-event-of-withdrawal-of-a  
19 general-partner.

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

22 Sec. 18. Section 487.202, Code 1997, is amended to read as  
23 follows:

24 487.202 AMENDMENT TO CERTIFICATE.

25 1. A certificate of limited partnership is amended by  
26 filing a certificate of amendment to the certificate of  
27 limited partnership in the office of the secretary of state.

28 The certificate of amendment shall set forth all of the  
29 following:

30 a. The name of the limited partnership.

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

33 c. The amendment to the certificate of-limited  
34 partnership.

35 2. Except-as-provided-in-subsection-5, within Within

1 thirty days after the happening of any of the following  
2 events, an amendment to a certificate of limited partnership  
3 reflecting the occurrence of the event shall be filed:

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

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

8 b. The withdrawal of a general partner.

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

11 3. A general partner who becomes aware that a any  
12 statement in a certificate of limited partnership was false  
13 when made or that any arrangements or other facts described  
14 have changed, making the certificate inaccurate in any  
15 respect, shall promptly amend the certificate. ~~An amendment~~  
16 ~~to show the admission of or a change of address of a limited~~  
17 ~~partner shall be filed within twelve months of the admission~~  
18 ~~or change of address.~~

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

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

25 6. 5. A ~~limited partner~~ person is not liable because an  
26 amendment to a certificate of limited partnership has not been  
27 filed to reflect the occurrence of an any event referred to in  
28 subsection 2 if the amendment is filed within the thirty-day  
29 period specified in subsection 2.

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

35 Sec. 19. Section 487.204, subsection 1, Code 1997, is

1 amended to read as follows:

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

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

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

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

13 Sec. 20. Section 487.205, Code 1997, is amended to read as  
14 follows:

15 487.205 AMENDMENT OR CANCELLATION BY JUDICIAL ACT.

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

29 Sec. 21. Section 487.208, Code 1997, is amended to read as  
30 follows:

31 487.208 SCOPE OF NOTICE.

32 The fact that a certificate of limited partnership is on  
33 file in the office of the secretary of state is notice that  
34 the partnership ~~claims-to-be~~ is a limited partnership and the  
35 persons designated in such certificate as general partners are

1 general partners, but it is not notice of any other fact.

2 Sec. 22. Section 487.301, Code 1997, is amended to read as  
3 follows:

4 487.301 ADMISSION OF NEW LIMITED PARTNERS.

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

7 a. At the time the limited partnership is formed.

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

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

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

18 b. In the case of an assignee of a partnership interest of  
19 a partner who has the power, as provided in section 487.704 to  
20 grant the assignee the right to become a limited partner, upon  
21 the exercise of that power and compliance with any conditions  
22 limiting the grant or exercise of the power.

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

29 Sec. 23. Section 487.303, Code 1997, is amended to read as  
30 follows:

31 487.303 LIABILITY TO THIRD PARTIES.

32 1. Except as provided in subsection 4, a limited partner  
33 is not liable for the obligations of a limited partnership  
34 unless the limited partner is also a general partner or, in  
35 addition to the exercise of the limited partner's rights and

1 powers as a limited partner, the limited partner takes-part  
2 participates in the control of the business. However, if the  
3 limited partner's-participation partner participates in the  
4 control of the business ~~is-not-substantially-the-same-as-the~~  
5 ~~exercise-of-the-powers-of-a-general-partner~~, the limited  
6 partner is liable only to persons who transact business with  
7 the limited partnership ~~with-actual-knowledge-of-the-limited~~  
8 ~~partner's-participation-in-control~~ reasonably believing, based  
9 upon the limited partner's conduct, that the limited partner  
10 is a general partner.

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

14 a. Being a contractor for or an agent or employee of the  
15 limited partnership.

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

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

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

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

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

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

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

35 (2) The sale, exchange, lease, mortgage, pledge, or other

1 transfer of all or substantially all the assets of the limited  
2 partnership ~~other than in the ordinary course of its business.~~

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

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

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

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

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

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

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

17 h. Winding up the limited partnership pursuant to section  
18 487.803.

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

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

26 4. A limited partner who knowingly permits the limited  
27 partner's name to be used in the name of the limited  
28 partnership, except under circumstances permitted by section  
29 487.102, subsection 2, ~~paragraph "a"~~, is liable to creditors  
30 who extend credit to the limited partnership without actual  
31 knowledge that the limited partner is not a general partner.

32 Sec. 24. Section 487.304, Code 1997, is amended to read as  
33 follows:

34 487.304 PERSON ERRONEOUSLY BELIEVING SELF TO BE A LIMITED  
35 PARTNER.

