

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 297

Short Title: Various Limited Partnership Law Changes.

(Public)

Sponsors: Senators Clodfelter; Cooper, Hartsell, Kerr, Miller, and Odom.

Referred to: Judiciary I.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-79 reads as rewritten:

"§ 1-79. Domestic ~~corporations.~~ corporations, limited partnerships, and limited liability companies.

(a) For the purpose of suing and being sued the residence of a domestic ~~corporation~~ corporation, limited partnership, or limited liability company is as follows:

- (1) Where the registered or principal office of the ~~corporation~~ corporation, limited partnership, or limited liability company is located, or
- (2) Where the ~~corporation~~ corporation, limited partnership, or limited liability company maintains a place of ~~business.~~ business, or
- (3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term 'residence' shall include any place where the ~~corporation~~ corporation, limited partnership, or limited liability company is regularly engaged in carrying on business.

1 (b) For purposes of this section, the term 'domestic' when applied to an entity
2 means:

3 (1) An entity formed under the laws of this State, or

4 (2) An entity that (i) is formed under the laws of any jurisdiction other than
5 this State, and (ii) maintains a registered office in this State pursuant to
6 a certificate of authority from the Secretary of State."

7 Section 2. G.S. 59-102 reads as rewritten:

8 "**§ 59-102. Definitions.**

9 As used in this Article, unless the context otherwise requires:

10 (1) 'Business' means any lawful trade, investment, or other purpose or
11 activity, whether or not the trade, investment, purpose, or activity is
12 carried on for profit.

13 ~~(1)~~(1a) 'Certificate of limited partnership' means the certificate
14 referred to in G.S. 59-201, and the certificate as
15 amended.

16 (2) 'Conformed copy' shall include a photostatic or other photographic copy
17 of the original document.

18 (3) 'Contribution' means any cash, property, services rendered, or a
19 promissory note or other binding obligation to contribute cash or
20 property or to perform services, which a partner contributes to a limited
21 partnership in his capacity as a partner.

22 (4) 'Event of withdrawal of a general partner' means an event that causes a
23 person to cease to be a general partner as provided in G.S. 59-402.

24 (5) 'Foreign limited partnership' means a partnership formed under the laws
25 of any state, province, country, or other jurisdiction other than this State
26 and having as partners one or more general partners and one or more
27 limited partners.

28 (6) 'General partner' means a person who has been admitted to a limited
29 partnership as a general partner in accordance with the partnership
30 agreement and named in the certificate of limited partnership as a
31 general partner.

32 (7) 'Limited partner' means a person who has been admitted to a limited
33 partnership as a limited partner in accordance with the partnership
34 agreement.

35 (8) 'Limited partnership' and 'domestic limited partnership' mean a
36 partnership formed by two or more persons under the laws of this State
37 and having one or more general partners and one or more limited
38 partners.

39 (9) 'Partner' means a limited or general partner.

40 (10) 'Partnership agreement' means any valid ~~agreement, written or oral,~~
41 agreement of the partners as to the affairs of a limited ~~partnership and~~
42 partnership, the conduct of its business, and the responsibilities
43 and rights of its partners. The term 'partnership agreement' includes any

1 written or oral agreement, whether or not the agreement is set forth in a
2 document referred to by the partners as a 'partnership agreement', and
3 includes any amendment agreed upon by the partners unanimously or in
4 accordance with the terms of the agreement. The term also includes any
5 agreement of the partners to waive or revise the terms of the partnership
6 agreement in one or more specific instances and not necessarily on an
7 ongoing or permanent basis.

8 (11) 'Partnership interest' means a partner's share of the allocations of
9 income, gain, loss, deduction or credit of a limited partnership and the
10 right to receive distributions of cash or other partnership assets.

11 (12) 'Person' means a natural person, partnership, limited partnership
12 (domestic or foreign), trust, estate, association, or corporation.

13 (13) 'State' means a state, territory, or possession of the United States, the
14 District of Columbia, or the Commonwealth of Puerto Rico."

15 Section 3. G.S. 59-106(a)(5) reads as rewritten:

16 "(5) ~~Unless contained in a written partnership agreement: A written record~~
17 that contains:

18 a. The amount of cash and a description and statement of the
19 agreed value of the other property or services contracted by each
20 partner and which each partner has agreed to contribute;

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

24 c. Any right of a partner to receive distribution of property,
25 including cash from the limited partnership; and

26 d. Events upon the happening of which the limited partnership is to
27 be dissolved and its affairs wound up.

