

Act No. 323
Public Acts of 1994
Approved by the Governor
October 11, 1994
Filed with the Secretary of State
October 12, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Reps Profit Dobb Randall Palamara Munsell Keith Middaugh Alley Yokich and Murphy

ENROLLED HOUSE BILL No. 5593

AN ACT to amend the title and sections 15 18 34 36 and 40 of Act No 72 of the Public Acts of 1917 entitled An act to define what shall constitute partnerships the relation of partners to persons dealing with the partnership the relation of partners to one another to provide for the dissolution and winding up of partnerships and to make uniform the law relating thereto being sections 449 15 449 18 449 34 449 36 and 449 40 of the Michigan Compiled Laws and to add sections 44 45 46 47 and 48

The People of the State of Michigan enact

Section 1 The title and sections 15 18 34 36 and 40 of Act No 72 of the Public Acts of 1917 being sections 449 15 449 18 449 34 449 36 and 449 40 of the Michigan Compiled Laws are amended and sections 44 45 46 47 and 48 are added to read as follows

TITLE

An act to define partnerships the relation of partners to persons dealing with the partnership the relation of partners to one another to provide for the dissolution and winding up of partnerships to prescribe powers and duties of certain state agencies and officials and to make uniform the law relating to partnerships

Sec 15 (Nature of partner s liability) Except as otherwise provided by section 46 all partners are liable for both of the following

- (a) Jointly and severally for everything chargeable to the partnership under sections 13 and 14
- (b) Jointly for all other debts and obligations of the partnership However a partner may enter into a separate obligation to perform a partnership contract

Sec 18 (Rules determining rights and duties of partners) The rights and duties of the partners in relation to the partnership shall be determined subject to any agreement between them by all of the following rules

(a) Each partner shall be repaid his or her contributions whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities including those to partners are satisfied Except as provided in section 46 each partner shall contribute towards the losses whether of capital or otherwise sustained by the partnership according to his or her share in the profits

(b) The partnership shall indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him or her in the ordinary and proper conduct of its business or for the preservation of its business or property

(c) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital which he or she agreed to contribute shall be paid interest from the date of the payment or advance

(d) A partner shall receive interest on the capital contributed by him or her from the date when repayment should be made

(e) All partners have equal rights in the management and conduct of the partnership business

(f) A partner is not entitled to remuneration for acting in the partnership business except that a surviving partner is entitled to reasonable compensation for his or her services in winding up the partnership affairs

(g) A person cannot become a member of a partnership without the consent of all partners

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners. However, an act in contravention of any agreement between the partners may not be done rightfully without the consent of all the partners

Sec 34 (Right of partner to contribution from copartners after dissolution) Except as otherwise provided by section 46 if dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his or her copartners for his or her share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless this dissolution is caused by 1 of the following

(a) The dissolution being by act of any partner and the partner acting for the partnership had knowledge of the dissolution

(b) The dissolution being by the death or bankruptcy of a partner and the partner acting for the partnership had knowledge or notice of the death or bankruptcy

Sec 36 (Effect of dissolution on partner's existing liability)

(1) The dissolution of the partnership does not discharge the existing liability of any partner

(2) A partner is discharged from existing liability upon dissolution of the partnership by an agreement to that effect between the partner, the partnership creditor, and the person or partnership continuing the business. An agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business

(3) If a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of the obligations

(4) Except as provided in section 46, the individual property of a deceased partner shall be liable for those obligations of the partnership incurred while he or she was a partner but subject to the prior payment of his or her separate debts

Sec 40 (Rules for distribution) In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary

(a) The assets of the partnership are as follows

(i) The partnership property

(ii) The contributions of the partners specified in subdivision (d)

(b) The liabilities of the partnership shall rank in order of payment as follows

(i) Those owing to creditors other than partners

(ii) Those owing to partners other than for capital and profits

(iii) Those owing to partners in respect of capital

(iv) Those owing to partners in respect of profits

(c) The assets shall be applied in the order of their declaration in subdivision (a) to the satisfaction of the liabilities

(d) Except as provided in section 46, the partners shall contribute as provided by section 18(a) the amount necessary to satisfy the liabilities. If any of the partners are insolvent, not subject to process, or otherwise refuse to contribute, the other partners shall contribute their share of the liabilities in the relative proportions in which they share the profits

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in subdivision (d)

(f) Any partner or his or her legal representative shall have the right to enforce the contributions specified in subdivision (d) to the extent of the amount which he or she has paid in excess of his or her share of the liability

(g) The individual property of a deceased partner shall be liable for the contributions specified in subdivision (d)

(h) When partnership property and the individual properties of the partners are in the possession of a court for distribution, except for lienholders and secured creditors, partnership creditors shall have priority on partnership property and separate creditors on individual property

(i) If a partner has become bankrupt or his or her estate is insolvent the claims against his or her separate property shall rank in the following order

- (i) Those owing to separate creditors
- (ii) Those owing to partnership creditors
- (iii) Those owing to partners by way of contribution

Sec 44 (1) A partnership may organize as a limited liability partnership by filing with the department on a form provided by the department a registration that states the following