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

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

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

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

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

24 b. An appropriate certificate is filed to show the  
25 ~~person's status as a limited partner and, in the case of an~~  
26 ~~amendment, after expiration of the period for filing the~~  
27 ~~amendment relating to the person as a limited partner under~~  
28 section 487:202 that the person is not a general partner.

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

33 Sec. 25. Section 487.401, Code 1997, is amended to read as  
34 follows:

35 487.401 ADMISSION OF ADDITIONAL GENERAL PARTNERS.

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

12 Sec. 26. Section 487.402, Code 1997, is amended to read as  
13 follows:

14 487.402 EVENTS OF WITHDRAWAL.

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

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

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

23 ~~2.~~ 3. The general partner is removed as a general partner  
24 in accordance with the partnership agreement.

25 ~~3.~~ 4. Unless otherwise provided in ~~the certificate of~~  
26 limited writing in the partnership agreement, the general  
27 partner does any of the following:

28 a. Makes an assignment for the benefit of creditors.

29 b. Files a voluntary petition in bankruptcy.

30 c. Is adjudicated a bankrupt or insolvent.

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

35 e. Files an answer or other pleading admitting or failing

1 to contest material allegations of a petition filed against  
2 the general partner in a proceeding of a nature specified in  
3 paragraph "d".

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

8 ~~4-~~ 5. Unless otherwise provided in ~~the certificate of~~  
9 ~~limited writing in the partnership agreement~~, upon the  
10 expiration of the following time periods:

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

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

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

25 ~~5-~~ 6. If the general partner is a natural person when  
26 either of the following occur: --

27 a. The general partner dies.

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

30 ~~6-~~ 7. If the general partner is acting as a general  
31 partner by virtue of being a trustee of a trust, when the  
32 trust terminates. Substitution of a new trustee is not  
33 termination of the trust.

34 ~~7-~~ 8. If the general partner is a separate partnership,  
35 the dissolution and commencement of winding up of the separate

1 partnership.

2 8- 9. If the general partner is a corporation, the filing  
3 of a certificate of dissolution, or its equivalent, for the  
4 corporation or revocation of the corporation's charter.

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

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

11 Sec. 27. Section 487.403, Code 1997, is amended to read as  
12 follows:

13 487.403 GENERAL POWERS AND LIABILITIES.

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

19 2. Except as provided in this chapter, a general partner  
20 of a limited partnership has the liabilities of a partner in a  
21 partnership without limited partners to persons other than the  
22 partnership and the other partners. Except as provided in  
23 this chapter or in the partnership agreement, a general  
24 partner of a limited partnership has the liabilities of a  
25 partner in a partnership without limited partners to the  
26 partnership and to the other partners.

27 Sec. 28. Section 487.405, Code 1997, is amended to read as  
28 follows:

29 487.405 VOTING.

30 The partnership agreement may grant to all or certain  
31 identified general partners the right to vote on a per capita  
32 or any other basis, separately or with all or any class of the  
33 limited partners, on any matter.

34 Sec. 29. Section 487.502, Code 1997, is amended to read as  
35 follows:

1 487.502 LIABILITY FOR CONTRIBUTION.

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

5 2. Except as provided in the certificate-of-limited  
6 partnership agreement, a partner is obligated to the limited  
7 partnership to perform a any enforceable promise to contribute  
8 cash or property or to perform services even if the partner is  
9 unable to perform because of death, disability, or any other  
10 reason. If the a partner does not make the required  
11 contribution of property or services, the partner is obligated  
12 at the option of the limited partnership may-require-the  
13 partner to contribute cash equal to that portion of the value,  
14 as stated in the certificate-of-limited-partnership,  
15 partnership records required to be kept pursuant to section  
16 487.105, of the stated contribution that which has not been  
17 made.

18 3. Unless otherwise provided in the partnership agreement,  
19 the obligation of a partner to make a contribution or return  
20 money or other property paid or distributed in violation of  
21 this chapter may be compromised only by consent of all  
22 partners. Notwithstanding the compromise, a creditor of a  
23 limited partnership who extends credit or otherwise acts in  
24 reliance on that obligation after the partner signs a writing  
25 which reflects the obligation and before the amendment or  
26 cancellation of such obligation to reflect the-compromise may  
27 enforce the original obligation.

28 Sec. 30. Section 487.503, Code 1997, is amended to read as  
29 follows:

30 487.503 SHARING OF PROFITS AND LOSSES.

31 The profits and losses of a limited partnership shall be  
32 allocated among the partners, and among classes of partners,  
33 in the manner provided in writing in the partnership  
34 agreement. If the partnership agreement does not so provide  
35 in writing, profits and losses shall be allocated on the basis

1 of the value, as stated in the ~~certificate-of-limited~~  
2 partnership records required to be kept pursuant to section  
3 487.105, of the contributions made by each partner to the  
4 extent the contributions have been received by the partnership  
5 and have not been returned.