28 The written record required pursuant to this subdivision may be part of a
29 written partnership agreement or may be contained in one or more other
30 documents or records."

31 Section 4. G.S. 59-107 reads as rewritten:

32 "**§ 59-107. Nature of business.**

33 A limited partnership may be formed for and carry on any lawful business that a
34 partnership without limited partners may carry on. business."

35 Section 5. G.S. 59-205 reads as rewritten:

36 "**§ 59-205. Amendment or cancellation-Execution by judicial act.**

37 If a person ~~required by G.S. 59-204 to execute a certificate of amendment or~~
38 ~~cancellation~~ fails or refuses to ~~do so, execute a certificate pursuant to G.S. 59-204, any~~
39 ~~other partner, and any assignee of a partnership interest, person~~ who is adversely affected
40 by the failure or refusal, may petition the court for the county in which the partnership's
41 registered office is located to direct the ~~amendment or cancellation. execution of the~~
42 certificate. If the court finds that the amendment or cancellation is proper it is proper for
43 the certificate to be executed and that any person so designated has failed or refused to

1 execute the certificate, it shall order an appropriate person to prepare, and the Secretary
2 of State to record ~~record, an appropriate certificate of amendment or cancellation-~~
3 certificate."

4 Section 6. G.S. 59-206(a)(5) reads as rewritten:

5 "(5) The certificate required by subdivision (3a) of this section ~~subsection~~
6 shall be recorded by the register of deeds in the same manner as deeds,
7 and for the same fees, but no formalities as to acknowledgement,
8 probate, or approval by any other officer shall be required. The former
9 name of the limited partnership holding title to the real property before
10 the amendment shall appear in the 'Grantor' index, and the amended
11 name of the limited partnership holding title to the real property by
12 virtue of the amendment shall appear in the 'Grantee' index."

13 Section 7. G.S. 59-301 reads as rewritten:

14 **"§ 59-301. Admission of ~~additional~~ limited partners.**

15 (a) In connection with the formation of a limited partnership, a person is admitted
16 as a limited partner upon the later to occur of:

17 (1) The formation of the limited partnership; or

18 (2) The time provided for becoming a limited partner pursuant to and upon
19 compliance with the partnership agreement.

20 (b) After the ~~filing~~ formation of a limited partnership's original certificate of limited
21 partnership, a person may be admitted as an additional limited partner:

22 (1) In the case of a person acquiring a partnership interest directly from the
23 limited partnership, at the time provided pursuant to, and upon the
24 compliance with ~~with, the partnership agreement, or, if the partnership~~
25 ~~agreement does not so provide, upon the written consent of all partners;~~
26 agreement; and

27 (2) In the case of an assignee of a partnership interest of a partner who has
28 the power, as provided in G.S. 59-704, to grant the assignee the right to
29 become a limited partner, upon the exercise of that power and
30 compliance with any conditions limiting the grant or exercise of the
31 power."

32 Section 8. G.S. 59-302 reads as rewritten:

33 **"§ 59-302. Voting.**

34 ~~Subject to G.S. 59-303, the~~ The partnership agreement may grant to all or a specified
35 group of the limited partners the right to vote (on a per capita or other basis) upon any
36 matter."

37 Section 9. G.S. 59-303 reads as rewritten:

38 **"§ 59-303. Liability to third parties.**

39 (a) ~~Except as provided in subsection (d), a limited partner is not bound by the~~
40 ~~obligations of a limited partnership unless he is also a general partner or, in addition to~~
41 ~~the exercise of his rights and powers as a limited partner, he takes part in the control of~~
42 ~~the business. However, if the limited partner's participation in the control of the business~~
43 ~~is not substantially the same as the exercise of the powers of a general partner, he is liable~~

1 only to persons who transact business with the limited partnership with actual knowledge
2 of his participation in control.