- (a) The name of the partnership
 - (b) The address of the partnership's principal office
 - (c) If the partnership is a foreign limited liability partnership the address of the registered office and the name of the registered agent authorized to receive service of process in this state
 - (d) A brief statement of the business of the partnership
 - (e) A statement that the partnership will operate as a limited liability partnership
 - (f) The partnership's federal employer identification number or if a number has not been assigned to the partnership the social security number of the person or persons signing the registration
 - (g) Any other information that the department may require
- (2) A majority in interest of the partners or individuals authorized to execute a registration by a majority in interest of the partners shall sign the registration form described in subsection (1) The registration shall be accompanied by a registration fee of \$100 00
- (3) The registration is effective immediately upon filing with the department and the payment of the registration fee and shall remain in effect for 1 year from the effective date under this section
- (4) A registration may be renewed for 1 year by filing with the department a renewal registration on a form provided by the department and the payment of a renewal fee of \$100 00
- (5) The status of a partnership as a registered limited liability partnership shall not be affected by errors or subsequent changes in the information provided pursuant to this section
- (6) As used in this section and sections 47 and 48 department means the department of commerce

Sec 45 The name of a registered limited liability partnership shall contain the words limited liability partnership or the abbreviation L L P or LLP as the last words or letters of the partnership's name

Sec 46 (1) Except for a tax obligation of the partnership a partner of a registered limited liability partnership is not liable directly or indirectly including by way of indemnification contribution assessment or otherwise for debts obligations and liabilities of or chargeable to the partnership whether in tort contract or otherwise arising from negligence wrongful acts omissions misconduct or malpractice committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or an employee agent or representative of the partnership

(2) This section shall not affect the liability of a partner in a registered limited liability partnership for the partner's own negligence wrongful acts omissions misconduct or malpractice or that of any person under the partner's direct supervision and control

(3) Except as provided in subsection (2) a partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership the object of which is to recover damages or enforce the obligations arising out of the negligence wrongful acts omissions misconduct or malpractice as described in subsection (1)

Sec 47 (1) A registered limited liability partnership formed under the laws of another state territory district or possession of the United States or another country shall not conduct business in this state until the partnership has registered with the department and paid a registration fee of \$100 00

(2) The registration form shall contain the same information as required by section 44(1) and the address of its registered office and the name and address of its registered agent for service of process

(3) The registration is effective immediately upon filing with the department and payment of the registration fee and shall remain in effect for 1 year from the effective date under this section

(4) A registration may be renewed for 1 year by filing with the department a renewal registration and the payment of a renewal fee of \$100 00

(5) Except as otherwise provided by this act a foreign limited liability partnership shall be governed by the laws under which it was formed

(6) The name of a partnership doing business in this state under this section shall contain the words limited liability partnership or the abbreviation L L P or LLP as the last words or letters of its name

Sec. 48 (1) The registration or renewal of a registration for a limited liability partnership shall be filed by delivering the registration to the department together with the fees and any other documents required by section 44 or 47. The department may establish procedures for accepting the registration by means of facsimile transmission.

(2) If the registration substantially conforms to the requirements of section 44 or 47, the department shall indorse upon it the word "filed" with the date of filing and shall file and index the registration or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy of registration. If requested at the time of filing, the department shall include in the indorsement the hour of filing.

(3) The records and files of the department relating to registered limited liability partnerships shall be open to reasonable inspection by the public. The records or files may be maintained either in their original form or in a photostatic, micrographic, photographic, optical disc media, or other reproduced form.

(4) The department may make copies of all documents filed under section 44 or 47 by a photostatic, micrographic, photographic, optical disc media, or other process and may destroy the originals of the documents copied. A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the department, which may be sent by facsimile transmission, shall be considered an original for all purposes and is admissible in evidence in the manner as an original.

(5) A fee received under section 44 or 47 shall be deposited in the state treasury to the credit of the department to be used by the department in carrying out the duties required by this section. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred by the department, the money remaining shall be credited to the general fund of the state.

(6) A minimum charge of \$1.00 for each certificate and 50 cents per folio shall be paid to the department for certifying a part of a file or record pertaining to a registered limited liability partnership. The department may furnish copies of documents, reports, and papers required or permitted by law to be filed with the department and shall charge for those copies pursuant to a schedule of fees that the department adopts with the approval of the state administrative board. The department shall retain the revenue collected under this subsection to be used by the department to defray the costs for its copying and certifying services.

(7) If a domestic or foreign registered limited liability partnership pays fees or penalties by check and the check is dishonored, the fee shall be considered unpaid and the filing of all related documents is rescinded.

(8) The department may accept a credit card in lieu of cash or check as payment of a fee under this act. The department shall determine which credit cards may be accepted for payment.

(9) The department may charge a nonrefundable fee of up to \$50.00 for a document submitted or certificate sent by facsimile transmission. The department shall retain the revenue collected under this subsection to be used by the department in carrying out its duties under this section.

(10) If the department rejects the filing of a registration or renewal registration, the department shall refund any fees paid except for \$25.00, which the department shall retain to defray its costs incurred under this section.

This act is ordered to take immediate effect.

Co Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor

Witness before me on this day