6 Sec. 31. Section 487.504, Code 1997, is amended to read as  
7 follows:

8 487.504 SHARING OF DISTRIBUTIONS.

9 Distributions of cash or other assets of a limited  
10 partnership shall be allocated among the partners, and among  
11 classes of partners, in the manner provided in writing in the  
12 partnership agreement. If the partnership agreement does not  
13 so provide in writing, distributions shall be made on the  
14 basis of the value, as stated in the ~~certificate-of-limited~~  
15 partnership records required to be kept pursuant to section  
16 487.105, of the contributions made by each partner to the  
17 extent the contributions have been received by the partnership  
18 and have not been returned.

19 Sec. 32. Section 487.601, Code 1997, is amended to read as  
20 follows:

21 487.601 INTERIM DISTRIBUTIONS.

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

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

29 ~~2.--If-a-distribution-is-a-return-of-part-of-the-partner's~~  
30 ~~contribution-under-section-487.6087-subsection-27-to-the~~  
31 ~~extent-and-at-the-times-or-upon-the-happening-of-the-events~~  
32 ~~specified-in-the-certificate-of-limited-partnership-~~

33 Sec. 33. Section 487.603, Code 1997, is amended to read as  
34 follows:

35 487.603 WITHDRAWAL OF LIMITED PARTNER.

1 A limited partner may withdraw from a limited partnership  
2 only at the time or upon the happening of events specified in  
3 ~~the certificate of limited partnership and in accordance with~~  
4 writing in the partnership agreement. ~~If the certificate does~~  
5 ~~not specify the time or the events upon the happening of which~~  
6 ~~a limited partner may withdraw or a time for the dissolution~~  
7 ~~and winding up of the limited partnership, a limited partner~~  
8 ~~may withdraw upon not less than six months prior written~~  
9 ~~notice directed or delivered to the partnership or to each~~  
10 ~~general partner at the partner's address on the books of the~~  
11 ~~limited partnership at its office in this state.~~

12 Sec. 34. Section 487.605, Code 1997, is amended to read as  
13 follows:

14 487.605 DISTRIBUTION IN KIND.

15 Except as provided in ~~the certificate of limited~~ writing in  
16 the partnership agreement, a partner, regardless of the nature  
17 of the partner's contribution, has no right to demand and  
18 receive any distribution from a limited partnership in any  
19 form other than cash. Except as provided in writing in the  
20 partnership agreement, a partner shall not be compelled to  
21 accept a distribution of any asset in kind from a limited  
22 partnership to the extent that the percentage of the asset  
23 distributed to the partner exceeds a percentage of that asset  
24 which is equal to the percentage in which the partner shares  
25 in distributions from the limited partnership.

26 Sec. 35. Section 487.607, Code 1997, is amended to read as  
27 follows:

28 487.607 LIMITATIONS ON DISTRIBUTION.

29 A partner shall not receive a distribution ~~if, after~~ from a  
30 limited partnership to the extent that, after giving effect to  
31 the distribution, all liabilities of the limited partnership,  
32 other than liabilities to partners on account of their  
33 partnership interests, ~~will~~ exceed the fair value of the  
34 partnership assets.

35 Sec. 36. Section 487.608, subsection 3, Code 1997, is

1 amended to read as follows:

2 3. A partner receives a return of the partner's  
3 contribution only to the extent that a distribution to the  
4 partner reduces the partner's share of the fair value~~7-as~~  
5 ~~specified-in-the-certificate~~ of the net assets of the limited  
6 partnership below the value, as set forth in the partnership  
7 records required to be kept pursuant to section 487.105, of  
8 the partner's contribution which has not been distributed to  
9 the partner.

10 Sec. 37. Section 487.702, Code 1997, is amended to read as  
11 follows:

12 487.702 ASSIGNMENT OF PARTNERSHIP INTEREST.

13 Except as provided in the partnership agreement, a  
14 partnership interest is assignable in whole or in part. An  
15 assignment of a partnership interest does not dissolve a  
16 limited partnership or entitle the assignee to become or to  
17 exercise any rights of a partner. An assignment entitles the  
18 assignee to receive, to the extent assigned, only the  
19 distribution to which the assignor would be entitled. Except  
20 as provided in the partnership agreement, a partner ceases to  
21 be a partner upon assignment of all the partner's partnership  
22 interest.

23 Sec. 38. Section 487.704, Code 1997, is amended to read as  
24 follows:

25 487.704 RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER.