3 (b) ~~A limited partner does not participate in the control of the business within the~~
4 ~~meaning of subsection (a) solely by doing one or more of the following:~~

5 (1) ~~Being a contractor for or an agent or employee of the limited~~
6 ~~partnership or of a general partner, or an officer, director, or shareholder~~
7 ~~of a corporate general partner;~~

8 (2) ~~Consulting with and advising a general partner with respect to the~~
9 ~~business of the limited partnership;~~

10 (3) ~~Acting as surety for the limited partnership;~~

11 (4) ~~Proposing, approving or disapproving an amendment to the partnership~~
12 ~~agreement;~~

13 (5) ~~Proposing or voting on one or more of the following matters:~~

14 a. ~~The dissolution and winding up of the limited partnership;~~

15 b. ~~The sale, exchange, lease, mortgage, pledge, or other transfer of~~
16 ~~all or substantially all of the assets of the limited partnership~~
17 ~~other than in the ordinary course of its business;~~

18 e. ~~The incurrence of indebtedness by the limited partnership other~~
19 ~~than in the ordinary course of its business;~~

20 d. ~~A change in the nature of the business; or~~

21 e. ~~The addition, removal or substitution of general partners;~~

22 (6) ~~Bringing an action in the right of a limited partnership to recover a~~
23 ~~judgment in its favor pursuant to Part 10 of this Article;~~

24 (7) ~~Approving or disapproving a transaction involving an actual or potential~~
25 ~~conflict of interest between a general partner and the limited~~
26 ~~partnership; or~~

27 (8) ~~Requesting or attending a meeting of partners.~~

28 (c) ~~The enumeration in subsection (b) does not mean that the possession or~~
29 ~~exercise of any other powers by a limited partner constitutes participation by him in the~~
30 ~~control of the business of the limited partnership.~~

31 (d) ~~A limited partner who knowingly permits his name to be used in the name of~~
32 ~~the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is~~
33 ~~liable to creditors who extend credit to the limited partnership without actual knowledge~~
34 ~~that the limited partner is not a general partner.~~

35 A limited partner is not liable for the obligations of a limited partnership by reason of
36 being a limited partner and does not become liable for the obligations of a limited
37 partnership by participating in the management or control of the business of the limited
38 partnership."

39 Section 10. G.S. 59-304 reads as rewritten:

40 "**§ 59-304. Person erroneously believing himself limited partner.**

41 (a) Except as provided in subsection (b), a person who makes a contribution to a
42 business enterprise and erroneously but in good faith believes that ~~he~~the person has
43 become a limited partner in the enterprise is not a general partner in the enterprise and is

1 not bound by its obligations by reason of making the contribution, receiving distributions
2 from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the
3 mistake, he:

4 (1) Causes an appropriate certificate of limited partnership or certificate of
5 amendment to be executed and filed; or

6 (2) Withdraws from future equity participation in the enterprise.

7 (b) A person who makes a contribution of the kind described in subsection (a) of
8 this section is liable as a general partner to any third party who transacts business with the
9 enterprise ~~(i) before the person withdraws from the enterprise, or (ii) before the person gives~~
10 ~~notice to the partnership of his withdrawal from future equity participation, but only if the third~~
11 ~~party actually believed in good faith that the person was a general partner at the time of the~~
12 ~~transaction. in the case in which:~~

13 (1) The third party actually believed in good faith that the person was a
14 general partner at the time of the transaction; and

15 (2) The third party transacted business with the enterprise before either:

16 a. An appropriate certificate has been filed pursuant to subsection
17 (a) of this section to reflect that the person is not a general
18 partner; or

19 b. The person has given notice to the partnership of withdrawal
20 from future equity participation and before the withdrawal was
21 effective."

22 Section 11. G.S. 59-305 reads as rewritten:

23 **"§ 59-305. Information.**

24 Each limited partner has the right to:

25 (1) Inspect and copy any of the partnership records required to be
26 maintained by G.S. 59-106; and

27 (2) Obtain from the general partners from time to time upon reasonable
28 demand (i) true and full information regarding the state of the business
29 and financial condition of the limited partnership, (ii) promptly after
30 becoming available, a copy of the limited partnership's federal, State,
31 and local income tax returns for each year, and (iii) other information
32 regarding the affairs of the limited partnership as is just and reasonable."