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

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

35 b. ~~When the partnership agreement so-provides,-if-persons~~

1 ~~required-to-consent-to-the-assignee-becoming-a-limited-partner~~  
2 ~~consent-in-the-manner-specified-in-the-agreement.~~

3 ~~e- b.~~ All other partners ~~other-than-the-assignor-of-the~~  
4 ~~interest~~ consent ~~to-the-assignee-becoming-a-limited-partner.~~

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

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

20 Sec. 39. Section 487.801, subsection 1, Code 1997, is  
21 amended to read as follows:

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

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

26 b. When events specified in the partnership agreement  
27 occur.

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

30 ~~e- d.~~ When a general partner withdraws unless at the time  
31 there is at least one other general partner and the  
32 certificate provisions of limited the partnership permits  
33 agreement permit the business of the limited partnership to be  
34 carried on by the remaining general partner and the remaining  
35 partner does so.

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

3 Sec. 40. Section 487.902, subsections 3 and 7, Code 1997,  
4 are amended by striking the subsections.

5 Sec. 41. Section 487.902, Code 1997, is amended by adding  
6 the following new subsections:

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

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

15 Sec. 42. Section 487.1002, Code 1997, is amended to read  
16 as follows:

17 487.1002 PROPER PLAINTIFF.

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

26 Sec. 43. Section 487.1104, Code 1997, is amended to read  
27 as follows:

28 487.1104 EFFECT ON EXISTING LIMITED PARTNERSHIPS.

29 ~~This-chapter~~ Except as specifically provided in this  
30 section, this chapter applies to all limited partnerships in  
31 existence on July 1, 1997, and does not invalidate provisions  
32 in limited partnership agreements or certificates executed  
33 prior to July 1, 1982 1997. Unless otherwise agreed to by the  
34 partners, the applicable provisions of existing law, in effect  
35 prior to July 1, 1997, governing events of withdrawal,

1 withdrawal of a limited partner, and assignment of a  
2 partnership interest, govern limited partnerships formed  
3 before July 1, 1997.

4 Sec. 44. NEW SECTION. 487.1106 SAVINGS CLAUSE.

5 The repeal of any statutory provision effective July 1,  
6 1997, does not impair or otherwise affect the organization or  
7 the continued existence of a limited partnership existing on  
8 July 1, 1997, nor does the repeal of any existing statutory  
9 provision effective July 1, 1997, impair any contract or any  
10 right accrued before July 1, 1997.

11 Sec. 45. Sections 487.206 and 487.1105, Code 1997, are  
12 repealed.

13 EXPLANATION

14 This bill rewrites provisions of the uniform limited  
15 partnership law contained in Code chapter 487. Generally, the  
16 bill amends provisions allowing a limited partner to  
17 contribute services to the limited partnership in lieu of  
18 property or other valuable obligations, allowing limited  
19 partners to be granted voting rights in the partnership  
20 agreement, granting limited partners access to partnership  
21 records, authorizing a derivative action by limited partners  
22 against the partnership, and providing for the registration of  
23 foreign limited partnerships.

24 The bill refocuses the chapter on the limited partnership  
25 agreement as the primary governing document, as opposed to the  
26 certificate of limited partnership, and provides that unless  
27 contained in a written limited partnership agreement, the  
28 partnership must keep at its office a writing containing  
29 amounts contributed by each partner, times or events  
30 triggering additional contributions, the right of a partner to  
31 receive a distribution of assets, and events triggering  
32 dissolution of the limited partnership.

33 The bill creates new Code sections rewriting provisions  
34 relating to filing requirements, fees to be charged by the  
35 secretary of state related to such filings, the effective time

1 and date of documents filed, procedures and duties of the  
2 secretary of state with respect to such filings, the  
3 evidentiary effect of a copy of a filed document, the creation  
4 of a certificate of existence, penalties for signing false  
5 documents, and powers of the secretary of state.

6 The bill strikes items currently required to be contained  
7 in the certificate of limited partnership and provides for the  
8 inclusion of those items in the partnership agreement or other  
9 writing.

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HOUSE FILE 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 company, 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:

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.

- 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

- 1. 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. 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.~~

~~c. 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~~ 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.

~~2.~~ 3. The general partner is removed as a general partner in accordance with the partnership agreement.

~~3.~~ 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.

~~4.~~ 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 compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or

cancellation 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 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. ~~b. 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.

c. 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~~ 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 17, 1998, or pursuant to an exchange offer announced prior to January 17, 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 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. An 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 agreement, an assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled.

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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.

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RON J. CORBETT  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 642, Seventy-seventh General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved May 26, 1997

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TERRY E. BRANSTAD  
Governor

**HF 642**