33 Section 12. G.S. 59-402(4) reads as rewritten:

34 "(4) Unless otherwise provided in writing in the partnership agreement, the
35 general partner: (i) makes an assignment for the benefit of creditors; (ii)
36 files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or
37 insolvent; (iv) files a petition or answer seeking for himself any
38 reorganization, arrangement, composition, readjustment, liquidation,
39 dissolution, or similar relief under any statute, law, or regulation; (v)
40 files an answer or other pleading admitting or failing to contest the
41 material allegations of a petition filed against ~~him~~ the general partner in
42 any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in
43 the appointment of a trustee, receiver, or liquidator of the general

1 partner or of all or any substantial part of ~~his~~ the general partner's
2 properties;".

3 Section 13. G.S. 59-402(5) reads as rewritten:

4 "(5) Unless otherwise provided in writing in the partnership agreement, 120
5 days after the commencement of any proceeding against the general
6 partner seeking reorganization, arrangement, composition, readjustment,
7 liquidation, dissolution, or similar relief under any statute, law, or
8 regulation, the proceeding has not been dismissed, or if within 90 days
9 after the appointment without ~~his~~ the general partner's consent or
10 acquiescence of a trustee, receiver, or liquidator of the general partner or
11 of all or any substantial part of his properties, the appointment is not
12 vacated or stayed, or within 90 days after the expiration of any such
13 stay, the appointment is not vacated;"

14 Section 14. G.S. 59-502(a) reads as rewritten:

15 "(a) Except as provided in the ~~agreement of limited partnership,~~ partnership
16 agreement, a partner is obligated to the limited partnership to perform any enforceable
17 promise to contribute cash or property or to perform services, even if ~~he~~ the partner is
18 unable to perform because of death, disability or any other reason. If a partner does not
19 make the required contribution of property or services, ~~he~~ the partner is obligated at the
20 option of the limited partnership to contribute cash equal to that portion of the agreed
21 value of the stated contribution that has not been made. As used in this section, the term
22 'agreed value' means an amount or other measure of value as (i) is provided in the
23 partnership agreement, or (ii) if not provided in the partnership agreement, is required to
24 be set forth in the written records required pursuant to G.S. 59-106."

25 Section 15. G.S. 59-503 reads as rewritten:

26 "**§ 59-503. Sharing income, gain, loss, deduction or credit.**

27 ~~Allocation of the income,~~ Income, gain, loss, deduction or credit of a limited
28 partnership shall be allocated among the partners, and among classes of partners, in the
29 manner provided in the partnership agreement. ~~If the partnership agreement does not so~~
30 provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis
31 of the value of the contributions made by each partner to the extent they have been received by
32 the partnership and have not been returned. ~~To the extent the partnership agreement does not~~
33 provide for the allocation of items of income, gain, loss, deduction, or credit, then those
34 items shall be allocated on the basis of the agreed value of the contributions made by
35 each partner to the extent they have been received by the partnership and have not been
36 returned. As used in this section, the term 'agreed value' means an amount or other
37 measure of value as (i) is provided in the partnership agreement, or (ii) if not
38 provided in the partnership agreement, is required to be set forth in the written records
39 required pursuant to G.S. 59-106."

40 Section 16. G.S. 59-504 reads as rewritten:

41 "**§ 59-504. Sharing of distributions.**

42 Distributions of cash or other assets of a limited partnership shall be made among the
43 partners, and among classes of partners, in the manner provided in the partnership

1 agreement. ~~If the partnership agreement does not so provide in writing, distributions shall be~~
2 ~~made on the basis of the value of the contributions made by each partner to the extent they have~~
3 ~~been received by the partnership and have not been returned.~~ To the extent the partnership
4 agreement does not provide for the sharing of distributions among the partners,
5 distributions shall be made among the partners on the basis of the agreed value of the
6 contributions made by each partner to the extent they have been received by the
7 partnership and have not been returned. As used in this section, the term 'agreed value'
8 means an amount or other measure of value as (i) is provided in the partnership
9 agreement, or (ii) if not provided in the partnership agreement, is required to be set forth
10 in the written records required pursuant to G.S. 59-106."

11 Section 17. G.S. 59-602 reads as rewritten:

12 **"§ 59-602. Withdrawal of general partner.**

13 After filing of the original certificate of limited ~~partnership~~ partnership, a general
14 partner may withdraw from a limited partnership at any time by giving written notice to
15 the other partners, but if the withdrawal violates the partnership agreement, the limited
16 partnership may recover from the withdrawing general partner, in addition to its other
17 remedies, ~~and any damages for breach of the partnership agreement.~~ agreement and may
18 offset the damages against the amount otherwise distributable or payable to the partner."

19 Section 18. G.S. 59-603 reads as rewritten:

20 **"§ 59-603. Withdrawal of limited partner.**

21 A limited partner may withdraw from a limited partnership only at the time or upon
22 the happening of events specified in writing in and in accordance with the partnership
23 ~~agreement.~~ agreement, including any amendment or addendum to the partnership
24 agreement agreed upon by the partners unanimously or in accordance with the terms of
25 the agreement and made in connection with any permitted withdrawal. If the partnership
26 agreement does not specify in writing the time or the events upon the happening of which
27 a limited partner may ~~withdraw~~ withdraw, a limited partner may not withdraw prior to the
28 ~~or a definite~~ time for the dissolution and winding up of the limited ~~partnership,~~ a limited
29 partner may ~~withdraw upon not less than six months prior written notice to each general partner~~
30 ~~at his address on the books of the limited partnership at its registered office in this State.~~
31 partnership."

32 Section 19. G.S. 59-604 reads as rewritten:

33 **"§ 59-604. Distribution upon withdrawal.**

34 Except as provided in this Article, upon withdrawal any withdrawing partner is
35 entitled to receive any distribution to which ~~he~~ the partner is entitled under the
36 partnership agreement and, if not otherwise provided in the agreement, ~~he~~ the partner is
37 entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ the
38 partner's partnership interest in the limited partnership as of the date of ~~withdrawal.~~
39 withdrawal, based upon the partner's right to share in distributions from the limited
40 partnership."

41 Section 20. G.S. 59-606 reads as rewritten:

42 **"§ 59-606. Right to distribution.**

1 Subject to the other provisions of Part 6 of this Article, at the time a partner becomes
2 entitled to receive a distribution, ~~he~~the partner has the status of, and is entitled to all
3 remedies available to, a creditor of the limited partnership with respect to the
4 distribution."

5 Section 21. G.S. 59-608(c) reads as rewritten:

6 "(c) A partner receives a return of ~~his~~the partner's contribution to the extent that a
7 distribution to ~~him~~the partner reduces ~~his~~the partner's share of the fair value of the net
8 assets of the limited partnership below the agreed value of ~~his~~the partner's contribution
9 which has not been distributed to ~~him~~the partner. As used in this section, the term
10 'agreed value' means an amount or other measure of value as (i) is provided in the
11 partnership agreement, or (ii) if not provided in the partnership agreement, is required to
12 be set forth in the written records required pursuant to G.S. 59-106."

13 Section 22. G.S. 59-702 reads as rewritten:

14 "**§ 59-702. Assignment of partnership interest.**

15 Except as provided in the partnership agreement, a partnership interest is assignable in
16 whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest
17 does not dissolve a limited partnership or entitle the assignee to become or to exercise
18 any rights of a partner. An assignment entitles the assignee to receive, to the extent
19 assigned, only the allocation and distribution to which the assignor would be entitled.
20 Except as provided in the partnership agreement, a ~~limited partner shall continue to be a~~
21 ~~limited partner after assignment of all or any part of his partnership interest. Except as provided~~
22 ~~in the partnership agreement, a general partner ceases to be a general partner and to have the~~
23 power to exercise any rights and powers of a partner upon assignment of all ~~his~~ of the
24 partner's partnership interest. Except as provided in the partnership agreement, neither
25 the pledge or granting of a security interest in any or all of the partnership interest of a
26 partner nor the pledge or granting of a lien or other encumbrance against any or all of the
27 partnership interest of a partner shall cause the partner to cease to be a partner or cease to
28 have the power to exercise any rights or powers of a partner."

29 Section 23. G.S. 59-704(b) reads as rewritten:

30 "(b) An assignee who has become a limited partner has, to the extent assigned, the
31 rights and powers, and is subject to the restrictions and liabilities, of a limited partner
32 under the partnership agreement and this Article. An assignee who becomes a limited
33 partner also is liable for the obligations of ~~his~~the assignee's assignor to make and return
34 contributions as provided in ~~Part~~Parts 5 and 6 of this Article. However, the assignee is
35 not obligated for liabilities that (i) are unknown to the assignee at the time ~~he~~the assignee
36 became a limited partner and ~~which~~(ii) could not be ascertained from the written
37 provisions of the partnership agreement."

38 Section 24. G.S. 59-801 reads as rewritten:

39 "**§ 59-801. Nonjudicial dissolution.**

40 (a) A limited partnership is dissolved and its affairs shall be wound up upon the
41 happening of the first to occur of the following:

- 42 (1) At the time specified in the certificate of limited partnership or upon the
43 happening of events specified in writing in the partnership agreement;

- 1 (2) Written consent of all partners;
- 2 (3) An event of withdrawal of a general partner ~~unless at~~ unless:
- 3 a. At the time there is at least one other general partner and the
- 4 written provisions of the partnership agreement permit partner, in
- 5 which case, unless otherwise provided in a written partnership
- 6 agreement or agreed upon by all remaining partners, (i) the
- 7 limited partnership is not dissolved, (ii) the limited partnership
- 8 shall not be wound up, and (iii) the business of the limited
- 9 partnership to be carried on shall be continued by the remaining
- 10 general partner and that partner does so, but the limited partnership is
- 11 not dissolved and is not required to be wound up by reason of any
- 12 event of withdrawal if, within partners; or
- 13 b. Within 90 days after the withdrawal, all remaining partners
- 14 partners, or a lesser number or portion of the partners provided in
- 15 the partnership agreement, agree in writing to continue the
- 16 business of the limited partnership and to the appointment of one
- 17 or more additional general partners if necessary or desired; or
- 18 desired, in which case the limited partnership is not dissolved and
- 19 is not required to be wound up by reason of the event of
- 20 withdrawal;
- 21 (3a) 90 days after the withdrawal of the limited partnership's last limited
- 22 partner, unless the limited partnership admits at least one limited partner
- 23 before the end of the 90 days; or
- 24 (4) Entry of a decree of judicial dissolution under G.S. 59-802.
- 25 (b) The causes of dissolution of a limited partnership shall be governed solely by
- 26 this Article. Article 2 of this Chapter, which governs the causes of dissolution of a
- 27 partnership without limited partners, does not apply and shall not govern the causes of
- 28 dissolution of a limited partnership."
- 29 Section 25. G.S. 59-903 reads as rewritten:
- 30 "**§ 59-903. Issuance of registration.**
- 31 (a) If the Secretary of State finds that an application satisfies the requirements of
- 32 this Article, the Secretary shall, when all requisite fees have been tendered as in this
- 33 Article prescribed:
- 34 (1) Endorse on the application the word 'filed', and the hour, day, month
- 35 and year of the filing thereof;
- 36 (2) File in the office of the Secretary of State the application;
- 37 (3) Issue a certificate of authority to transact business in this State to which
- 38 the Secretary shall affix the conformed copy of the application; and
- 39 (4) Send to the foreign limited partnership or its representative the
- 40 certificate of authority, together with the conformed copy of the
- 41 application affixed thereto."
- 42 Section 26. G.S. 59-907(e) reads as rewritten:

1 "(e) A limited partner of a foreign limited partnership is not liable as a general
2 partner of the foreign limited partnership solely by reason of the foreign limited
3 partnership's having transacted business in this State without registration."

4 Section 27. G.S. 59-1002 reads as rewritten:

5 **"§ 59-1002. Proper plaintiff.**

6 In a derivative action, the plaintiff must be a partner at the time of bringing the action
7 and ~~(1)~~ (i) must have been a partner at the time of the transaction of which he complains
8 that is the subject of the complaint or ~~(2) his~~ (ii) the plaintiff's status as a partner had ~~had~~ must
9 have devolved upon him ~~the partner~~ by operation of law or pursuant to the terms of the
10 partnership agreement from a person who was a partner at the time of the transaction."

11 Section 28. This act becomes effective October 1, 1999, and applies to suits
12 filed on or after that date. Section 18 of this act applies to (i) any limited partnership
13 formed before October 1, 1999, only if validly adopted in writing by its partners or
14 otherwise as a part of its partnership agreement, and (ii) all limited partnerships formed
15 on or after October 1, 1999.